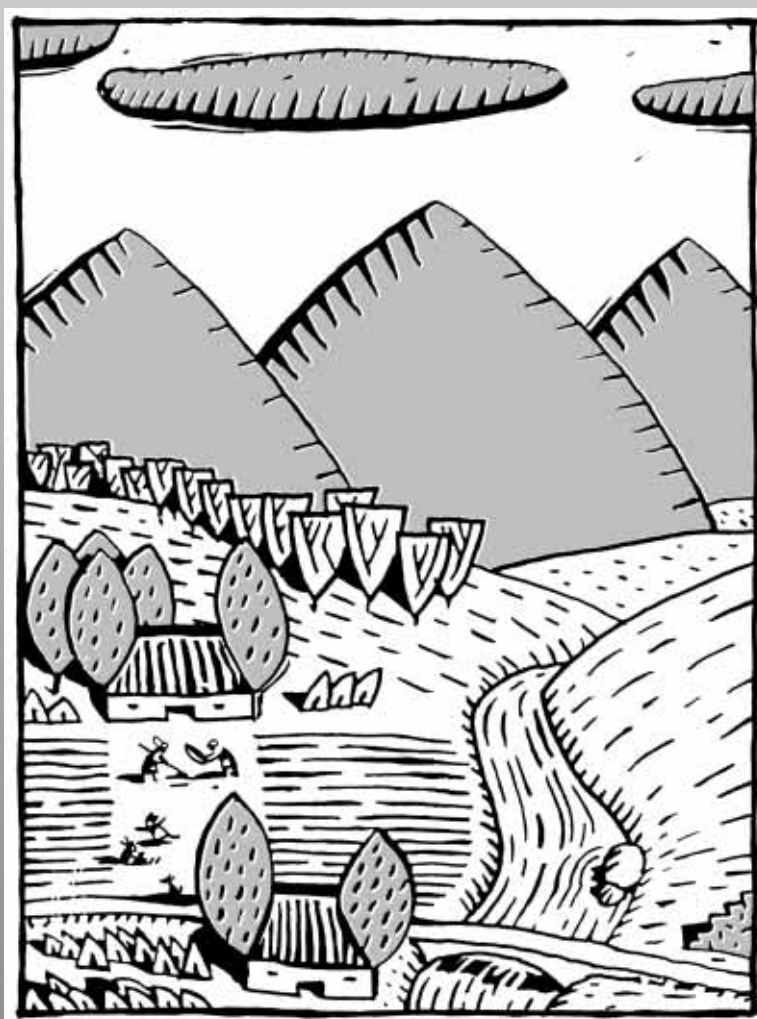

Legal bases for the management of forest resources as common property



COMMUNITY
FORESTRY
NOTE

14



Food
and
Agriculture
Organization
of
the
United
Nations

LEGAL BASES FOR THE MANAGEMENT OF FOREST RESOURCES AS COMMON PROPERTY

by
John W. Bruce



The designations employed and the presentation of material in this publication do not imply the expression of any opinion whatsoever on the part of the Food and Agriculture Organization of the United Nations concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying or otherwise, without the prior permission of the copyright owner. Applications for such permission, with a statement of the purpose and extent of the reproduction, should be addressed to the Director, Information Division, Food and Agriculture Organization of the United Nations, Viale delle Terme di Caracalla, 00100, Rome, Italy.

© FAO 1999

Foreword

An understanding of the impact that different private, communal and state management systems have on both the utilization and conservation of forest resources and the welfare of local communities is essential to sustainable development.

State and national authorities in many different regions of the world are currently decentralizing the management of forest reserves. There is growing interest in employing a more participatory, collaborative form of management as a strategy for forest conservation. The challenge is to enable both local communities and nations to benefit from goods and services that improve livelihoods, without compromising long-term resource and development goals.

In order to have a greater understanding of the possibilities offered by different tenure and management arrangements for forest resources, the Community Forestry Unit (CFU) has been involved since the early 1990's in identifying the conditions under which the communal management of forests is a viable approach. It has become clear that management systems entail intricate relationships between village groups and local institutions, between local traditions and national laws that govern the forest, and between governments and local people.

This study is part of a series of documents on forest and tree management. It addresses legal issues that arise in common property forestry, that is, when the right to use the forest and its products is vested in a community rather than individuals. It explores the experience of local communities and those who work with them to provide secure access to natural resources, and focuses on the question of how best to lay solid legal foundations for common property forestry. Related publications concerned with tenure, institutional and legal analysis, and communal management are presented on page 127 at the back of this publication.

Support and funding for *Legal bases for the management of forest resources as common property* was provided by the multidonor Trust Fund, the Forests, Trees and People Programme (FTPP). FTPP works to increase social and economic equity and improve well-being, especially that of the poor, through the support of collaborative and sustainable management of trees, forests and other natural resources.

Lennart Ljungman
Director, Forestry Policy and Planning Division
Forestry Department

Table of Contents

FOREWORD iii

LIST OF TABLES AND BOXES vii

ACRONYMS viii

ACKNOWLEDGEMENTS ix

INTRODUCTION 1

CHAPTER 1. PROBLEM: THE LEGAL VULNERABILITY OF COMMON PROPERTY 3

- ▶ The new optimism 3
- ▶ Common property regimes and competition for resources 6
- ▶ The sources of legal vulnerability 7

CHAPTER 2. LEGAL BASES IN INDIGENOUS COMMUNITY-BASED TENURE SYSTEMS 11

- ▶ Indigenous community-based tenure systems 11
- ▶ Landscapes and their tenure niches 12
- ▶ The evolution of indigenous common property 14

CHAPTER 3. LEGAL BASES IN NATIONAL LEGAL SYSTEMS 21

- ▶ National statutes and common property law 21
- ▶ The colonial inheritance 22
- ▶ Latin America: diversification and indigenization 25
- ▶ Africa: common property in an era of law reform 29
- ▶ South and Southeast Asia: contractual and property solutions 36
- ▶ After communism: finding a niche for common property 44
- ▶ The Near East: Islamic and secular solutions 47
- ▶ The variety of approaches: an explanatory model 49

CHAPTER 4. COMMON PROPERTY CONFLICTS AND THEIR RESOLUTION 53

- ▶ Conflict and the creation of common property 54
 - The Alto Jura in Brazil 56
 - The Chimanes Forest in Bolivia 56
 - The Awá Indian Territory in Ecuador 56



▶ Common property disputes	57
Disputes over exclusion	57
Collective choice disputes	57
Disputes over rules concerning use	58
Disputes between communities and the state over the role of the state	59
▶ Coping with conflict, resolving disputes	60
CHAPTER 5. GUIDELINES: LEGAL CHANGE AND STRATEGIES	67
▶ A review	67
▶ Securing common property under national law	68
▶ Community strategies for securing common property	71
▶ Managing conflict over common property	74
▶ Conclusion	74
APPENDIXES: COUNTRY CASE STUDIES	75
A. The English commons	75
B. Tanzania’s experience with village ownership	77
C. India’s Joint Forestry Management programme	83
D. The Philippines’ Communal Forest Stewardship Certificates	89
E. Guatemala: ejido forestry in an unfriendly legal environment	93
F. Mexico: ejido forestry with a constitutional mandate	95
G. Guinea: property rights reform and community forest management	99
H. China: decollectivization and community forestry	103
I. Albania: towards local government and village forestry	109
J. Syria: Islamic law and community resource management	113
GLOSSARY	115
BIBLIOGRAPHY	117
RELATED COMMUNITY FORESTRY PUBLICATIONS	127
COMMUNITY FORESTRY PUBLICATIONS	129

List of Tables and Boxes

Table 1	Legal bases: common property.....	23
Table 2	National and state-level JFM policies.....	39
Table 3	The JFM programme in India.....	85
Box 1	What makes common property work?.....	4
Box 2	Small CPR works better.....	5
Box 3	Colonial construction of ‘communal tenure’.....	8
Box 4	The Gambia: community forestry and village interests.....	9
Box 5	Community resource management in the inland Niger Delta.....	13
Box 6	How ‘communal’ is communal tenure?.....	15
Box 7	Traditional forest reserves in Babati District, Tanzania.....	16
Box 8	Indigenous common property forestry in Nepal.....	17
Box 9	Africa: prospects for indigenous management and change.....	19
Box 10	A community institutes common property forestry in Mexico.....	26
Box 11	Niger: the ‘Guesselbodi Law’.....	31
Box 12	Guinea: use of the forest domains of local communities.....	32
Box 13	Guinea: contracting to provide secure access.....	34
Box 14	J & K Social Forestry Project.....	36
Box 15	Community Forest Stewardship Agreement, the Philippines.....	41
Box 16	Legislation liberalizing land and tree tenure in China.....	45
Box 17	Albania legislates communal forests.....	46
Box 18	An Islamic statement concerning hema.....	49
Box 19	Co-management and/or common property in Africa?.....	50
Box 20	India: Chandri Beat time line.....	55
Box 21	Forestry law and pastoralists’ commons in Senegal.....	58
Box 22	Conflict resolution commissions in Niger.....	61
Box 23	Lessons from disputes in the creation of the Awá Indian Territory, Ecuador.....	63
Box 24	Struggling for common property: Betagi, Bangladesh.....	65
Box 25	Women and community forestry in Nepal.....	69
Box 26	Including women and people without power.....	72

Acronyms

ADB	Asian Development Bank
AID	Agency for International Development
CFMA	community forest management agreement
CFSC	Communal Forestry Stewardship Certificate
CICOL	Central InterComunal del Oriente Lomerio
COFYAL	Cooperativa Forestal Yanasha
CPIM	Communist Party India – Marxist
CPR	common property regime
CSC	Certificate of Stewardship Contract
CSRD	Conseillers sous régionaux de développement
CTFT	Centre Technique Forestier Tropical
DENR	Department of Environment and Natural Resources
DIGEBOS	Dirección General de Bosques
FPC	Forest Protection Committee
FPRI	Forestry and Pastures Research Institute
GDF	General Directorate for Forestry
GTZ	Gesellschaft für Technische Zusammenarbeit/German Agency for Technical Cooperation
HIVOS	Humanist Institute for Cooperation with Developing Countries
ISFP	Integrated Social Forestry Programme
JFM	joint forestry management
MFP	minor forest product
MLHUD	Ministry of Lands, Housing and Urban Development
NAFTA	North American Free Trade Agreement
NGO	non-governmental organization
OCEFO	Organización Comunitaria de Empresas Forestales de Oaxaca
OEPPF-Zona Maya	Organización de Ejidos Producción Forestal de la Zona Maya de Quintana Roo
PEPP	Proyecto Especial Pichis-Palcazu
PUMAREN	Programa de Uso y Manejo de Recursos Naturales
RCUP	Resource Conservation and Utilization Project
SARH	Secretariat of Agriculture and Water Resources
SFA	State Forest Administration
SPFE	Society of Ejido Forest Producers
TFR	traditional forest reserve
UCEFO	Union of Forestry Communities and Ejidos of Oaxaca
USAID	United States Agency for International Development
WBFD	West Bengal Forest Department
WDO	Women's Development Office

Acknowledgements

The author wishes to thank several research assistants at the University of Wisconsin-Madison for their invaluable assistance (Sharmila Rudrappa, Li Zongmin, Biong Deng Kuol, Michael Grisham and Nelle Chmielewski); several readers for their very helpful comments on drafts (Elinor Ostrom of Indiana University, Jon Lindsay of FAO's Development Law Service and Marilyn Hoskins, FAO's Senior Community Forestry Officer in the early stages of this effort). Special thanks are due to Dr Laurel Rose, whose *Disputes in common property regimes* (1996) was prepared as part of this same initiative with FAO. The author draws upon her writing extensively in the chapter of this publication on disputes and their settlement. The support of the Land Tenure Center (LTC) and the Department of Forest Ecology and Management, University of Wisconsin-Madison, is gratefully acknowledged, as is the United States Agency for International Development (USAID) funding for LTC research under the Global Bureau's Access II Project, which made possible many of the case studies from which evidence is marshalled here. Finally, the author especially wishes to thank the staff of FAO's Community Forestry Unit for their patience and persistent encouragement throughout this project.

Endagwe, Tanzania

Endagwe village lies between Lake Babati and the Duru Hills. Most of the hills in the western part of the village were until recently covered by miombo forest, but the forested area is now rapidly being cleared for settlement.

The villagers were aware, however, of the benefits of maintaining part of the forest for catchment protection and as a source for forest products. In 1989, when intact miombo forest remained on only a couple of ridges within the village boundaries, an active forester had influenced the village council to try to prevent further clearing. The village council decided to conserve two areas as 'Village Forest'. They drafted a by-law and announced that cultivation was prohibited in these areas, and that nobody should be allocated land there.

Shortly afterward, a farmer who had recently immigrated to the village cleared and burned a major part of one of these forests. The village, again inspired by the forester, sued the 'encroacher' in the District Court, arguing that the decision to protect the forest had been approved by the village council and properly announced.

No by-laws have as yet been returned to the villages after approval in the District and the Prime Minister's Office in this district. The village was not demarcated and had no title to its land. The court found that the 'encroacher' had not violated any law, that he could go on cultivating the land, and that the village even had to pay him compensation.

Interview with Forests, Trees and People field staff, Hoben et al., 1992

INTRODUCTION

This publication concerns legal issues that arise in cases of common property forestry, that is, when the right to use the forest and its products is vested in a community rather than individuals. Usually (though not necessarily) the trees are held by the community as a part of the 'land' on which they stand. The use may be carried out by members in loose or tight coordination, or even by individuals acting independently, using the resource serially or simultaneously, and within only very general limits set by the community.

This publication seeks to explore the experience of local communities and those who work with them to provide secure access to resources for community forestry, and focuses on the question of how best to lay solid legal foundations for common property forestry. It attempts to respond to the needs of communities such as Endagwe in Tanzania (see facing page). It asks what the role of common property is in community forestry, and what we can learn about its utility from the experience to date. An attempt is made to examine these issues not just from the viewpoint of policy-makers and law-reformers, but from the viewpoint of local communities and of those who work with them, who must often make difficult choices in legal milieus over which they have little control.

It has been a challenge to do justice to three different but legitimate perspectives. One is the pragmatic approach of many foresters, who are searching for a realistic strategy for getting local people behind efforts to conserve forests and afforest degraded areas. Another is that of the institutional economists, who have brought considerable rigour to our thinking about what

makes common property work. The third reflects the hope of many communities that access to, and especially ownership of, forest resources might help them conserve their cultural values and achieve greater political and economic autonomy.

Chapter 1 of this publication describes a problem: the legal vulnerability of common property arrangements. It is often difficult to provide legal security of expectations, including security of tenure, to communities managing land resources under indigenous common property regimes or seeking to construct such regimes.

Chapter 2 examines indigenous common property regimes, and in particular attempts to understand their evolution and how they nest within community-based land tenure systems.

Chapter 3 turns to national statute law, and reviews the diverse national situations, seeking to understand why they differ so substantially with regard to the management authority vested in community forestry institutions and the degree of security of tenure in which the forest resource is held.

Chapter 4 supplements these examinations of substantive law with a look at disputes arising under common property regimes and their resolution, in recognition that no tenure system can provide security unless there are adequate structures for dispute resolution.

Chapter 5, the final chapter, drawing on the earlier material, attempts to suggest guidelines on:

- ▶ how policy-makers and legislators can best limit the vulnerability of common property by

- improving the national statutory law and rationalizing its relationship to customary law;
- ▶ how local communities and those who work with them can best legally secure common property regimes, both customary regimes and regimes being created anew by communities and government; and
 - ▶ how dispute settlement arrangements can be framed to effectively manage conflict concerning common property.

PROBLEM: THE LEGAL VULNERABILITY OF COMMON PROPERTY

The new optimism

In the 1970s, the ‘tragedy of the commons’ was almost conventional wisdom in discourse on natural resource management. The asserted tragedy was that, as population and pressure on resources grew, users of resources held in common would inevitably eventually overexploit and degrade those resources (Hardin, 1968). Today there is a renewed optimism about the prospects for effective community management of natural resources, based to a significant extent on the growing perception that communities that have the opportunity to manage resources as common property have a reasonable chance of doing so sustainably.

The discussion of this topic is bedevilled by confused terminology, and it is best to clarify some key terms at the outset. ‘Common property’ is a narrower category than ‘community resource management’ or ‘decentralized resource management’. By focusing attention on ‘property’, it asserts that the terms on which the community holds the resource are important. ‘Common property’ can be most simply defined as ‘corporate group property’ (Bromley, 1992a). It can be held in full ownership or under a right less than ownership. For example, a long-term lease can also be common property, so long as the right is held by a group.

But there must be a group, sometimes referred to vaguely as ‘the community’, and the group must be organized and legally recognized (‘corporate’ in Bromley’s terminology). The term ‘community’ is bandied about as if its meaning were obvious, but in fact it refers to many types of groups

beyond the simple residential community. A ‘community’ may be a lineage or a clan, units defined by descent from common ancestors, or it may be simply a ‘community of interest’, a group that has formed voluntarily to achieve a common purpose or represent a common interest. The term is used because it conveys effectively to many unfamiliar with the jargon of the field a sense of an organized and legally recognized group, Bromley’s ‘corporate group’. The term ‘institution’ is often used to describe the organization of the community that holds common property, but the term ‘organization’ itself is preferable for this purpose. This is because it allows us to use the term ‘common property institution’ uniquely and thus unambiguously to refer to the complex of rules and rights that constitute common property, in the same way that we use the term ‘the institution of marriage’.

Common property is one important way to ensure that communities have the confident expectation of long-term use of the land. Common property is a strategy to increase incentives for sustainable use by giving them a longer planning horizon. Communities can respond positively to the incentives for investment created by secure expectations, as do individuals on their own holdings.

Realization of the potential of common property in supporting sustainable community resource management has in part grown out of the observations of development practitioners that local communities sometimes manage their resources effectively, even under substantial pressure. It is also due to the work of institutional economists who have reflected to good advantage on what precisely we mean by common property, why

sustainable common property management is theoretically workable, and what might be the necessary conditions for effective common property management (Bromley, 1992b; Ostrom *et al.*, 1994).

The literature that has developed over the past decade distinguishes 'open access' situations, in which there are no social controls over use of the resource and where a 'tragedy' of overuse may indeed be likely, from common property, where the conditions for such control exist: a group with a limited membership, with a right to exclusive use of the resource, which then has the opportunity to regulate resource use by its members and also the incentive to do so, because the costs and benefits of disciplined, sustainable use are internalized to the group (Bruce and Fortmann, 1992; see Box 1). Those who predicted the inevitable demise of the commons have qualified their predictions (Hardin, 1994).

Community resource management, and by extension common property, are important because certain resources, by their nature, are less conveniently partitioned for management by households than others. Resources in movement, such as rivers and fish and wildlife, are most difficult to individualize. For other resources, such as pastures and forests, the costs of individualizing are high and may be impractical. In the case of pastures, herders who can no longer move to accommodate highly variable rainfall patterns would need to establish a source of water for each discrete grazing unit. Costs of establishment are too

high for small stockowners, so the options become either individualization with the squeezing out of many small stockholders, or the maintenance and further formalization of common property through legal mechanisms such as Kenya's group ranches. In forestry, there are protection and management costs and opportunity costs associated with long-term investment in trees that can more easily be borne by a community or other group than by households.

The special physical properties of these resources, which have important management implications, have led them to be characterized as 'common pool resources'. This appears to be the best way to refer to the resource itself, as opposed to the term 'common property resource', which seems to suggest that there is some necessary connection between common property as a legal regime and the nature of the resource, when in fact many resources can be managed either as individual or common property. Here the term 'common property regime' (CPR) is used to refer to the legal regime for a resource that is utilized as common property, and the term 'common pool resource' is used to describe a resource exploited as a commons (McKean and Ostrom, 1995).

Many designers and managers of development and conservation projects are seeking to incorporate the establishment or support of CPRs within their projects. Designers of natural resource management projects, disillusioned with the performance of the state as a resource manager, now almost reflexively urge greater control of resource

BOX 1 • WHAT MAKES COMMON PROPERTY WORK?

The question, then, is what leads to successes. Ostrom (1986) has suggested that groups emerge to manage common property when the user population lives close to the resource and is relatively small and when supply is moderately scarce compared to demand and is subject to multiple uses requiring management and co-ordination. Groups seem to survive if they have clear-cut rules that are enforced by both users and officials, internally adaptive institutional arrangements, the ability to nest into external organizations for dealing with the external environment, and different decision rules for different purposes. And their chances are better if they are subject to slow exogenous change....

Bruce and Fortmann, 1992

BOX 2 • SMALL CPR WORKS BETTER

The use of case-study materials to test hypotheses is also illustrated by several studies that examine the effects of group size on the performance of institutions managing common-property resources. The analytical literature on collective action and the case-study materials highlight group size as a factor that affects the ability of the group to manage a common-property resource. The intuition is obvious. If a group is smaller, all other things being equal, it should be less costly for members of the group to recognize each other and so easier for the group to detect rule infractions by group members and entry into the commons by nongroup users. The cost of decision making and coordination of activities should similarly be related to group size. Four factors have already been mentioned: cost of intragroup enforcement, cost of extragroup exclusion, cost of decision making, and cost of coordination. (The per capita benefits of cooperation are assumed in these mental experiments to be held constant as group size varies.) The costs involved for each of these activities is affected by more than group size and in particular responds to the costs of transportation and communication, which in turn depend in part upon the available technology. Thus it is not surprising that unequivocal generalizations do not emerge from a quick review of the case studies.

Yet the case studies do include information corroborating our intuition. The three “successful” cases discussed by Berkes (Chapter 7) were located in bays exploited by from 100 to 140 registered fishing units; the numbers of units in the bays in which failures occurred were twice to ten times as large. All four factors appear to be relevant in the cases discussed by Berkes.

Similar results are reported by Kari Bullock and John Baden (1977) in their discussion of the operation of Hutterite communes. Group sizes of 60 to 150 have promoted successful communal operations in such settings. Victor S. Doherty and N.S. Jodha (1979; compare Doherty, 1982), like Doherty, Senen M. Miranda, and Jacob Kampen (1982) also highlight the importance of group size in the successful operation of tank irrigation schemes in semiarid areas in South Asia. (Similar evidence for aquaculture in Panama is found in Molnar, Schwartz, and Lovshin (1985)).

Feeney, 1992

use by local communities. Common property forestry is urged as an efficient approach, but there are other important values reflected in the literature on common property. One is the need to maintain access to critical resources for the many rather than the few, and especially to preserve the access of the rural poor. In some cases, the survival of minority peoples depends upon the safeguarding of the rights of those communities in their lands and forests (*Cultural Survival Quarterly*, 1990, 1995; Plant, 1994).

Donors and governments are increasingly opting for smaller, more participatory projects. There is evidence that CPR works better where the

resources to which it is applied are not too extensive (see Box 2). Non-governmental Organizations (NGOs) commonly operate at this smaller scale and have a generally more open attitude towards local participation in project design and management. They often find communities using land as commons, and frequently find common property arrangements governing the use of pasture, woodland and fishing grounds under community-based tenure systems. There is currently a particular interest in exploring more thoroughly the role that common property can play in community forestry (McKean and Ostrom, 1995).

However, the experience of NGOs with common property as a project component has been mixed. They are finding that, while common property arrangements often already exist or can be created with the stimulation of project funding, it is sometimes difficult to sustain them against challenges from inside and outside the community. It may also be difficult to ensure that the resource or its production is not 'hijacked', redirecting benefits away from the beneficiaries as envisaged in the project design towards other, more powerful actors.

It is becoming clear that the pervasiveness of conflict and competition in both the creation and maintenance of CPRs has not been adequately treated in much of the literature, and this has in turn led to inadequate attention to development of strategies to reduce the legal vulnerability of common property. The need is to think through what legal arrangements, in terms of both organization and property, provide the necessary exclusivity, security and control.

Common property regimes and competition for resources

The conflict over resources under CPR can be understood if we consider the circumstances in which common property is created. When a particular resource is plentiful, there is no need for property rights. Such resources are exploited as open access resources, and in terms of social control of use, all that may be needed is a dispute settlement mechanism to resolve problems created when two users try to use the same specific part of the resource simultaneously and conflict results. Overlapping use of the same resources by different communities is common, and there may be some mediation mechanism that coordinates use.

But the resource becomes more highly valued as population grows. In addition, a particular resource may be the subject of more intense competition because of its proximity to the village, markets or other resources. The competition may come from neighbouring communities or from 'outsiders'. A community then decides that open access is no longer a viable option, and that it must establish exclusive rights over the resource. It must be able to exclude others. That establish-

ment of exclusive control creates possibilities for effective management of the resource that did not exist when it was under a regime of open access.

It has long been suggested that property rights emerge in response to increasing competition for resources, as a way in which society manages that competition (Demsetz, 1967; Bromley, 1992a). This understanding applies to forests as to other resources, and a beginning has been made in exploring these issues specifically in the forestry context (Fortmann and Riddell, 1985; Raintree, 1987; Fortmann and Bruce, 1988; and Bruce and Fortmann, 1992).

The creation of a CPR, like the creation of individual property, confers the right to exclude others from the resource. That right to exclude is the essence of property regimes, and even if not pressed to complete exclusion, it provides the basis for regulation of use. In the case of common property, those excluded might be either present or potential users from outside the community. The community's right to exclude will understandably be challenged by others who want access to the resource.

Some challenges will come from previous users. Others will come from new claimants, backed by national power. In many countries governmental and commercial elites are actively appropriating land, stimulated by subsidies to commercial agriculture or by increasing food prices under structural adjustment policies. These interests often target unintensively or seasonally used common pool resources, asserting that they are vacant and underutilized (Bruce and Tanner, 1993).

Moreover, the creation of a CPR for the resource will not please everyone in the community. Even within a simple village community, different households and individuals will have different stakes in a particular resource, and will accordingly be willing to invest more or less in its management as common property (Lawry, 1990). Others, well positioned to appropriate the bulk of those resources, will tend to favour partition of the resource among individuals rather than management of the resource as common property.

We should expect the legal basis of common property to be challenged from both inside and outside the community. Those challenges most often are not formal legal challenges, but acts that violate rules of exclusion and rules governing

use, acts that test the will and ability of the community to enforce its rules and seek to undermine the CPR.

The sources of legal vulnerability

Community control of common pool resources often proves vulnerable to these challenges. Indeed, in many cases there has been little apparent attention to providing a firm legal basis for common property. Communities and their advocates often fail to perceive that a strong legal foundation and security of tenure are as important to the community as to the individual property owner. Alternatively, the problem is perceived but when its difficulty is realized, legal ambiguity is accepted as a 'given' with which the community must live. There is a lack of well-articulated legal strategies, whether for altering the legal position to provide a firmer legal base for the common property institution, or for devising coping strategies to minimize the risks created by legal ambiguity.

Why is this lack of a firm legal basis so difficult to confront effectively? Three major sources of difficulty exist:

- (1) the lack of solid legal provisions for CPRs in national law, relating both to organizational form and property rights;
- (2) the exclusion of claims to such rights for local communities by the state's claim to own vast areas of the rural land resource, including forests; and
- (3) the poor integration of national systems of statutes and custom, often conflicting, within which common property must be secured.

Those trying to think about these issues at the level of the local community or 'project' usually do not have access to relevant legal models for statutory or contractual instruments to create and sustain common property. The common property literature is couched heavily in terms of rules, and one of its primary concerns has been the normative requirements of effective common property. But that literature has been remarkably unclear with regard to precisely what tenure local communities require for a CPR. For example, security of tenure seems as important to the

incentives of the common property holding group as for the individual landholder; but must such communities have perpetual ownership of the resource, or will a long-term lease from the state provide sufficient security?

Where does one look for legal models for a sound and secure CPR? Most commonly, a nation's law relevant to common property consists of a collection of laws concerning organizations, tenure and administration, which must be pieced together rather like a jigsaw puzzle to assemble a legal basis for common property. The statutes themselves are often defective and outdated, and it is not easy to work through how best they can be fitted together. This is beyond the competence of most local communities and those who assist them. This will be dealt with more thoroughly in Chapter 3.

These difficulties are nested within a larger problem, the third of the major sources of difficulty noted above: the poor integration of parallel systems of customary and statutory land law. In most developing countries, overlapping and poorly reconciled (or directly conflicting) systems of law are in operation. One such system is national law, and there will also be bodies of law associated with provinces or other subdivisions of the state. Frequently there are also community-based legal systems, including tenure systems, that derive their authority from local custom. These community-based tenure systems, which vary from one ethnic group to another and according to land use even within ethnic groups, continue to prevail in most rural areas of developing countries. These systems are commonly called 'customary', or 'indigenous', or 'traditional' land tenure.

The roots of this situation lie in colonial history. Colonial powers introduced Western tenure forms alongside the indigenous systems. This introduction was, however, often limited to modest land areas, usually areas where landholdings had been demarcated and surveyed. There was sometimes explicit recognition by colonial law of customary tenure rights as well, but in other cases customary rights might be unrecognized and unenforceable in the colonial courts. In the latter case, there might nonetheless be administrative recognition of custom by colonial administrators out of their practical need to work with reality. Legal recognition was more common in Africa

BOX 3 • COLONIAL CONSTRUCTION OF 'COMMUNAL TENURE'

Early administrators approached Africa with certain basics in mind. These were the broad evolution of human societies from status to contract; the contrast between individualism and communalism; and, even among the anthropologically minded, a contrast between rational and irrational economic behavior. An essential part of this picture was the model of land tenure, the basic features of which were that land was held in some form of communal tenure and could not be sold by individuals, and that all had a more or less equal right to land.... Iliffe remarks that rural capitalism was seen "not only as socially and politically dangerous, but somehow improper for Africans like guitars or three piece suits" (Iliffe, 1983:137). The framework of suspicion and of tight control over rural entrepreneurs meant condemning their desire to increase their landholdings as unnatural and greedy, in a sense economically right, but not customary and therefore not legitimate. Gradually a picture of a customary economic world was built up according to which institutions in the realm of custom, like landholding, were judged. Even customary institutions that did not fit this picture were judged illegitimate....

Against this background of notions of African economic behavior, and the powers of chiefs, the colonial legal system etched its version of the customary land law, a version essentially necessitated by the need to validate early land alienations. The summoning into existence of the customary regime was hugely convenient, for to treat indigenous rights as if they were the equivalent of rights recognized in English law would have created a plethora of embarrassing problems. And to treat Africans as people who had not "evolved" the institution of private property in land not only gave vastly greater scope to the state, but it also functioned as a powerful ideological criticism of African societies. Individual title could be thought of as a distant goal of policy, while in the meantime the colonial regimes would handle land in the best interests of the population. Attempts to assert individual rights could gain no recognition because they were by definition not legal....

Chanock, 1991

than in Asia or Latin America, and in Africa it was more common in British than in French colonies. In the British colonies the recognition often involved considerable distortions of those systems to serve colonial policies (Chanock, 1985; see Box 3).

Such recognition tended to be limited to farmland, with the state claiming pastures and forests for itself and seeking to extinguish traditional use rights. For these categories of land, there was a much greater uniformity than with regard to farmland and residential land. Across continents and across different national colonial traditions, the clear and consistent theme of colonial natural resource management was concentration of con-

trol over those resources in the hands of the state.

Later, new elites coming to national power at independence often expanded these policies, and even sought to entirely replace local systems with new national land laws. They attempted to bring access to land within their control, removing it from the control of traditional elites. The tenure policies that they have pursued have been characterized as 'replacement' rather than 'adaptation' policies (Bruce and Migot-Adholla, 1994). Whether the objective was individual private property in land, as in Kenya, or collective management, as in Tanzania, the change was seen as critical to the nation-building process.

Most often, these legal changes have been wholly

BOX 4 • THE GAMBIA: COMMUNITY FORESTRY AND VILLAGE INTERESTS

The research team visited the three villages of Brefet, Bessi, and N'Demban of the Foni Brefet District. These three villages have banded together to establish and manage-in-common the Kasala Community Forest. Three years ago, the villagers of Brefet, Bessi and N'Demban jointly delineated the Forest boundaries, created their management committee, signed a community forest management agreement, and constructed a fire break. Since 1991, there have been neither bush fires nor illegal firewood collection in Kasala—both signs of success....

The three villages of Bessi, N'Demban, and Brefet share a common ethnicity and are interrelated through marriage. During interviews, representatives from each of these villages spoke of strong inter-village ties which provided a foundation for the resolution of disputes present at the beginning of the project.... [T]he villagers of Brefet initially refused to manage Kasala in common with their neighbors in Bessi and N'Demban. Brefet villagers claimed that they were the traditional owners of the land. In fact, they were the traditional owners of a large tract of land extending from the River Gambia to the Cassamance border. Given this fact, they said that they could not see how they could jointly own Kasala Community Forest.

The *Seyfo* [chief] immediately held a series of inter-village meetings attended by the elders of the three villages. During these meetings, all the elders were given a chance to speak about the settlement history of the area. Drawing from these settlement histories, the *Seyfo* formed a consensual agreement around the fact that the villagers of Brefet were the descendants of those who originally cleared the land and thus are the traditional owners. Having established this fact, the *Seyfo* made several appeals to the people of Brefet. Appealing to their sense of unity and common sense, the *Seyfo* asked: *"Kasala is a large tract of land, can the small community of Brefet ever hope to manage all this land alone?"* Appealing to their sense of moral obligation, the *Seyfo* asked: *"Is it reasonable for you to exclude your neighbors and relatives from the land since they have been settled here for generations and since every man must have land to survive?"* Appealing to their willingness to compromise, the *Seyfo* asked: *"We have established that Brefet is the traditional owner of the land, but owning the land and using the land are two different things. Would you be willing to join together with Bessi and N'Demban to jointly use this forest land for the benefit of all and the environment?"*

By asking these questions of the traditional owners thus, verifying that Brefet elders were the only ones who could agree or disagree to establish Kasala as a community forest held in common, the *Seyfo* was able to, one, assuage the fears of Brefet that the project would result in the loss of their ownership rights to the land, and, two, provide the grounds for an agreement to be struck. These grounds included: a relinquishing of use rights but not ownership rights to gain the added benefit that would accrue from managing the community forest jointly and a recognition that traditionally these use rights had been granted to the people of N'Demban and Bessi.

This is the popular understanding. The legal document, the community forestry management agreement, states that establishment extinguishes all individual rights to the land. There is space in the interpretation of this legal agreement that allows for this popular agreement to be supported in court—if there ever is a problem in the future. However, it might be useful to modify these agreements so that these agreements acknowledge overlapping rights...

Sheehan, 1995

were directed, and the state has failed to enforce them. The reforms have undermined the formal position of the community-based tenure systems and interfered with enforcement of their rules, without providing a viable alternative. The earlier systems continue to exist, sometimes modified by attempts to replace them. The result is a pervasive dichotomy between the formal legal situation under national statute law, and the law-in-action, that is, the local, community-based system, upon which local people still rely for access to land.

The typical outcome is a legal layer cake. At the bottom are a variety of local, community-based systems whose formal validity may or may not be recognized by statutory law. They may have been distorted or impaired by attempts to replace them. Alongside them, usually quite limited in extent, are tenures from the colonial period, generally freehold (full private ownership) and leasehold. Over them all are one or more layers of failed legislation that attempted to replace them with a unified national land law. One may think of these laws as the normative expression of the 'semi-autonomous social spheres' of local, regional and national authorities (Moore, 1978). There is a major tension between these systems in the law and custom concerning land and natural resources. They exist with regard to forest as well as other resources (see Box 4).

This ill-integrated legal pluralism creates confusion, and when the operable law is not clear, it is difficult to create common property arrangements that are not vulnerable to legal challenge. Reliance on community-based common property arrangements is risky because their legal status may be negative or unclear, and challenges can be framed in terms of national statute law. Reliance on national statute law, even if the relevant provisions are identified, involves forms unfamiliar to local people, forms that are often formal or complex beyond the capacity of local communities to work with them. To make things worse, there are commonly different customary, administrative and formal legal fora for the resolution of disputes coming out of the different systems. Challengers or supporters of common property can initiate legal action in a forum that will apply the rules of the tenure system that will

support the claim. Later, the other party may initiate action in another forum, seeking application of the law it wants.

These anomalies favour the powerful. Litigation in developing countries, even more than in developed countries, is often a trial according to relative resources rather than substantive law. The legal confusion makes it easy to frame legal defenses when a community seeks to enforce compliance with the common property arrangement. Even dubious claims by those opposing the arrangement will suffice. If a court will entertain them, it is often not necessary that the court ultimately approve them; the mere disruption of activity caused by restraining orders and the law's delays can cause the collapse of a CPR.

What does this mean for the local community seeking to sustain its CPR? First, those who govern the community will often be faced with the need to formulate a legal strategy. Can the community rely solely on its own custom as the legal basis for common property management? What is its legal durability, in terms of its strength in the local community, and its status under national law? Alternatively, should the community resort to national statutes to find 'modern' forms of common property that the national state may more readily recognize? This may lead the community and its advisors to strain to stretch laws to meet their needs.

The community may face a difficult choice among several not very satisfactory legal solutions. At this point the problem may just be set aside, as a 'given' with which the community must live, a potential problem that community leaders hope to ignore with impunity. These problems are particularly difficult for external NGOs and firms working with local communities under short-term contracts; they have little chance of getting legal options broadened within their planning horizon.

This chapter has attempted to state the problem of legal vulnerability. Chapter 2 examines some features of indigenous CPRs, and in particular seeks to understand how common property is often 'nested' within community-based tenure systems.

LEGAL BASES IN INDIGENOUS COMMUNITY-BASED TENURE SYSTEMS

Common property of course exists in several forms in modern statutory law, including ownership of land by corporations or cooperatives, or community land trusts. But that diversity is dwarfed by the many common property forms within the world's numerous indigenous tenure systems. This chapter does not attempt to develop a full taxonomy of these forms, though numerous examples are given. Instead, it first seeks to clarify some conceptual issues concerning CPRs within indigenous tenure systems, and then asks how such CPRs for forestry developed and whether they have a future.

Indigenous community-based tenure systems

As noted earlier, CPRs based on local custom continue to play a major role in many developing countries. Those arrangements, covering resources such as forests, pastures and water resources, are part of broader local resource tenure systems that also include tenure for individuals, families and lineages in farmland and residential land. Such systems are important around the world (Messerschmidt, 1993), and custom is relevant to forest management even in America and elsewhere in the developed world (Fortmann, 1990).

Our terminology for these systems leaves much to be desired. Many of the terms carry connotations which are misleading. Such systems are commonly called 'customary' or 'traditional', but those terms suggest relatively static institutions, unchanged over time, and we now realize that such systems do evolve, regularly and sometimes

rapidly. The term 'informal' is often used for systems in which rules are unwritten, but it seems incongruous to apply the term to some indigenous systems, which, though unwritten, are nonetheless quite formal and complex.

The term 'indigenous' has been used, and is perhaps preferable because it simply says that the system is based on local culture. To many generalists, however, the term has the sound of anthropological jargon, and to readers whose first language is French, it has by colonial usage acquired the same objectionable connotations as the term 'native' in English. The term 'community-based' (Lynch, 1992) is attractive, because it captures the local nature of such systems, both as regards the geographical extent of their application and the source of their legitimacy, and allows them to be contrasted to the 'national' tenure system. But one can have community-based systems that are not indigenous (e.g. tenure within peasant associations in Ethiopia after 1975 land reform), and indigenous systems from highly centralized traditional polities that are not 'local' enough to be termed community-based. So perhaps we must speak in terms of 'indigenous community-based' and 'alternative community-based' tenure systems to achieve clarity on the systems under discussion here.

The inquiry about the nature of indigenous common property arrangements carries us back into long and intractable debates about the nature of customary or 'communal' tenure systems. 'Communal' has been used in the land tenure literature to describe a variety of situations:

- ▶ where a resource is used by virtually anyone, a situation better characterized as open access;

- ▶ where land is utilized co-extensively and simultaneously or serially by a number of users, as in the classic and widespread ‘grazing commons’ situation;
- ▶ unusually, where land is utilized collectively, with production actually organized and carried out by a community or descent group; and
- ▶ where there are social institutions that allocate and reallocate land among households on a temporary basis.

Systems that have some or all of these elements are often described as ‘communal’, though they may in fact include within them land that is perpetually individual and family property. In this publication, the term ‘community-based’, instead of ‘communal’, is used for these complex systems based on local usage, emphasizing their source of legal legitimacy without attempting to broadly characterize the tenurial substance of these internally diverse systems.

How does common property figure in the community-based systems? Some authors suggest that a CPR may be conceived as encompassing an entire village territory, including individually held land. Here the term ‘common property’ becomes almost synonymous with ‘community-based tenure system’ or the older ‘communal land tenure’. This does some violence to the strong household and individual property rights within those territories, which may amount to private ownership. The same reasoning has been used, on an even broader scale, to characterize as common property an elaborate regional resource management institution such as the Dina in the inland Niger Delta, which involves the negotiated sharing of a wide variety of natural resources among several ethnic groups (Moorehead, 1989; see Box 5).

This usage is potentially misleading. In order to conserve the learning from institutional economists as to what makes common property work, it is best to use a narrower definition of common property within which those lessons apply: that is, property of a group in a common pool resource, which they use simultaneously or sequentially. This requires deconstruction of the community’s landscape into several component tenure ‘niches’, a concept explored in the following section.

Landscapes and their tenure niches

To understand the landscape of indigenous communities in tenure terms, it is useful to have reference to the concept of a ‘tenure niche’, a discrete area of land within that landscape defined by application to it of a specialized set of tenure rules (Bruce *et al.*, 1993). Indigenous tenure systems have customized tenure arrangements for land under different uses. Each tenure will have been evolved to meet the needs of community members as they use a resource, allocating rights and responsibilities to them and their products. A community’s tenure system is composed of several tenures, each of which defines different rights and responsibilities for resource use.

Examining the territory of a community, then, one finds the landscape divided into areas of land under different uses, with different tenures applying to those areas. Each area constitutes a tenure niche, that is, a space in which access to and use of resources is governed by a common set of rules, a particular tenure.

Distinctive patterns of resource use in different areas, determined both by physical features of the resource and by cultural factors, spatially define many tenure niches. The boundaries of one pattern of resource use (and of a corresponding tenure niche) may be visible. Where swidden-fallow systems are no longer practised and cultivation has stabilized, one can easily see the boundary between cultivated land (belonging to households) and grazing land (a commons).

But tenure also determines distribution of the benefits of resource use, and for that purpose one can find different tenures applied to areas of land under similar use, creating distinct tenurial niches in those areas. For example, in parishes in highland Tigray in Ethiopia, prior to the 1975 land reforms, most land for cereal production was, in the case of laity, allocated by inheritance according to descent from a remote first settler, but some cereal land was also allocated to farmer-priests and deacons according to their commitments to conduct masses and meet other religious obligations in the parish church (Bruce, 1976).

The concept of a tenure niche allows us to respond analytically to local specificity and complexity. Tenure niches define spatially the areas to which we can apply the various bodies of the-

BOX 5 • COMMUNITY RESOURCE MANAGEMENT IN THE INLAND NIGER DELTA

In the nineteenth century a Fulani theocratic state extended its control over the entire delta and imposed a system of resource management, called the *Dina*, on all major production systems. The *Dina* divided the area into a number of grazing territories allocated to loose Fulani clan groupings within which were to be found groups of wholly subordinate farmers (the Rimaibe) and more independent farmers, farmer fishermen, and hunting and gathering fishermen, who paid tribute. Two of the most important effects of the *Dina* system were to sedentarize groups of nomadic herders and fishermen, and to formalize grazing, fishing and farming territories in the area. In doing this, resource-management systems that already existed in the delta were formally established (and recorded in texts), and adapted to the interests of the Fulani.

Forest, browse and wild food resources were *res nullius* during the *Dina* period. A communal-property regime concerned agricultural land, pasture rights and fisheries in both the Erg and on the floodplains, while on the drylands only fields were allocated by community resource managers as *res communes*...

The state's formal ownership of all natural resources, and the central role it plays in the adjudication of disputes, offers the opportunity of access to resources to exploiters who may never have had a right of entry. At the same time the proliferation of authorities with the ostensible power to grant access (administration, foresters, livestock service, political party, and so on) undermines the authority of traditional managers. Further, the imposition of administrative frontiers unrelated to customary fishing and herding territories has led to the transfer of control over resources from one production system to another (where farmers have been able to lay claim to fisheries near their villages, for example). That control formerly belonged to masters of the water now in neighbouring administrative areas or to the reallocation of resources between communities practising the same way of life.

Moorehead, 1989

ory which we use to analyze different types of tenure (e.g. applying common property theory to community pastures). Any analysis of resource use at community level should involve the identification not just of areas of use, but of tenure niches: who uses the resource and on what terms.

The same individuals and households often hold different parcels of land under different tenures, and this is commonly because they hold the parcels of land for different uses in different tenure niches. All community members do not necessarily have the same rights within different niches, and so initiatives and innovations undertaken within different niches will affect various members differently. For example, women in some societies have greater security of tenure in

niches under individually controlled property, such as land within the homestead plot. In others, they may rely heavily on commons areas for their gathering activities.

Tenure niches are by no means simple or static. The space they cover may vary seasonally, as when household fields become after harvest a commons where all community livestock can graze crop residues. In swidden systems, tenure niches move and rights in resources change as cultivation is undertaken at one location then moves on to other areas. Tenure niches may overlap when there are distinct tenure regimes for two resources that physically overlap, as when tenure in trees is defined independently from that in land. When two communities with different

tenure systems share (or compete for) a resource, each community may project a tenure over the resource, and the overlapping niches may have very different rules. Where niches overlap, we can expect to find conflict (Bruce *et al.*, 1993). Many of the common property disputes dealt with in Chapter 4 of this publication are generated by this overlap.

The evolution of indigenous common property

We can understand the development of common property niches within community-based tenure systems better if we think of common and individual property as two related property types, with a good deal in common (Bromley, 1992a). In both cases, the interests of good resource management call for the ability to exclude outsiders (whether on the part of the individual or community), governance structures (within the household or community) and security of tenure (whether provided to the individual or to the community).

Long before concepts of lineage or household property in land develop, many groups have a sense of territoriality, based on the right of the polity to require political loyalty from those who live within its territory. This can coexist with plentiful resources and a desire on the part of the polity to attract new members rather than exclude them. Within the territorial boundaries, land use is at this early stage uncoordinated and not subject to much social control. The idiom of property is sometimes used to describe the community's rights over land, but it is questionable whether 'tenure' is present here. In these circumstances, families may graze their animals, cut wood or establish farms where they wish. It is increasingly appreciated that individual appropriation of resources, as opposed to land allocation by the community, plays a large role in these situations, once characterized as 'communal tenure systems' (Cheater, 1990). In Zambia, White noted this as early as the 1950s (White, 1953; see Box 6).

In some indigenous systems, however, there is a stronger common property element. There are community-managed systems based on swidden-fallow successions involving soil restoration through the promotion of certain trees and the contributions of livestock (Messerschmidt,

1993). Such systems are community resource management systems, and are sometimes appropriately characterized as common property, though they mix with farming land uses such as pasture and forest, which in other environments where cultivation has stabilized exist as discrete resource areas (Shepherd, 1993).

There are illustrated gradations of property rights within such systems, as in the bush-fallow systems in southeastern Nigeria: two communities both designate areas of their 'far fields' for cultivation by their members in given years to maintain a community rotation system, but in one the fields farmed by the community members are allocated to them by the community on an annual basis, while in the other these are owned by lineages and individuals, and farmers who do not have land in an area designated for cultivation that year must lease land from those who do hold land there. In the first case we are dealing with common property; in the latter individual private property has emerged, subtracted from the common property.

But even when land in general is plentiful, and long before lineage and household property develops, land is scarce in certain locations and for certain purposes. The community or sub-groups within the community begin to aspire to control and manage smaller units of land discretely. They may draw upon their rules about ownership of things (personal property) to conceptualize and then stake out common property claims to some land areas.

For example, the community may begin to exclude outsiders from a nearby area of pasture of which its members have been the principal users, and seek to regulate use by community members. Messerschmidt (1986) relates this process in Nepal with regard to the development of indigenous common property forestry arrangements there. Or a descent group such as a lineage may make claims to permanent rights based on first settlement by an ancestor to an area of land that it cultivates. Or a community may undertake to annually reallocate an area of floodplain among its members for cultivation, excluding others. Individual or family property may be established at the same time with respect to some resources, such as residences and the parcels on which they stand. Other resources in the vicinity may continue to be subject to common property or open access.

BOX 6 • HOW 'COMMUNAL' IS COMMUNAL TENURE?

It is unfortunate that this misleading expression so often continues to be used as a blanket definition of African land tenure, implying that every individual has equal rights in every piece of a tribe's land. Applied to grazing areas in Northern Rhodesia in the provinces so far studied one may to some extent speak of communal rights in grazing since anyone may graze his cattle on any land not claimed for individual use; but it must be qualified by the observation that these communal grazing rights are not vested in a whole group collectively, for where land is short as among the Tonga or the Mambwe, individuals can bring pieces of communal grazing land under their personal control for arable purposes by the usual process of starting to cultivate it. The communal grazing areas are not vested in any authority which preserves them from encroachment in this way.

In so far as rights over arable land are concerned these are essentially individual—acquired by the individual, enjoyed by him, and disposed of by him. Rights of individuals over arable land cannot possibly be described as communal tenure without a complete distortion of the facts. Much of the confusion here no doubt springs from contrasting English ideas of land ownership with the conditions found in the most undeveloped systems of shifting cultivation, where a man exercised rights over a piece of land for only a brief period, and when it was exhausted, passed on to open up another piece of vacant land. Under such conditions land was presumably hardly ever inherited and only infrequently transferred. An individual enjoyed rights in respect of a piece of land but only of an ephemeral nature in that they were soon transferred to another piece of land. But with the stabilization of agriculture or with the scarcity of land in a given area or with the emergence of cash cropping putting an economic value on land, or some combination of all three, the permanence of a man's land rights developed quickly. In areas where land is valuable for these reasons, it is regularly transferred or inherited, and rarely abandoned. Hence in some places land once acquired does not revert to the common pool to be taken up by someone else, but passes directly from one to another without any intervening authority. At this stage individual rights of a continuing permanent nature are strongly developed; whilst it may be inappropriate to refer to such tenure by any English term which is liable to contain unsuitable implications, it is certainly necessary to avoid the use of the expression communal tenure. It would seem preferable to call such cases individual tenure, accompanying the expression by such definition as may be necessary of the rights existing. Individual tenure of this type occurs in all the provinces of Northern Rhodesia so far studied.

White, 1953

As demand for land grows, communities and descent groups stake out claims that gradually shift land out of the open access category into individual or common property. Sometimes the land is appropriated directly as individual property, while in other cases it first becomes property in common, and later is broken up into individual holdings. Common property is a useful approach to exclusion of other claims, even when the resource is not intrinsically well-suited for management as common property. In early

stages, common property is a means to stake a claim and to develop and defend the land as a group, but once the claim is established, subdivision into individual parcels may take place, perhaps over several generations. This emergence of individual property from common property is often seen in the case of farmland.

But there are certain resources, including the common pool resources mentioned above, that are not easily individualized. Land may lack water and so the use of its grazing requires use of

the land as a commons, allowing many to use the grass while taking turns at scarce water points. The establishment of a separate water point for each owner may not be feasible, or at least not economic. Water itself is difficult to individualize, because it is difficult to delimit, though this is sometimes accomplished in streams. For some

resources, such as irrigation water, dry-season grazing and sacred forests, CPRs prevail and become more focused and sophisticated. Indigenous CPRs vary greatly, having developed in very different natural and cultural environments. Examples of indigenous common property in forests are provided in Boxes 7 and 8.

BOX 7 • TRADITIONAL FOREST RESERVES IN BABATI DISTRICT, TANZANIA

In our study, we used the following working definition of a TFR [traditional forest reserve]: A forested area, not less than roughly 0.04 ha, which is protected by the residents of the adjacent area *in accordance with their customary laws*. Thus the creation of TFR has its roots in the local community. It is by no means based on government laws.

Using this definition we identified a number of TFR that in the final analysis could be classified as follows:

1. Haymanda - TFR for men for circumcision and dances
2. Meeting places for male elders
3. Cemetery ground (for the Barabaig tribe)
4. Place of a natural spring
5. TFR controlled by private persons (e.g. traditional medicine-men)
6. TFR believed to make rain
7. TFR for traditional teaching of the young women

As is indicated in the above list many of the TFR are used by (sometimes secret) groups for traditional ceremonies. If a member or non-member cuts a tree in the TFR without permission (which is rarely granted), he/she is nearly always required to pay a fine of a bull to the group. If the breaker of this traditional law refuses to pay, the group will pray for bad luck for the family of the offender and take steps to ostracize them from the village. The prayers are directed to the traditional God - Loa - who is the God of Rainmaking.

The effectiveness of the described sanctions is shown by the fact that the TFR have been virtually untouched for generations. In some areas the TFR stand out as 'environmental museums' of vegetation that formerly covered the surrounding agricultural fields. Socially as in the case of natural springs, the TFR serve as a clear demonstration of the wise ecological beliefs and behaviour of the elders when they teach the younger generation to respect the TFR. Without the ecological tradition of the elders, the natural spring in the TFR would probably have dried up as have many other natural springs on cultivated public land. Other social roles of the TFR are to serve as a traditional "church" or "classroom" and to help in integration and understanding between members of different tribes that belong to the TFR groups.

We located 46 TFR covering an area of roughly 288 ha. Most of them (33) are "haymanda". The majority of the TFR are situated on hills or slopes and cover a total area of 245 ha.

The fact that many of the TFR are on slopes and hills and surround natural springs is an indication of their ecological importance. They conserve water sources and protect against soil erosion. Also, they are natural, surviving habitats for animals and birds and represent a "memory" of the natural forest environment of the past.

Gerden and Mtallo, 1990

BOX 8 • INDIGENOUS COMMON PROPERTY FORESTRY IN NEPAL

Another example of traditional community forestry is seen in Lete Panchayat at Ghasa (a Thakali ethnic village in the predominantly Buddhist district of Mustang in north-central Nepal). Ghasa villagers recognized in the 1960s that their local pine forest was rapidly being depleted by over-cutting, indiscriminate grazing, and general abuse. They closed off approximately 5 ha to allow regeneration. Access is controlled and the forest is patrolled by members of a community forest committee. While this committee functions within the modern panchayat system, it is of an older style dating to pre-panchayat times (pre-1960s) when the Thakali people exercised much more control over local affairs.

Since 1974, access to the Ghasa forest has been strictly forbidden for sheep and goat grazing. Cattle, water buffalo, horses, and pack mules, however, are allowed to graze. Similarly, cutting fuelwood and building materials is prohibited, although cutting poles and timber for public use (e.g., school construction, bridge repair) is permitted on request to the committee. Fines are levied on violators.

Each winter the householders of Ghasa are required to collect debris and litter within the forest. Two persons from each of approximately 50 households are allowed to collect up to five large basket loads of pine needles and litter daily, over a nine or ten day period. This serves to reduce the risk of forest fire and provides bedding for cattle stalls. The litter ultimately becomes a valuable mulch and compost for fields. The forest is also home to a tutelary Thakali deity.

In the early 1980s, under the RCUP [Resource Conservation and Utilization Project] project, forest officers recommended that a formal management plan be prepared following the new rules for panchayat-protected forests. The villagers expressed reluctance, however, in the belief that by changing current management practices, they would lose all local control. Currently, national involvement is limited to district forest officers assigning permits for thinning the forest, and there are plans to permit cutting of large timber at maturity. As of 1984, no further action had been taken to change the old system.

Reluctance to change the old ways of resource management is a common theme among the ethnic peoples in the northern border districts of Nepal. Elsewhere in Mustang District, for example, similar traditional systems for managing local resources have been documented (Messerschmidt, 1986b). In some instances, villagers go along outwardly with new schemes promulgated in the name of the nation-wide panchayat system, but quietly maintain their own social traditions behind the scenes. As Devkota *et al.* (1983) have observed: "The traditional system is the underlying strength of the communities; the panchayat system serves as the community mouthpiece to the outside."

Messerschmidt, 1986

As a result of these processes, we find ourselves with a varied tenure landscape, with different tenure niches involving open access, common property and individual property. At any given time, land will be shifting between categories. In the short term, population pressure and market

forces may wax and wane, and as they wane individual property rights may give way to common property (Bruce, 1976). Or farmland may be overused and degraded, and relegated to de facto open access, even where older rights are remembered and conserved for the future, as with cer-

tain hilltop lands in Guinea's Fouta Jallon (Fischer, 1995).

The institutions that hold rights in common property forests themselves evolve and change over time. Clan, lineage and village are traditional units. It is not always clear whether these units are public or private in nature. Some that were conceived as public under the traditional dispensation may, if excluded from recognition by the state, reconceptualize themselves as private. Indeed, it has long been recognized that the territoriality of small social units has by this exclusion often been transformed into 'communal tenure', with political territoriality recast in a property idiom more appropriate for an institution that now exists only as a private entity (Colson, 1971).

This change is not unidirectional, and even long-term directions may not be so clear. Today we see intensive effort to shelter biological diversity from the expansion of farmland, even in a time of food insecurity, and in the longer term increased efficiency of land use and declining population growth rates may lead to a contraction of land under those uses which we associate with individual property. This appears to be under way in the United States today.

How has indigenous common property forestry fared in the past century? In many parts of the world the national state has rejected or simply refused to recognize indigenous CPRs, and by undermining them, has returned large areas to the relative chaos of open access. It has then often responded to this chaos by insisting that the state must assume control of the resource (Lawry, 1990). It is in fact difficult to establish clearly the extent of common property forests in the past, but we know that in this century many have disappeared.

Today indigenous common property forests are gone from large areas of Asia, where they appear to have once been most common, perhaps because they came under pressure from population growth even prior to colonial interventions. Such forests have been converted to individualized farmland or reserved by the state, though areas remain in parts of Nepal (Adhikari, 1990), India (Arnold and Stewart, 1989) and other countries.

In Africa, with the exception of sacred forests, communities have rarely set aside forest land for management exclusively as forest, but have

lived, farmed and herded among their forests. Indigenous community resource management in Africa has tended to focus on coordination of multiple land uses by a variety of user communities, rather than on creation of common property tenure niches specifically for forestry (Shepherd, 1993).

In Latin America, indigenous common property forestry appears to survive primarily in two circumstances: rainforest territories of indigenous peoples, which could be characterized in much the same terms as Shepherd (1993) uses for Africa, and instances preserved through their incorporation into 'modern' legal institutions, such as the forestry ejido in Mayan Mexico.

What can we learn from these cases of indigenous common property forestry? Shepherd (1991, 1993) seems pessimistic about its future in Africa (see Box 9). It may indeed lapse if the state does not provide it with a more supportive legal and institutional environment, but this environment is improving, in Africa and elsewhere.

Can we build on indigenous models of common property as we design CPRs under national law? One difficulty of deriving models from indigenous community forestry in Nepal has been noted: the variability in these arrangements from one community to the next. Still, it may be that those who work with these issues can learn much about what is acceptable to local communities through examination of the experience with indigenous CPRs.

In some areas there may be a clear need to reinforce existing indigenous CPRs. But in other areas, for instance Africa and the Amazon at least, the task of the first order seems less the preservation of indigenous common property forestry arrangements, which are relatively limited in scope, than the conservation of the tradition of community land use management over traditional territories. The task of the second order may be the creation of CPRs to formalize and protect community control of forests, and the creation of organizational structures for the management of the resource. In many areas of Africa, the establishment of a community property right that can be registered and recognized by national land law may be the only way to protect the resource from landgrabbing by national and local elites (Bruce and Tanner, 1993). There appear to be similarities to these cases in some areas of Asia (the Philippines), but in others (India), com-

BOX 9 • AFRICA: PROSPECTS FOR INDIGENOUS MANAGEMENT AND CHANGE

Broad as the definition of management has been in this article, certain themes nevertheless stand out. Firstly, in the past, there have been strong capable managers in charge of woodlands and the exploitation of trees in many of these areas: managers with a lifetime commitment since they, like the people they administer, are making their living from the resource. Often, too, these managers have the double commitment of being closely related to those to whom they are responsible. Most management rules, as a result, are very well attuned to local needs and constraints, and have arisen in apt response to some perceived problem.

Secondly, management is as simple as possible. Unless the resource has some value or some scarcity, management will not be undertaken (Beidelman, 1967; Gibson and Muller, 1987). Rules are quite flexible and can be modified as need arises.

Thirdly, management is for a set of interlocking benefits. It is quite hard to separate out woodland management from swidden-fallow management, herd management and annual crop management. Moreover, wood is far from being the only resource for which woodlands are managed.

Fourthly, rising population density is turning pastoralists into farmers, long swidden-fallow into short, the usufruct of clan land into individual title. So the management focus has narrowed and in many areas the numbers of locally born and locally significant decision-makers above the level of household head are dwindling. As a result, management has changed from use-rights based on clan-membership and thence rights to use clan resources, to the exercise of state-granted privileges and management by restriction and exclusion. The insiders have become outsiders. Similarly, rangeland and pastoral systems are under stress or in a state of collapse in many countries and areas.

Finally, political and economic authority has passed in most places from indigenous managers to the state over the last 30-40 years. The elders who are left can no longer command the respect they used to, and so it is difficult for them to hope to manage forests or woodlands in any very complex way. Increasingly, unregulated exploitation takes over (CTFT [Centre Technique Forestier Tropical], 1988). Unfortunately, these changes first began to occur during the abnormally wet 1950-65 period, so that the initial effects of negative resource management changes were cushioned by good rains. The 1968-73 drought exposed the breakdown in kin-based political structures and in their careful resource management practices, but the connection was not noted at the time.

Indeed centralized political authorities still continue to deny, on the whole, the ability of local decision-making bodies to manage their environment; and government legislation has become necessary for the smallest changes to established practice, dissuading groups from organizing (World Bank, 1985). Forestry has come to mean forest reserves and village forestry schemes, neither of which replicate the integration with trees practised in the past.

The prognosis for adaptive change looks poor, from many points of view. Many previous woodland management practices are only likely to work under conditions of low population density, and can certainly only work if managers are also owners. Yet it is rare for reserved forest land to be returned to the people who are being asked to co-operate in its management.

Shepherd, 1991

munity forestry under the high-profile Joint Forestry Management (JFM) Programme has instead developed largely on state land to which local communities are given access by the state, to be managed by village-level institutions created *de novo* for this purpose (Lynch and Talbott, 1995).

Today, ‘corporate groups’ unknown to indigenous societies, such as the modern corporation, abound in the developing world. Some are truly new social constructs, but others involve the dressing up of older institutions in new forms. Some of the new institutions, like multipurpose cooperatives, usually have a clear legal existence under national statute law. Others, such as women’s production groups, may not have such a clear legal status; we may need to wonder whether they might be considered, perhaps, an association under national law. New property

rights are available, as are new means of establishing and protecting them, such as cadastral survey and title registration.

At least for people on the ground, working within local communities, one of the most difficult questions in thinking through their CPR is whether they should rely upon indigenous forms, try to create a new organization and tenure for the resource under national law, or try to find some middle ground. Indigenous forms may have been weakened by hostile colonial and national policy, but they are still alive and must be taken into account.

The following chapter examines different types of CPRs from national (usually statutory) law in a wide range of cultural and historical milieus and across a considerable variety of legal systems.

LEGAL BASES IN NATIONAL LEGAL SYSTEMS

This chapter first seeks to understand the relationship between the reality of common property, our theoretical models of it and actual statutory law. It then turns to the experience of numerous countries to examine how property rights and organizational forms have been deployed to support community forestry.

A caution at the outset: through such a review, one cannot derive legal forms that are universally 'right' for common property forestry management. There are lessons to be learned, of course, but there is no axiom more basic to the study of law and society than that a legal rule (a command to act or refrain from acting in a certain way) will produce different behaviour on the part of individuals differently situated. 'Differently situated' can mean situated in different economic classes or social groups, but it can also mean situated in different cultural and political milieus. The clear implication is that different legal solutions will be required for different contexts.

For this reason, models of organization and land tenure have been presented here in their historical context in the first instance. Much of the material is organized by regions of the world to facilitate reference by those whose interests are limited to specific regions. But in conclusion an attempt is made to understand the considerable variations among these cases in terms of a few basic variables, and to draw out some lessons about the potential of common property in specific situations.

National statutes and common property law

The index of laws for Country X will not direct the reader to laws on common property. Common property is a reality on the ground, and the topic of much modelling by economists. However, the reality is treated by statutory law in almost all countries in an unfocused and fragmented fashion. There is no single statute or even field of law that covers all of common property. Rules that structure common property are embodied in legislation dealing with several substantive areas.

Common property theory directs us to the relevant areas of law. Oakerson's model notes three fundamental normative requirements: (1) rules establishing collective choice; (2) rules regulating the use of the commons; and (3) rules defining external arrangements (Oakerson, 1986, 1992). These requirements correspond roughly to particular areas of law within national legal systems (see Figure 1), and those bodies will differ depending on whether the organization managing the common property is private or public. The relevant areas of law can be grouped in four categories, as follows.

- ▶ Rules establishing collective choice provide for the constitution and legal personality of the community, and the delimitation of its members, its authority to control their activities and the processes by which the community makes decisions concerning the commons.

The general body of law in which such issues are handled is the law of associations, including the law of corporations, cooperatives and other private organizations. It details the ways in which people must organize themselves in order to be recognized by the state and hold property rights. Public administrative law may be applicable, rather than the law of associations, if the community is organized as a creature of public law, such as a unit of local government.

- ▶ Rules conferring management authority and regulating use of the commons govern the activities of the members and non-members with respect to the commons, usually limiting use by the former and excluding use by the latter. Property law is generally the main source of such authority, though conservation law and other bodies of law can also be important.
- ▶ Rules defining external arrangements include those which define the relationship between the community proprietor of the commons and external actors, which may include neighbouring communities or their individual members; external actors who are more remote but whose activities still affect the community's use of its resources; and government at local, regional and national levels. Relations with neighbouring communities and even more remote actors will be governed primarily by property law, especially as regards the right of exclusion, but the law of dispute resolution will also play a key role. Dispute settlement is one of the key areas in which a common property system needs support from government, and the need may extend to disputes within the community as well as with outsiders. Relations between the government and a common property management institution will be affected by the legislation establishing and empowering the ministries or agencies that provide relevant services to the local community, and by the legislation that establishes the hierarchy of government down to local level. The community may be a part of that hierarchy, if it is a unit of local government.
- ▶ Relevant across all three of the above categories are specialized statutes regulating the use of natural resources generally, or more commonly a particular resource, such as forests or pasture. This resource-specific legislation is often the law with which public

officials such as forestry officers are most familiar, because it is specific to the resource with which they deal. It often provides some special option, such as a simplified form of organization and authority for community management of the resource, but it alone is almost never sufficient to the legal needs of common property management, nor does it exclude the possibility of the more general and complex forms of organization and authority available in the national legal system.

There is then no all-purpose 'common property statute' in any national law. In the concluding chapter, we can consider whether such a statute would be a good thing, but for now we must, like local people engaged in community forestry, take the statute law as we find it. Table 1 seeks to summarize the relevant areas of formal law. It recognizes that some local common property institutions are public rather than private, and that others are hybrids, with different bodies of law relevant in the different cases. Note that 'tenure', or property rights, is listed as a legal source of management authority.

The remainder of this chapter first examines the patterns established by colonial laws, which often undermined local traditions of commons. It then examines numerous national experiences, and seeks to identify trends that are developing in this area of law. The countries reviewed were selected to provide a considerable variety of legal forms.

The review focuses primarily on management authority and organization for management, rather than relations to external actors. A rigorous treatment of the issues in the last area would require extensive work on the structure of government, dispute settlement and the administration of justice in the countries concerned. Appendixes to this publication detail the country studies on which the following discussion is based.

The colonial inheritance

The development of a dichotomy between indigenous and national statutory law originated in most developing countries through the imposition of colonial law at national level. In all cases colonial law has been an important influence, and so it is appropriate to begin there.

TABLE 1 • LEGAL BASES: COMMON PROPERTY

	PUBLIC COMMON PROPERTY INSTITUTIONS	PRIVATE COMMON PROPERTY INSTITUTIONS
Institutional form (rules establishing collective choice)	<ul style="list-style-type: none"> ▶ Local government law ▶ Cooperative law ▶ Forestry law 	<ul style="list-style-type: none"> ▶ Law of associations ▶ Cooperative law ▶ Corporation law ▶ Foundation law ▶ Registration law ▶ Forestry law
Management authority (including tenure)	<ul style="list-style-type: none"> ▶ Constitution ▶ Local government law ▶ Cooperative law ▶ Forestry law ▶ Contract law 	<ul style="list-style-type: none"> ▶ Constitution ▶ Property law ▶ Forestry law ▶ Contract law
Relation to external factors	<ul style="list-style-type: none"> ▶ Local government law ▶ Administration of justice law ▶ Forestry law ▶ Property law ▶ Contract law 	<ul style="list-style-type: none"> ▶ Local government law ▶ Administration of justice law ▶ Forestry law ▶ Property law ▶ Contract law

The colonialists had their own traditions of commons. The English term ‘the commons’ comes out of the law of feudal England. In prefeudal times villages had commons, and during the feudal period local residents retained rights of commonage, though these pastures came to be considered the property of the feudal lord. In the late 1700s the enclosure movement resulted in the subdivision of most commons, and it was not until the late 1800s that concern over access to recreational space for town dwellers led to reassertion of rights of commonage. Today in Britain, the commons is not a species of community ownership, but a legal institution whereby persons other than the private or public owner of a piece of property have the legal right to pasture animals, or gather firewood, or practice recreation on that land (see Appendix A).

Because of the complex feudal antecedents of the English law of the commons, and the emphasis in

recent legislation upon recreation rather than production, the English commons legal model has limited usefulness in situations in developing countries. There appear to be no instances in which the quasi-feudal notion of commons as it exists in English law has been effectively applied there as a tool for managing natural resources, though this common law legal institution was received into the law of many former colonies of Great Britain.

How did colonial law treat commons? The descent groups that sometimes held rights over the commons in the developing world (seen as private in nature, as opposed to villages, which were public) posed a particular problem for British law. Co-ownership existed in modern British law only as regimes of marital property, regulating joint ownership of land by husband and wife. There were some early attempts by colonial courts to analogize customary tenure to

this co-ownership, but it was ill-fitted to the purpose and the courts did not persist (James, 1976).

Instead, the reception statutes often accorded broad recognition to indigenous legal systems, including customary instances of common property. Such recognition was a key element in British policies of indirect rule. The majority of land in the British colonies remained under customary arrangements, and indigenous land law was more broadly accepted than most other areas of indigenous law. This law was developed through the decisions of colonial courts, in the English common law tradition. The colonial power pursued its land policies through the courts (Mustafa, 1971; Seidman, 1976; Chanock, 1985). But British recognition of indigenous common property was uneven. In Asia, customary commons were less recognized than in Africa, and large areas of forest land were early declared reserves for direct management by the colonial state.

Where forest land was not placed in reserves, one finds a relatively well-developed body of court decisions recognizing indigenous common property arrangements. Statutory recognition, however, is often unclear. The lineage, clan or village that manages the land often is not defined by any statute, nor are its internal procedures detailed. Often, its legal personality is not recognized by national law, leaving in question its legal ability to hold rights and duties, to own property, or to contract in situations beyond the ambit of custom.

In Francophone Africa, a somewhat different pattern emerged, based on a strong French tradition of centralized forest management by the national state. The colonial Forest Code for French West Africa, set out in the Decree of 4 July 1935, declared that lands that were vacant and without owners belonged to the state. The criterion for recognition of occupation excluded most uses other than agriculture, and this led to vast areas of forest and range vesting in the state.

Under this law, the mission of the Forest Service evolved over the years into a repressive policing role that removed from indigenous communities their customary management authority and possessory rights, leaving only limited use rights generally available to individual members of the public. The approach reflected a centuries-old French state policy of restricting traditional peasant access to French forests in order, in part, to preserve the state's monopoly over the commercial use of increasingly valuable forests (Pinclt, 1993).

An opening towards customary land and forest rights was posed in a colonial Decree of 20 May 1955. The colonial regime had attempted earlier to introduce individual titling of land. In 1955, it tried to introduce titling in the name of customary landholding groups as a counter to the legal fiction of the state's monopoly over land, but such efforts were mistrusted by local people and largely failed.

The distinction between the English and French approaches to indigenous tenure systems has blurred somewhat under postindependence governments, which in pursuit of national unity sought to replace indigenous tenure systems with uniform national systems of land tenure. These efforts were successful only in relatively limited areas, but many countries still operate under law from that period. The difference made by the different colonial approaches to indigenous tenure systems is seen most clearly today in the attitudes of elites and officials towards those systems, rather than in existing national law or the situation on the ground.

It is necessary to turn to Latin America, and the heritage of Spanish law, to find a very direct transfer of common property traditions of the metropole to the colony. The region's history has provided opportunities for community forestry to rural people in some countries through a common property institution of Castilian origin: the *ejido*. In Latin America, public land is either *ejido* or *baldia*. *Ejido* land is land that belonged to the municipalities at the time of colonization, and municipal lands that were subsequently acquired. This land cannot be sold or mortgaged. *Baldia* land consists of land belonging to the government that is not *ejido* land and that has no other legal owner. The government may sell or assign this land. If the government assigns the land to a municipality, it becomes *ejido* land (Hendrix, 1995). These forms have remained the key legal vehicles for common property in some countries of the region, such as Mexico and Guatemala. Elsewhere, new forms have arisen.

Though some relevant commonalities remain from the colonial period, the unique national circumstances of the developing countries have coloured later development heavily. The past decades have seen extensive and diverse experimentation with the institutionalization of community forestry, and this experience is reviewed below.

Latin America: diversification and indigenization

In recent decades, there has been a virtual explosion of legal arrangements purporting to confer authority to manage forests on local communities. Historically, the ejido has played a major role, and its role has continued to develop and change, as will be seen in the brief review below of the experience with ejidos in Guatemala and Mexico (see Appendixes E and F).

In Guatemala, a unique system of community forest management exists among the Quiche Maya living in the highlands of southwestern Guatemala. As much as 25 percent of this region is held communally. The system has survived through integration into an imported Spanish commons institution. When the Spanish sought to repress Mayan institutions beginning early in the eighteenth century, they imported the Castilian notion of the ejido, village common property used for threshing, garbage disposal and other general necessities. Land that had been communally managed in pre-Columbian times was awarded as ejidos to the *pueblo* (town), usually the main settlement in the *municipio* (township), and the *aldeas* and *caserios* (villages) around the pueblo (Hill and Monaghan, 1987).

As ejidos, in practice these remain closed corporate communities, with membership based on birth in the community. Each is governed by a village council elected annually by the village assembly. The council assesses requests to extract trees, create and enforce rules, oversee the activities of the forest guards, and in some cases, manage nurseries. The ejidos have been threatened both by pressures to individualize land tenure and by governmental regulation of forest use, but there is evidence that they have effectively husbanded forest resources (Lebot, 1976; Castellon, 1992).

While ejidos in Guatemala have struggled in an unfriendly policy context, in Mexico they were the organizational cornerstone of the land reforms after the Mexican Revolution, and were enshrined in the Mexican Constitution of 1917. Ejidos had existed earlier in Mexico, but now they became the form for organizing land reform beneficiaries, and the entity that actually received title to the land. Presently there are 29 000 ejidos in Mexico, covering about 50 percent of Mexican territory.

Ejido forests are common property, but a 1947 law allowed the government to grant concessions to forests on ejido lands. This was the primary means of forest exploitation until the early 1980s, when ejidos began to organize into regional associations and assert their right to directly manage their forest resources (Arzola and Fernandez, 1993; Forster and Stanfield, 1993). The new control over marketing of timber products produced considerable surpluses for local communities, and they began to move into processing. The ejido has also been utilized in non-indigenous communities, as in the case of resin-tappers in Michoacan State, who agreed to communal exploitation of forest resources on their individual territories, subject to their right to tap resin and a stumpage payment (Sanchez Pego, 1995).

Under a 1991 reform, the ejido now has full ownership of its land rather than just use rights. The commons areas may not be alienated permanently, but the ejido board can lease out the use of the land for as long as 30 years, and may authorize a pledge of the use of the land as security for a loan. A creditor may foreclose, but at the end of the term of the use right, the land reverts to the ejido (Mexico, 1991). The new legislation has spurred reorganization of community forestry enterprises; an example is given in Box 10.

While in Mexico and Guatemala the ejido has played the key role in common property forestry, alternative institutional developments are now proliferating. In Brazil, the traditional rubber estate is used as a model for extractive reserves. Individual holdings within the traditional estate had no visible boundaries, but rights to trails were assigned and recognized. The Chico Mendes Extractive Reserve contains 19 former rubber estates. The extractive reserves belong to the government, which grants usufruct rights for 30 years (with renewal options) to traditional forest product extractor communities. There are now more than 3 million ha assigned under two reserve categories (Forster and Stanfield, 1993).

In numerous countries of Latin America with land reform experiences in the 1960s and 1970s, models of communal land ownership were introduced for reform beneficiaries (Casanova, 1990). These were intended more to protect the holdings of reform beneficiaries from reconsolidation in large estates than to provide a basis for communal

BOX 10 • A COMMUNITY INSTITUTES COMMON PROPERTY FORESTRY IN MEXICO

After searching for a form of autonomous organization, Nuevo San Juan opted for its own communal forestry enterprise in 1981, making the communal assembly the governing body. The enterprise took control of the forest resource and within a few years had developed a large timber industry. Jobs were eventually created for 800 *comuneros* [community members] in all aspects of production, including reforestation, forest technical services, logging, transport, industrialization, and administration. The communal enterprise created a successful dynamic that balances private and community interests.

Combining community and individual interests and properly resolving conflicts between those interests have been keys to the success of the communal enterprise. The flexible vision among the founders of the enterprise as to what constitutes communal interests has its roots in the governance structure and the land tenure system of the indigenous community. For years the communal forest resource has been divided among its members to improve the defense and protection of the resource. Each member of Nuevo San Juan is responsible for a parcel of forest.

The division of forest into individual parcels began in the early 1950s with the creation of *cuarteles* (districts) for resin-tapping. Each *cuartel* owner harvests resin for personal income. This practice could have been an obstacle to communal logging; however, the negotiations between the enterprise and the community members were very successful and generated benefits for both parties.

The community forestry enterprise permitted individual *comuneros* using the land to establish agreements with the new business on the following terms.

At the individual level:

- ▶ each member could retain his/her property within a part of the forest;
- ▶ each member continues resin extraction on his/her *cuartel*; and
- ▶ each member periodically collects a stumpage payment whenever the enterprise harvests wood within the *cuartel* as part of the cutting rotation in the forest management plan.

At the community level:

- ▶ the enterprise created employment for 800 of the 1,228 *comuneros*; and
- ▶ the entire community benefits from the profits generated, which are reinvested in productive activities and public services for all communal residents.

The legal, political, and economic aspects of these negotiations allowed the initiators of the organization to build consensus and cohesion among community members around the forestry enterprise project....

Sanchez Pego, 1995

management of the resource. Often these laws provide for titling based on established use, and these provisions have been utilized by Indian communities as a second-best approach to protecting their lands, seeking individual titles in the

absence of a possibility of obtaining a community title. In the past decade there has increasingly been a trend towards the liberalization of the property regime for these lands, allowing them to move into the market (Hendrix, 1995). This further reduces

their potential as a vehicle for common property forestry management.

In Brazil, the Indian Reserve (the equivalent of the Indian Reservation in the United States) is offered as a model. Davis and Wali (1994) characterize this option as protectionist. It involves the identification and regularization of indigenous territories, but that process has moved slowly. In 1990, a study found 526 indigenous areas, of which 90 were not identified, 80 were identified but not interdicted, 67 were interdicted, 93 were delimited, 136 were demarcated and confirmed by presidential decree and only 60 were fully regularized. The last category accounted for only 13 percent of the total area of indigenous lands. Steps are being taken to streamline the process, but Davis and Wali (1994) conclude that the National Indian Foundation as a bureaucratic institution lacks the technical competence, financial resources and authority to defend these lands. Encroachment is continuing. Moreover, they point out, the system does not recognize indigenous models of land tenure, social organization and resource management. They note that the relevant articles in the Brazilian Constitution of 1988 are broad enough to permit an alternative indigenous model, but so far this has not been implemented.

In addition, there are protected areas, established under conservation legislation, in Bolivia, Brazil, Peru, Venezuela and other Latin American countries. Davis and Wali (1994) cite the Xingu Indian Park in Brazil as the classic model, and many others have been created under pressure from the international conservation community. They protect territory, but do not provide a basis for sustainable resource management. The indigenous peoples do not have title to their land, all rights remaining vested in the government.

There are indigenous community models (sometimes called 'native community' models) in Bolivia, Ecuador and Peru, which seem more promising as a basis for common property management. Land is given to the communities, but under a standard western model of organization. For example, in the era of agrarian reform, Indian communities in Bolivia and Ecuador had to organize themselves into cooperatives to be allocated land. In Peru in 1974, the government enacted a Jungle Law that enables native communities to

register as legal entities and to hold land in that capacity. But it limited the size of traditionally occupied or used land that could be titled, and it has been suggested that this will prove inadequate in the long term. In Bolivia, there is a new law under study that recognizes indigenous territories and defines the specific land and resource rights of lowland indigenous groups (Davis and Wali, 1994). Examples of this model from Peru, Bolivia and Ecuador are examined below.

The Cooperativa Forestal Yanesha (COFYAL) is located in the Palcazu Valley in the Peruvian Amazon. A 1974 Law of Native Communities had permitted these communities to hold land communally in a manner recognized by the state for the first time. Logging areas are established by the communities. There is communal extraction with income generated used for communal activities, and also individual extraction with approval of communal authorities. The communities are authorized to manage and develop the forest through extraction contracts. These are granted on behalf of the community by the Ministry of Agriculture, since the communities are not allowed to own the forest. If the community does not obtain an extraction permit, it cannot carry out the process and market forest products because they will be confiscated and fines levied.

COFYAL was formed in 1986, in reaction to aggressive settlement in *ladinos* (areas with Europeanized inhabitants) in the region. The organizing committee proposed a cooperative as the most appropriate structure "because this structure resembles the Yanesha's traditional way to decide communal issues" (Lazaro *et al.*, 1993). Proyecto Especial Pichis-Palcazu (PEPP), the project administration for colonization in the area, had under local and international political pressure shifted its emphasis to natural resource management. It now assisted in the formation of the cooperative. Several communities were involved, covering a large territory.

As a funding condition, the Agency for International Development had required that ten Ayanesha communities in the Palcazu Valley receive land titles. The five indigenous communities in COFYAL managed some 2000 ha of production forest reserves and wood processing facilities. It was anticipated that another five

native communities may eventually add 6500 ha of production forest (Forster and Stanfield, 1993).

In the last two years, the situation of the cooperative has deteriorated. There was suspicion of the cooperative, based on management style, and there were difficulties in developing a full-time labour force for forest management consistent with other production responsibilities in traditional households. Significant problems of scale also emerged; the area may be too large to be manageable. Today, the cooperative has ceased to manage extraction, and local woodcutters are doing as they wish. Those reviewing the project cite complexity and unprofitability as undermining it, and also list an inadequate legal framework, though they do not specify in what sense this was the case (Lazaro *et al.*, 1993; Benavides and Paruiona, 1995).

Another troubled experience with this model is the Chaquitano indigenous community in eastern Bolivia. A regional cultural organization, the Central InterComunal del Oriente Lomerio (CICOL) provided the impetus for this effort, and decided that only a government-granted timber concession could provide a legal basis for protecting Indian territory. Bolivian law did not recognize communal titles. CICOL initiated a forest management project in 1984 called the Lomerio Project, and obtained support from Oxfam America and the Humanist Institute for Cooperation with Developing Countries (HIVOS), a Dutch organization. At the outset of the project there was apparent agreement of 21 communities to cede their land to the regional organization for management. The project prepared a forest management plan and applied for a concession.

As the project attempted to get under way, it was discovered that there was not a full consensus among communities. Property rights claims were being put forward by the communities. The Catholic Church supported the notion that each Chaquitano has property rights in resources. Three communities withdrew from the project and demanded that their areas be respected, and even those remaining asserted property rights. A major renegotiation was necessary, which clearly demarcated the area, perhaps 30 percent of the original area, that the regional organization will manage and log. It also became clear that in the

early project documents the sustainable offtake may have been overestimated. And in spite of seven years of lobbying, the concession has not yet been granted (Smith, 1993).

In Ecuador, the Quichua Indians of Napo Province in the Amazon have established areas of resource use. An oil boom in the 1970s precipitated a land rush, and Indians began to apply for individual titles under the agrarian reform laws. They converted forest to pasture to demonstrate use. The Programa de Uso y Manejo de Recursos Naturales (PUMAREN) is a regional natural resource management programme established in 1988 by the Indian Federation (Federation of Indian Organizations of Napo), representing 60 communities. In its first phase, the project has emphasized consolidation of land rights. PUMAREN has urged Indians to seek community titles for their full territories, rather than individual titles under the agrarian reform acts. At the outset, less than half the communities had any legal rights, and only one-third had global title. Today, only 25 percent of the communities lack legal standing and 60 percent have communal titles. PUMAREN is seeking to increase legalized indigenous territory through co-management agreements for protected areas (Forster and Stanfield, 1993).

A final model discussed by Davis and Wali (1994) is termed the 'indigenous territory' model. They present the model as expressing the current demands of indigenous people's regional organizations, and urge that its critical elements must be to provide land access and security in terms consistent with Indian social and political organization and cultural notions of space. Such projects, they suggest, will tend to be larger than earlier projects, to allow integrated management of an ecosystem. They suggest as a model the Awá Ethnic Forest Reserve in Ecuador, noting that the Ecuadorian Awá avoided using the agrarian reform law, and managed to get the government to establish an ethnic reserve. They stress also the role to be played by indigenous communities in defining these reserves, and cite promising experiences with use of indigenous topographic teams to identify territories in Ecuador and in Peru.

While these new forms have produced a much wider range of options for common property management, there are few comprehensive

reviews of all the options even at national level. A recently completed survey of legal options for common property management in Costa Rica gives some idea of the variety of forms that now exists (Espinoza and Murillo, 1994, reported in Hendrix, 1996). The study notes the fundamental orientation of the tenure system towards private ownership of land, and provides a list of organizational options which could apply to most Latin American countries. A considerable variety of organizational forms is available. Foundations are non-profit entities that have legal personality. They can own land, and could be used to manage common property. Solidarity associations are entities in which persons with similar aspirations and needs join together to promote those goals. They have legal personality and so can own land. They must have at least 12 members, and a formal constitution and by-laws are needed as well. Cooperative associations also have legal personality, and the organization enjoys limited liability. Cooperatives enjoy tax-free status, and this is true in a number of other Latin American countries as well. Unions could conceivably own common property as well, but at least 20 members are required, and a constitution, by-laws and many other legal formalities also are required.

Finally, a community development organization is an option. These must have a minimum of 100 and a maximum of 1500 members. A constitution and by-laws are required. Such associations are required to coordinate activity with the municipality, and are constrained by the National Economic Development Action Plan.

More recently, Costa Rica has granted legal recognition to indigenous communities. Article 2 of the Costa Rican Ley Indigena contemplates: (1) recognizing a separate legal personality for the communities, apart from the state; (2) designating reserves that belong to the community; (3) recording of their title at the Deeds Registry; and (4) exempting them from fees associated with the recording of titles. The reserves are non-transferable, and community property cannot be sold, rented, given away or mortgaged. The legal organization of the community is a 'development association', in which only indigenous people can participate. The development association is required to maintain current land use of present forest land and to use sustainable forestry practices under the state forestry programme.

Africa: common property in an era of law reform

With very few exceptions, most countries in Africa underwent major reforms of their land tenure systems in the years following independence. A few were privatization reforms, such as that of Kenya, but most vested land in the state and envisaged either communal production (Tanzania), a system of state concessions for commercial agriculture (Guinea Bissau), a small-holder agriculture in which farmers held their land titles as leases or permits from the state rather than from local communities, or some combination of these approaches. These were all reforms that sought to replace community-based tenure systems, and for the most part they proved impossible to implement (Bruce, 1993b). The policy debate has in recent years swung back towards recognition and adaptation of community-based tenure systems rather than their replacement (Bruce and Migot-Adholla, 1994).

Donor pressures at land law reform have until very recently, however, emphasized the need for strong rights for farmed and residential land, to the neglect of common property resources. The legal struggle over the future of common property can be seen going on at two levels: first, the roles and space assigned to landownership by communities in property rights reforms; and second, reforms of forestry law to accommodate community forestry management.

The case of Tanzania illustrates the struggle over communal resources in the rush to property rights reforms (see Appendix B). In the years immediately after independence, Tanzania moved rapidly to villagize peasants and encourage them to engage in *ujamaa* (communal productions). Working on a basis of broad government landownership inherited from the colonial period, the government ran roughshod over community-based tenure rights, which had received greater recognition by the colonial government and law. The village landholdings created were often inadequately demarcated and were simply administratively assigned to villages. A legal framework for village management, the Villages and Ujamaa Villages (Registration, Designation and Administration) Act, 1975, came only as an afterthought, and was repealed in 1982. Under a new Local Government (District Authorities) Act of 1982, villages can enact by-laws for land administration, but the system for national

approval of such by-laws rendered the system ineffective (Hoben *et al.*, 1992). The case of the Endagwe community featured at the beginning of this publication highlights the inadequacy of this system.

In 1982 a new land policy called for demarcation of village lands and formalization of a leasehold title for the villages. The potential of such leaseholds as a legal basis for community forestry in miombo woodlands and other forest resources was subsequently noted and discussed in World Bank forestry sector documents (e.g. Hoben *et al.*, 1992). There has, however, been a continuing conflict over how expansively the boundary lines of villages should be drawn. One school of thought favours giving them 'enough' land, keeping some land in government's hands for development on the concession model (Tanzania, 1995). Others have argued that historical notions of village territories should be honoured, and communities should be encouraged to develop those resources (Tanzania, 1992).

A new National Land Policy (Tanzania, 1995) calls for titling of "specific common property resources" to villages. This may reflect a middle road, setting some common pool resources aside for development by local communities, but it is unclear how and by whom it will be decided that a 'specific' resource should be titled as the common property of the village. This issue is one of tremendous importance to the future of common property forestry and natural resource management in Tanzania. A new land law is currently being drafted.

While this process is still under way, some communities working with donors seem to have made significant progress towards effective control of their forests. At Duru-Haitemba in Babati District, by-laws have been enacted and are being implemented, though whether they have gone through the full formal process of approval by government is not clear. This last point may be less of a concern because the community is about to obtain a long-term leasehold title over the community forest, as part of the general titling of the territory to the village under the Village Registration Program (Wily, 1996).

A similar history of conflict has been documented in Guinea Bissau, where an explosion of concessions in recent years is destroying the ability of communities to manage the resources upon

which they have historically depended. Again, there is a failure to provide legal recognition for community rights to land used for hunting and gathering (Bruce and Tanner, 1993).

In Francophone Africa, work on legal reforms to facilitate community resource management and shift away from broad state management of natural resources has been limited to a few exceptional cases, such as Senegal, Guinea and Niger. This is in spite of a strong recent emphasis on the *terroire villageois* approach to natural resource management in the region. No clear debate on a legal framework comparable to the discussions in Tanzania has emerged in most countries, though extensive discussions of policy reforms have taken place, in particular at the Praia Regional Conference on Land Tenure and Decentralization in the Sahel in 1994.

In these countries, however, pressures have been building for a reform of the forest codes in the French tradition. The codes have been reviewed and faulted both for their failure to provide an adequate legal basis for community forestry and for undermining incentives for tree-planting on privately held land (Elbow and Rochegude, 1990). Studies in individual Sahelian countries have developed this critique (Elbow and Lawry, 1989; McLain, 1992a), and in 1993 a Sahelian Forestry Code Workshop listed the following shortcomings of current forestry and related legislation: (1) excessive centralization and the existence of a state monopoly over forest resource management; (2) failure to recognize indigenous systems of forest management and indigenous rights to forest resources; and (3) excessive reliance on punitive law, based on a system of permits and fines (McLain, 1993a).

A series of studies have sought to think through the conditions for a more decentralized system of forest management by local communities (Thomson, 1983; Bocoum, 1992; McLain, 1992a; Heermans and Fries, 1992). A generation of village woodlot projects failed because the villages concerned never felt a sense of ownership of those projects, and in retrospect the project planners exhibited a remarkable naiveté about incentives and motivation (Fortmann and Bruce, 1988). But there have since been successful co-management schemes on classified forest land, such as Guesselbodi in Niger (Heermans, 1985). (Relevant provisions of the law authorizing community participation in management of natural

BOX 11 • NIGER: THE 'GUESSELBODI LAW'

English translation of DECREE NO. 048/MAG/EL/CNCR OF 16 MAY 1990

ARTICLE 1

In order to encourage participatory management of natural resources, together with a concern for their rational exploitation following established (or to be established) technical norms, the following usufruct rights are granted to village communities that participate in forest resource management on their traditional lands: harvesting of all types of wood (timber, building poles, firewood) as well as bark, leaves, fruits, gums, medicinal plants, food plants, and all other secondary products.

ARTICLE 2

The establishment of technical norms for the exploitation of forest resources (e.g., a management plan) for each site managed as part of a development program is the responsibility of the institutions charged with the training and follow-up of the participating communities.

ARTICLE 3

The benefits incurred from the exploitation of forest resources mentioned in ARTICLE 1 are reserved in priority for the involved village communities. However, if it is determined that the community is incapable of attaining the harvest objectives set out in the management plan (i.e., in case of underexploitation of significant available resources), harvests will be permitted, according to suitable procedures to be established, by persons outside of the village communities.

ARTICLE 4

Harvesting operations can be temporarily suspended:

- ▶ If it is determined that silvicultural objectives have been met for the year (i.e., all of the exploitable resources for the year have been removed).
- ▶ If harvest methods do not conform to silvicultural norms prescribed in the management plan. In this case, the institution responsible for training and follow-up will hold meetings with the village communities to resolve this problem.

ARTICLE 5

At each management site the Sub-regional Development Council will arbitrate all unresolved conflicts or differences of interpretation of the management plan between the village communities and the institution responsible for training and follow-up.

ARTICLE 6

Usufruct rights established by this decree will be recognized by the Rural Code.

ARTICLE 7

Préfets, sous-préfets, and the Director of the Environment are instructed to implement the present decree, which takes effect on the date of signature and which will be published in the Official Journal of the Republic of Niger.

Niger, 1990. Translation by Kent Elbow.

resources in Niger are included in Box 11.) Across the region there are a growing number of interesting experiments with organization of local communities to manage natural resources, such as the Near East Foundation's project at Bora in Mali (McLain, 1992b). More recently, there is a new generation of projects, still not adequately evaluated, that stress the terroire villageois approach, which seeks to provide for integrated management of village territories defined

to include forest resources (Painter, 1991).

Guinea has arguably led West Africa in both forestry code and property law reform, but has had difficulty reconciling the visions of the drafters of the two new laws. A recent Code Forestier (Ordinance 081/PRG/SGG/89, 20 December 1989), prepared with the assistance of FAO, provides for classification of local community forests and management of those forests by

BOX 12 • GUINEA: USE OF THE FOREST DOMAINS OF LOCAL COMMUNITIES

CHAPTER 4. FOREST DEVELOPMENT

SECTION 1: USE

[...] **B. Use of the forest domain by local communities** ("collectivités décentralisées")

ARTICLE 36

The forest domain of local communities can be used:

- ▶ directly by the local communities concerned;
- ▶ under a contract for forest development;
- ▶ by the forest administration.

In all these cases, the use must conform to the requirements of plans of forest management prepared under articles 43 and 44 hereafter.

ARTICLE 37

Local communities which directly exploit their forest domain are subject to the technical control of the forestry administration.

For the needs of their exploitation, they are able to require its cooperation and obtain its aid, according to the modalities established by the application texts for the present code.

ARTICLE 38

The products from the use of the local communities' forest domains are for the benefit of the communities concerned, after deduction, according to the case, of the costs to the forest administration of its contributions.

ARTICLE 39

The exploitation of portions of the forest domains of local communities may be conferred on a third party, by virtue of the contracts for forest development.

These are concluded, in the name of the local community, by the administrative authority competent to contract, according to the terms of articles 29, 30 and 31 hereafter.



ARTICLE 40

The validity of contracts for forest development concluded by local communities is subject to the approval of the Minister in charge of forests.

The control of the execution of these contracts is jointly assured by the collaboration of the administration authority envisaged in the previous article and the forestry administration.

ARTICLE 41

Management units for the forest domains of local communities will be generated by the Forest Administration:

according to the request of the local community;

according to the decision of the Minister in charge of forests, where the good husbandry of the management unit is in danger of compromise by reason of inattention, by the local community, to forestry legislation or the management plans.

ARTICLE 42

The product of the exploitation of the management units created by the Forest Administration is to be returned to the local communities concerned, after deduction of the costs of development.

ARTICLE 43

In accordance with the provisions of article 44 hereafter, the forest management plans for the forest management units of the local communities must comply with the requirements of prior articles 33 and 35.

ARTICLE 44

The management plans envisaged in the preceding article are developed according to the needs of the local community concerned, with the technical consent of the Forest Administration. These plans are approved and revised by decision of the Director of the Forest Administration. They must conform to the requirements of the regulations.

ARTICLE 45

Inter-district associations may be created, by a convention, among the local communities possessing forest domains, for the common development of their units of management.

The validity of conventions establishing such associations is subject to approval by the Ministry in charge of forests.

Ordinance no. 081/PRG/SGG/89, Forestry Code. Journal Officiel de la République de Guinée, 10 January 1990, p.36-45. Translation by the author.

local communities (relevant provisions are included in Box 12)(see McLain, 1993b).

Shortly thereafter, in 1992 a new Land Code was drafted with assistance from the World Bank. The code reflects primarily urban concerns, and was in fact initially drafted just for urban areas, but was later applied with some adjustments to the

entire country. The code provides for the automatic conversion of land under customary rights to the private ownership of whoever is using it like an owner. It is an approach that can promote expansive and conflicting claims, especially where there are overlapping claims to the land (Tabachnik and Bruce, 1994).

In the Fouta Jallon, where it has not yet been applied, the code has increased tensions and competition over land to which both former master and former slave populations make claims. This has undermined prospects for a terroire villageois approach to resource management. A programme put in place there by the University of

Wisconsin's Land Tenure Center has attempted instead to use contracts to create smaller, discrete areas for community management. Such contracts may have considerable utility when project managers are confronted with uncertainties about the impacts of general laws (Fischer, 1994/95, 1995). An example is given in Box 13.

BOX 13 • GUINEA: CONTRACTING TO PROVIDE SECURE ACCESS

**PREFECTURE OF LELOUMA
SUB-PREFECTURE OF BALAYA**

**REPUBLIC OF GUINEA
Work - Justice - Solidarity**

Agreement made between

Mr(s) - Mamadou Cellou Sylla Tiaguel-Dicko
- El-Hadj Marwane Diallo Kouratiwdhé
- Mody Mamadou Diallo T.Dicko
- Mody Mamadou Diallo T.Dicko
- Ibrahima Sory Diallo Bowèl
- Mody Amadou Bobo Diallo T.Dicko

The owners of the property of Dounkiba hereafter called "the owners,"
and

Mr(s) - Saliou Sylla Dow Banga
- Bailo Kewlin Bourouwol Banga
- Sidibé Yére Sadio

The representatives of the users of Dounkiba hereafter called "the users,"

1. In response of the request of the users, the owners cede the property of Dounkiba to the users for their production activities from May 1990 to the end of the winter season of 2015, that is for a period of twenty-five years (25 years).

2. The ownership rights in the property remain with the owners. However, the users under the present agreement have the use right for all the land during the full period mentioned in article 1 of this agreement.



3. The owners promise not to reclaim the property during this period and the users will return it to the owners at the end of the term of this agreement unless the latter accept a renewal of the loan.

4. During this period, the users will send as is the custom a tithe (one tenth of the harvest) to the owners. No other payment is due under the present agreement.

5. During the duration of this agreement, all investments realized in the property by the users or by any of the users, is the property of the latter (owners?). At the end of the loan, the users will leave them for the benefit of the owners.

6. During the term of this agreement, the users are solely responsible for the property. However, they can accept or refuse all new demands for parceling of the property.

7. All new laws or decisions, national, regional or prefectural, concerning land tenure, apply to the present agreement.

8. The clauses contained in the present agreement cannot be modified, or added to, or reduced, without the agreement of the two parties in the presence of customary authorities.

9. The present agreement enters into force from the date of signature by the two parties.

10. Signatures

1. For the owners

Date

Mody Mamadou Cellou Sylla

.....

El-Hadj Marwane Diallo

.....

Mody Hamidou Diallo

.....

Mody Mamadou Diallo

.....

Mody Ibrahima Sory Diallo

.....

Mody Mamadou Bobo Diallo

.....

2. For the users

Date

3. For the sub-prefecture

Date

The under-prefect of Balaya

4. For the Prefecture

El-Hadj Imrana Diallo

Secretary general in charge of local communities. ("collectivités décentralisées").

Diallo, 1995. Translation by the author.

The experience in Guinea highlights the importance of coordinating provisions on community forestry management with general property law.

South and Southeast Asia: contractual and property solutions

In South and Southeast Asia, there have been strong traditions of state control of forests. In India, large areas of forest were reserved for management by the state, while in the Philippines the state claimed all untitled land, including most land in the country.

India's JFM programme has attracted considerable attention (see Appendix C). In 1988 a new forestry policy reversed a century of tight control of forests by the state, calling for popular participation in the reforestation of wastelands. The shift in policy was in part the product of numerous social movements in the 1970s. The largest of these was the Chipko movement, which drew attention to the plight of forest dwellers and forest-dependent populations. The new policy

drew upon several models, including the van panchayats in Uttar Pradesh, an earlier social forestry programme, and most proximately, the model developed in successful experiments in the Arabari Region of West Bengal. The JFM programme initiated by a 1990 circular order by the national government was based on a recent shift of forestry from a state to a joint competence of state and federal government. States are encouraged but not required to participate in the programme.

Under the JFM programme, use agreements are negotiated by the Forest Service with local communities, which may be organized as a *panchayat* (local government), a cooperative or a village forest committee. An example is provided in Box 14, but there is considerable variation among India's states, some of which is indicated in Table 2. The community is allowed to collect non-timber forest products and receive a share in the proceeds of the sale of timber. No more grazing or farming is permitted on the lands under the agreement. The scheme is operational for a peri-

BOX 14 • J & K SOCIAL FORESTRY PROJECT

Proforma Agreement for Degraded Forests

An agreement made this.....day of.....19..... betweenVillage (Rehabilitation of Degraded Forests) Committee hereinafter referred to the Committee (which expression shall also include its successors) and.....the Divisional Forest OfficerDivision hereinafter referred to as "the Forest Officer" (which expression shall mean and include his successors).

- i) Whereas the Forest Department has planned to rehabilitate an area within a demarcated forest and more particularly described in the schedule hereto (hereinafter referred to as "the degraded forest area") and
- ii) Whereas the said degraded forest area is contiguous to the territory within the land revenue jurisdiction of mouza [tax region]and
- iii) Whereas the inhabitants of the mouza are electors and within jurisdiction of the panchayat and have approached the panchayat to request the Forest Officer to permit them to protect any rehabilitation works within the degraded forest area in return for a share of the forest produce at harvest and
- iv) Whereas the panchayat conveyed such request to the Forest Officer to which the Forest Officer has conceded to.



Now this agreement witnesseth:

1. The Forest Officer will rehabilitate the degraded forest area in accordance with plans sanctioned by the Forest Department.
2. The panchayat on behalf of the said mouza undertakes that the inhabitants of the said mouza protect the said rehabilitation works and will prevent any person from damaging the said works. The Panchayat further undertakes on behalf of the said mouza that the inhabitants of the said mouza will keep the Forest Officer duly informed of any attempts to damage the said plantation and co-operate with the Forest Officer to the extent necessary to fulfil their obligations hereunder.
3. In consideration for the aforesaid acts the inhabitants of the said mouza and upon their due performance the Forest Officer agrees and undertakes that the inhabitants of the said mouza will be entitled to receive forest produce (or cash in thereof property in cash and property in forest produce) to the extent of 25 per cent of the value of the forest produce accruing from the said degraded forest area at harvest after deducting therefrom all direct costs. For the purpose of this agreement the term "direct costs" shall mean an included cost of establishment maintenance.
4. The panchayat agrees and undertakes the beneficiaries will enclose the said plantation with bushwood fencing upon being requested by the Forest Officer to do so and at such time (or times) as the Forest Officer may deem fit.
5. For all plantation work, the Forest Officer and the Committee will as far as is practicable employ labour from among the beneficiaries giving preference to landless agricultural labourers and persons belonging to the traditionally poorer segments of the population.
6. During the operation of this segment the Forest Officer will provide regular training to the villagers nominated by the panchayat in order to develop skills and transfer techniques of cultural operations so that the panchayat and the beneficiaries may assume management of the plantation as soon as possible and also develop the ability to establish, run and manage similar plantations in the future.
7. The Forest Officer will maintain in a plantation a journal which will follow the format of the existing Forest Department Journal, record of the numbers of plants by species survival, mandays of labour and other inputs and expenditures incurred by the Forest Officer and the panchayat (by or on behalf of the beneficiaries) and will make such information available upon request to a representative of the beneficiaries duly authorised in writing by the panchayat.
8. Before the commencement of this agreement the parties have prepared a scheme more particularly set in schedule 2 hereunder which sets out, *inter-alia*.
 - a) The minor Forest Produce which the beneficiaries may collect free of charge and the manner of its collection subject, however, to the right of the Forest Officer to prohibit such collection (in part or entirely) after discussion with the beneficiaries if the Forest Officer deems such prohibition necessary for improvement and establishment of the plantation;
 - b) The method by which the forest produce accruing at each thinning, cutting or final felling shall subject to the recovery of costs by the Forest Officer set out in clause 9 below, be distributed among or sold to the beneficiaries or sold to persons other than the beneficiaries and in the event of such sale, the objects on which the net income arising from such sale will be expended; and
 - c) Where any sale takes place under sub-clause, (b) above the percentage of the net income which will be reserved for the purpose of reforestation.

—————→

TABLE 2 • NATIONAL AND STATE-LEVEL JFM POLICIES

	Sharing	Organisation	FPC Responsibility	Tenure Period
NATIONAL	Community should share in usufructs: grasses, MFPs [minor forest products], fuelwood, timber i.e. 25%.	Exclusively to village community. No individual agreement.	No grazing, no agriculture, promote stall feeding.	No ownership or lease. Use rights. 10 years + renewal.
RAJASTHAN	All MFPs (except bamboo) 60% of net timber, 50% reinvest	Registered society. Revenue village based.	Control grazing, illegal felling, fires, encroachment.	Not specified. Maximum of 50 ha. per group.
ORISSA	Subsistence timber/fuel. Free, not for sale.	FPC-panchayat based. 8 + member mel sarpanch.	- Same as above - + Distribution to villages.	Not specified.
GUJARAT	All MFPs 25% of GFD timber. 80% of timber from other sources.	Village communities, panchayat, society, or informal groups. All families.	To regenerate & develop degraded forest land. No agriculture or grazing.	No lease or ownership rights. Joint management agreement.
WEST BENGAL	25% of timber net after minimum 5 year protection. All MFPs.	Community based FPC under panchayat broad based land management committee.	To protect forest against fires, encroachment, cutting.	Through the rotation 10 yr. with possible extension.
HARYANA	25% net of timber. 1st priority in HRMS vested after 3 yrs. All MFPs except fodder and fibre lease.	Reg. society revenue village or community with R.V. [revenue village] Area: if other villagers agree. All H.H. [household] male and female heads.	Protection - Management plan development, accounts form rules and regulation.	Not specified except 1 yr. lease on fibre & fodder bamboo area. HRMS 1st choice.
BIHAR	Dry leaves, branches & grasses for free subsistence. No sale.	Village developments committee. All members of 1 or more villages tribal representation.	Est. rules for forest protection & enforce. Help organise forest labour. Meet regularly, distribute produce	2 yrs. then new committee formed.

Poffenberger and Singh, 1992

od of ten years, after which it must be renewed (Arnold and Stewart, 1989; Lindsay, 1994; Hobley, 1995a).

JFM is best characterized as a co-management regime, and exhibits a relatively low degree of institutionalization of forestry management and low security of tenure on the part of the communities. In most states, the forest protection committees remain informal, with no legal personality or status beyond their relationship to the state. In West Bengal, they are under direct supervision of local government. Exceptionally, in Haryana and Rajasthan they are registered under the Indian Societies Act, which governs corporations (Poffenberger and Singh, 1992). JFM also exhibits a low degree of security for the communities involved, since the parties commit themselves to the arrangements for ten years.

Today, the village committees involved in the JFM programme remain very much the creatures of the programme. Often they have not acquired an autonomous existence. They lack leverage to negotiate improvement of the terms of access to land with the Forestry Department. There is skepticism in some communities that the programme is just another method by which the Forestry Department is mobilizing people's labour to improve public lands, from which people will not in the end receive much benefit. There are also fears that to the extent that these projects are successful, their benefits will be hijacked by local elites.

This variety makes a conclusive evaluation difficult. In some states, the programme has sought to build upon local experience with forest use, while in others it has not. Lindsay concludes: "When applied by thoughtful foresters, JFM can be a mechanism for building upon and supporting existing local traditions and practices; applied thoughtlessly, it can be used to undermine these traditions and practices by imposing new structures and methods" (personal communication, 17 March 1997). The JFM programme is due for reconsideration in the year 2000, and it is only now that the initial plantings under the programme have matured and the first sales are taking place. A draft forestry law submitted by government in 1994, but not yet enacted, confirms the JFM programme along its current lines.

In the Philippines (see Appendix D), land classified as forest reserves, owned by the government, makes up more than 50 percent of the nation's land mass. Human communities live on and earn their livelihoods from these same lands, in some areas their historical territories. Individual permits to cultivate and *taungya* programmes were utilized after 1975 to try to regularize these situations. In 1982 a new Integrated Social Forestry Programme (ISFP) was initiated (LOI 1260 of 1982), which provided not only for contracts for individual farmers, but for Communal Forestry Stewardship Certificates (CFSCs), providing a legal basis for community management of forest reserve land. Individual stewardship certificates can be held within a CFSC area.

The CFSC provides a lease for 25 years, renewable for another 25 years, during which the community has exclusive rights to possess, cultivate and enjoy all the produce of the land and to restrict outsiders from using the land. The text of the CFSC agreement is provided in Box 15. The leases are signed with either a cultural community or a forestry association, commonly organized by an indigenous NGO under a contract with the Forestry Bureau, and finally incorporated as a non-stock, non-profit corporation. The appropriateness of this form has been questioned because of its complexity (Lynch and Talbott, 1988, 1995).

The contract gives the community full rights to non-commercial use of the forest and non-forest resources, and the community is required to aid and cooperate with the Forestry Bureau in protecting the forests immediately adjacent to their communal forests. Stewardship conditions are attached, but these are for the most part stated in relatively general terms. By mid-1992 there were 21 agreements covering almost 68 000 ha. They range in area from 50 to 15 000 ha, though most fall within the range of 1000 to 4000 ha (Lynch, 1992).

While the Forestry Bureau touts the success of the CFSCs, it has been reluctant to consider releasing this land from the state ownership and the reserve system. From the point of view of local communities, in particular the ethnic minority communities, the CFSC leases are a stop-gap, a way station along the road to satisfaction of their demands for legal recognition of their ancestral rights (Gatmaytan, 1989).

BOX 15 • COMMUNITY FOREST STEWARDSHIP AGREEMENT, THE PHILIPPINES

KNOW ALL MEN BY THESE PRESENTS:

This Agreement made and entered into this.....day of.....19.....
by and between the Republic of the Philippines, represented by the Director of Forest Management Bureau, Department of Environment and Natural Resources, and hereinafter referred to as the GRANTOR, and the cultural communities/forest associations of the whose constituents are identified in the attached census which forms an integral part of this Agreement, and who have organized themselves into the....., hereinafter referred to as the GRANTEE.

WITNESSETH:

WHEREAS, it is the policy of the government to democratize the disposition of public forest lands and promote equitable distribution of forest benefits among the less privileged sector of society, forest association and cultural communities and other occupants of forest lands;

WHEREAS, the GRANTOR has jurisdiction and authority over the demarcation, protection, management, disposition, reforestation, occupancy and/or use of public forests and forest reserves;

WHEREAS, forest association/cultural communities are allowed under existing government regulations to enter into a stewardship agreement on a communal basis of the areas they are presently occupying and utilizing for noncommercial purposes;

WHEREAS, the GRANTEE who is qualified to enter into a stewardship agreement of public lands in accordance with existing laws of the Republic of the Philippines, has applied with the Forest Management Bureau, Department of Environment and Natural Resources for permission to possess, cultivate and utilize the land described below;

WHEREAS, the GRANTOR after having evaluated the application of the GRANTEE, hereby favorably considers the said application for a Community Forest Stewardship Agreement.

NOW, THEREFORE, for and in consideration of the foregoing premises, the GRANTOR has authorized the GRANTEE under this COMMUNITY FOREST STEWARDSHIP AGREEMENT to develop, manage and administer the parcel of land situated in Sitios:

BarangaysMunicipality of....., Province of
containing an area of..... hectares technically described and/or shown in the attached sketch map, which forms an integral part hereof, to be hereinafter referred to as “the land” subject to valid and existing right, forest laws, policies, rules and regulations, and the following terms and conditions:



A. GRANTEE:

1. The GRANTEE shall have the sole and exclusive right to peacefully possess, cultivate and enjoy all the produce of the land as against any and all third parties; the right to allocate the land among themselves in accordance with the native custom and culturally accepted practices; the right to manage and work on the land in accordance with appropriate forest and farm methods and practices; and such other rights as may be granted by laws subject however, to existing private right if there be any.
2. The GRANTEE shall preserve monuments and other landmarks within the confines of the land which indicate corners and boundaries.
3. The GRANTEE shall prepare and submit a development plan for the area within the period of one (1) year after the approval of this Agreement.
4. The GRANTEE shall develop and improve the ecological condition of the land by planting a combination of agricultural crops, tree crops and forest plants and/or raising animals.
5. The GRANTEE shall protect and conserve the forest trees and forest products naturally grown on the land and shall cooperate with the Forest Management Bureau in the protection of forest areas immediately adjacent thereto.
6. The GRANTEE shall report to the nearest forest officer any violations of the provisions of forest laws, rules and regulations occurring on the land or in other areas immediately adjacent thereto.
7. The GRANTEE shall whenever applicable employ controlled-burning in land preparation, and shall prevent and suppress wild forest and grass fires on the land or areas immediately adjacent thereto.
8. The GRANTEE shall not cut trees or saplings from a strip of twenty (20) meters on each side along the banks of creeks, rivers or streams, bordering or passing across the land.
9. The GRANTEE shall not cut, gather or harvest for commercial use naturally grown forest products from the land or from any adjacent areas except in accordance with a license or permit that the GRANTOR shall issue upon prior application of the GRANTEE.
10. The GRANTEE shall not sublease nor in any way convey rights to the land or any portion thereof to any third parties.
11. The GRANTEE by entering into this Agreement shall not be deemed to have waived any claim of ancestral land rights inside and outside the areas covered by this Agreement.
12. The GRANTEE shall pay an annual fee for the use of the land actually cultivated which shall not exceed ten pesos (P10.00) per hectare as determined by the Department of Environment and Natural Resources, on the 6th year thereafter following the approval of the Agreement.

B. GRANTOR:

1. The GRANTOR reserves the right to regulate the cutting or harvesting of timber crops to insure normal balance of forest cover on the land.



2. The GRANTOR reserves the right to permit the opening, if public interest requires, of such portions of the land for road right-of-way; provided that the person or entity granted the road right-of-way shall pay the GRANTEE just compensation for any damage to permanent improvements, and/or growing crops.

3. The GRANTOR shall extend technical assistance, extension services and other available support.

4. The GRANTOR or his duly authorized representative shall have free access to the area for supervision and monitoring purposes.

5. The GRANTOR shall maintain the present legal status of the said area and shall not reclassify nor grant to any and all third parties and any privilege or extension thereof to develop, utilize or manage said area during the existence of this Agreement.

6. The GRANTOR shall terminate/cancel this Agreement if the GRANTEE fails to comply with the terms and conditions hereof within six (6) months after being notified in writing of its neglect by the GRANTOR due to serious and continued violation of forest laws, rules and regulations and when public interest so demands, without prejudice to the institutions of any other appropriate legal action as a consequence of such violations.

The provisions stated hereof have been explained by the GRANTOR in a language/dialect understandable to the GRANTEE prior to the signing of this Agreement.

This Agreement shall become effective upon the execution thereof by the parties and shall continue for a period of twenty five (25) years to expire on..... renewable for another twenty five (25) years.

IN WITNESS HEREOF, the said parties have hereunto set their hands this..... day of 19..... in

Board Chairman/President/Tribal Leader

Director

SIGNED IN THE PRESENCE OF:

APPROVED:

FULGENCIO S. FACTORAN, JR.
Secretary, Department of Environment and Natural Resources

Philippines, 1989

The legal bases for community forestry in the Philippines have continued to expand in recent years, and are now probably the most varied of any nation. Of special importance are new provisions for Certificates of Ancestral Domain Claims, provided in response to pressure from grassroots activists and donors. Under Administrative Order No. 2 of 1993 of the Department of Environment and Natural Resources, a process is laid out for delineating ancestral domains, the continuing validity of which was established under a long-ignored 1909 court decision that land occupied from time immemorial never became public land. The ancestral domains are perpetual and cannot be cancelled for failure to meet standards of the Department, and so constitute a much stronger community entitlement than grants under the other programmes. A 1991 National Integrated Protected Areas Act provides clear legal safeguards for ancestral domains in biologically critical areas. The Department has, however, lacked the resources to make a significant impact in the demarcation of the ancestral domains (Lynch and Talbott, 1995).

After communism: finding a niche for common property

A considerable part of the world is still working within legal frameworks created under communism, though many are in the process of revising them more or less radically. While communist governments treated forests as state property managed on an industrial scale by state enterprises, in some communist countries smaller areas were managed as collective forests, and the institutional arrangements for those collective forests are still of interest. In addition, it is instructive to examine how postcommunist societies in the throes of privatization are grappling with the reform of the ownership and management of state forest resources.

In China (see Appendix H), reforms have been incremental, under the control of the Communist Party. The 1982 Constitution and the 1987 National Land Administration Law made it clear that the land held by village collectives belonged to the collectives themselves, not to the state. The villages, encouraged by policy declarations,

largely returned to family farming in the years after 1985, leaving as common property such resources as fish ponds and hillside land, which had often been deforested during the collective period. A 1984 Forestry Law provided for the contracting out of afforestation of such hillside land, and asserted that while the land was still owned by the village, the planter became the owner of the trees. Leases are now available for periods of 50 years and even more in some locales (Liu Shouying, 1995).

A variety of organizational forms have been available because current law does not set out rigorous requirements for different forms of organization, but only requires their registration for recognition. Similarly, provisions on terms of land allocations and leases have been permissive. The result has been to stimulate a good deal of experimentation. In both cases, one sees a distinctive attitude towards law and social change, one which sees law not as a tool for working social change but as a capstone for changes that have already been accomplished by administrative processes.

The key legislative provisions that structured community forestry in China are provided in Box 16.

Albania (see Appendix I) presents a stark contrast to the Chinese case in several respects. Here a reform government has implemented the 'big bang' version of decollectivization, with great energies going into law reform as the basis for a new system of private property. Decollectivization was fuelled by popular anger with the old structures, and accompanied by the destruction of the physical plant of many public enterprises. There is a deep mistrust of collective projects.

Forests in 1991 were said to constitute 37 percent of the land in Albania, and all remain controlled by a State Forest Administration. They consist largely of production forests organized as localized 'forest enterprises', directly managed by the state. In areas of coppice and shrub, local villagers could purchase licences to graze their sheep and goats. A new Law of Forests and Forest Service Police (Law No. 7223 of 13 October 1992) makes provision for *komuna* forestry, forestry managed by the lowest level of local government, just above the villages. Control may also be delegated by the *komuna* to

BOX 16 • LEGISLATION LIBERALIZING LAND AND TREE TENURE IN CHINA

ARTICLE 22

People's governments at various levels should, in the light of specific conditions of their regions, work out afforestation plans and set forth targets for increasing the forest coverage of their respective regions.

People's governments at various levels should mobilize people of all walks of life in the urban and rural areas and various institutions to fulfill the task provided for in the afforestation plans.

The competent forestry departments and other competent departments are responsible for carrying out afforestation on the barren hills and uncultivated land suitable for afforestation owned by the whole people, and the collective economic organizations are responsible for carrying out afforestation on those owned by the collective.

Afforestation of areas along railways, highways, and rivers and around lakes and reservoirs should be carried out by competent departments concerned in the light of actual conditions of these areas. Afforestation of factories, mines, ground occupied by government departments and schools, and army barracks, as well as farms, pasture farms, and fish farms, should be carried out by those institutions concerned.

Both the barren hills and uncultivated land suitable for afforestation owned by the whole people and by the collective may be contracted to the collective or individual for tree planting.

ARTICLE 23

The forest trees planted by state-owned enterprises and institutions are under the cultivation of these bodies, which may use earnings from the forest trees according to state regulations.

Forest trees cultivated by institutions of collective ownership belong to such institutions.

Trees planted by rural inhabitants around their houses and on the private plots and hills under their management belong to themselves.

In the case of barren hills and uncultivated land suitable for afforestation owned by the whole people and by the collective that are contracted by the collective or individual for planting trees, the forest trees planted by the contracting collective or individual belong to themselves, unless otherwise provided for in the contract. In the latter case, provisions of the contract should be followed.

ARTICLE 24

Local people's governments are responsible for closing the newly cultivated young-growth land and other forest land that should be closed to facilitate afforestation. [China Forestry Law, 1982.]

"Land in the rural and suburban areas is owned by collectives except for those portions which belong to the state in accordance with the law; house sites and privately farmed plots of cropland and hilly land are also owned by collectives." [Article 10 of the Constitution, 1982.]

"Collectively owned land shall belong lawfully to peasant collectives of a village and shall be operated and managed by agricultural collective economic organizations such as village producers, cooperatives or villagers' committees." [Article 8, Land Administration Law, 1987.]

"...prolong the time period of the contracted land, encourage the peasants to increase their investment to foster the fertility of the soil and practice intensive operations. In general, the time period of the contracted land should be more than fifteen years. Projects with a long production cycle and of development nature, such as fruit trees, woods and forests, denuded hills, and wasteland, should have a longer contract period."

Central Committee of the Chinese Communist Party, 1984

REPUBLIC OF ALBANIA

Presidential decree

Promulgation of law no. 7623, Dated 13.10.1992

Chapter II

Forest estate, administration, development and treatment

ARTICLE 4

a) The forest estate is composed of state, communal and private forests.

b) Communal forests are those under state ownership and in the common use of one village, of several villages, or communes.

According to criteria determined by the Minister of Agriculture and Food, parts of communal forests with an area of 0.4–1 ha/family are given in use to the permanent inhabitants, according to an agreement between local authorities and forest authorities.

c) Private forests are all natural and afforested stands which are created and exist inside the borders of private lands.

The state assists with investments and technical assistance in the development of agrosilviculture and the foundation of private forests.

Technical criteria for the determination of communal and private forests, and the rules of their management, are given by special regulation of the Minister of Agriculture and Food.

ARTICLE 5

Not included in the forest estate are separated trees which are located inside or around agriculture lands and pastures, around monuments, institutions, stables, cemeteries, on the sides of irrigation and drainage canals and ditches, roads and railways and parks in inhabited centres and those in the outskirts of cities.

ARTICLE 6

Administration, development, protection and treatment of state, communal and private forests estate are realised according to the clauses of this law. State and communal forest resources are administered by the General Directorate of Forests through the directorates of the forest service.

Albania, 1992

a village. The legislative text is provided in Box 17. Komunas have areas of state forest within their boundaries but, unlike the Chinese case, these lie outside the boundaries of the villages. As a result, the break-up of the collectives into family holdings has left the villages without much land suitable for forestry.

The komunas, a new and relatively weak level of government, have not so far been able to realize the possibility of komuna forestry. There is a failure of state control, with enforcement mechanisms breaking down, and some villages are staking out claims to areas of state forest that they have traditionally used, in a few cases even building fences to keep out animals from other communities.

There is an ongoing discussion of whether the komuna is the appropriate level for community forestry. One could imagine it as local government forestry, somewhat like county forestry in the midwestern United States, or the komunas might delegate control to villages or even to individuals. In mid-1994, three komunas in Elbasan District, south of Tirana, were selected as pilot districts under an FAO community forestry programme, and it is here that new forms of community forestry will be piloted.

The state forestry bureaucracy in Albania is still legally in executive control of the forests, and its members are divided as to the wisdom and viability of delegating control of forest resources to local communities. High timber, it is generally agreed, can only be managed by the state or large commercial firms. For some, with former colleagues already ensconced in new private timber-harvesting firms, the future for large-scale commercial timbering appears to lie in a partnership between government and those firms.

The Near East: Islamic and secular solutions

Islamic law is the primary legal authority in Islamic states, and it is a source of law in many secular states in the developing world that have significant numbers of Muslim citizens. In the latter countries it is sometimes treated as a discrete body of personal law for Muslims, and in others simply as the custom of particular

Islamicized groups. In practice, rural Muslims commonly make no very clear distinction between their custom and Islamic norms, which have been melded together for centuries. Even in non-Islamic states, Islamic law often governs the family affairs of Muslims, including inheritance, and thus touches on land rights (Meek, 1968).

In Muslim communities, one is often dealing with a three-layered legal system. There are pre-Islamic, customary practices, which may have been endorsed by Islam. There are specifically Islamic norms, originating in the Koran and the Hadith of the Prophet. Finally, there is the national (and in some federal systems, state) statutory law, which may have Islamic origins or may be based on Western models, either of colonial or more recent origin. Even countries such as Pakistan, which strongly asserts an Islamic identity, work with a body of statutory law concerning the environment and natural resource management that is largely inherited from the British.

There are distinctly Islamic legal institutions for natural resource management, and those working in Islamic contexts need to be aware of their potential. Bagader *et al.* (1990) have sought to deal comprehensively with the bases in Islamic thought for natural resource conservation. They identify sources of conservationist values in Islam: the concepts that God has created nothing without a purpose for it, and that God has created a balance in nature that we should be reluctant to disturb. They note the existence of several distinctively Islamic institutions with conservation objectives.

The first is *hema*, reserves for pasture and forests. The Prophet, they note, abolished private reserves for the benefit of powerful individuals, but established public reserves for the common good. They note the broad potential of this institution for conservation purposes. They also note the special protection accorded plants and animals in the two *haramayn* (sanctuary regions) of Makkah and Madinah.

A second such institution is *wakf*, the Islamic charitable endowment. Islam encourages private contributions to the public good. A wakf involves the donation of property, including land, for religious purposes and for the benefit of the poorer sections of society. The ownership of such property vests in God, and its profits may be applied

for the stated purpose. Once this dedication is made, the property may not be sold, given away or inherited. It remains the property of the Islamic community. Bagader *et al.* (1990) note that a wakf:

may take the form of a land trust dedicated in perpetuity to charitable purposes such as agricultural and range research, wildlife propagation and habitat development, a village woodlot, or a public cistern, well or garden; or it may take the form of a fund or endowment for the financing of such projects. The governing authorities may set provision and standards for such wakf lands and funds, and for the qualifications of their managers, so that the benevolent objectives of such projects may be efficiently fulfilled.

While individual wakfs have certainly been made with conservationist purposes, it has not proved possible to find any purposeful attempt to use this model broadly in conservation programming. It may nonetheless have an important potential. Its legitimization of setting aside resources for poorer elements in the community is especially interesting.

The institution of hema, by contrast, has been actively promoted in some countries in recent years, or at least suggested as a model for consideration in range planning (Draz, 1978; Masri, 1991). A *hema* (or *hima*, plural *ahima*) is a reserve, usually a seasonal pasture set aside to allow its regeneration. In these and other arid environments such forests as exist are often scattered trees on those pastures, or scrub used primarily for grazing. There is no clear dividing line between the grazing land and forest land, and herders still graze their animals in the 'forests' without much effective control. Violation of the hema is traditionally punished by the slaughtering of one or more of the trespassing animals, but in more recent times sanctions have generally been fines and, in the case of repeated offence, imprisonment.

Hema is probably a pre-Islamic custom in the Near East, and indeed through the Mediterranean world (Bourbouze and Rubino, 1992). The Prophet is credited with having made a number of supportive statements with respect to the custom. It has different names in different parts of the Near East. In Morocco, the Berber *agdal* (pasture) of Oukaimedene in the High Atlas

Mountains has been studied by Gilles *et al.* (1986). It includes irrigated meadows, and is used for oxen, mules and horses, rather than for smallstock, the opening and closing being tightly controlled and use closely regulated. Artz *et al.* (1986) attribute the stability of the *agdal* to its sacred nature, and they note that many *agdals* have similar religious connections but that others are secular.

Draz (1978) has actively promoted the idea of hema as an Islamic conservation model (see Box 18), and, with Eighmy and Ghanem (1982) documented its history throughout the region. Draz (1978) specifically notes its use in the Arabian peninsula for protection of forests as well as grazing resources.

Syria (Appendix J) poses a particularly interesting case in which public policy and law have struggled with the revival of hema. At independence, Syria aspired to replace nomadic land use with irrigated farming, settling the pastoralists. Government abolished the native administration and with it the tribal grazing territories, and when new water sources were provided in the absence of effective social control, widespread overgrazing and land degradation occurred. Government then attempted to re-establish hema for grazing cooperatives, but control failed, and the condition of the range has deteriorated. There was a reluctance to enforce hema exclusion for fear of arousing old tribal rivalries (Masri, 1991).

There are provisions in the Forestry Law of 1953 (Decree No. 66 of 21 September 1953) for "village forests", but it is not clear how the forests are to be established, or what property regime would exist for them. The provisions appear to envisage harvesting of forest products just for village use, rather than for commercial purposes. No land has been allocated to the villages for reforestation, and no economic village forests have been created so far (Mekouar, 1993).

In other countries in the region, Islamic law plays only a limited role in natural resource management. Pakistan case studies of competition over forest resources at Hazara in the Punjab (Azhar, 1989), Chalt-Chaprote in Gilgilit District (Mumtaz and Nayab, 1991) and Azad Kashmir (Cernea, 1988) are framed in terms that are not specifically Islamic, and involve conflicts between national law on English legal models and customary tenure. The same would apply to

BOX 18 • AN ISLAMIC STATEMENT CONCERNING HEMA

Mosa'b Ibn Abdullah Al-Zubeiry stated to me after his father after Ibn Al-Dara, Wardi after Mohammed Ibn Ibrahim Al-Timy after his father.

On behalf of Sayed Ibn Abi Waquass who found a boy cutting the Hema. Sayed beat the boy and took his axe away.

A lady close to the boy's family went to the Caliph Omar Ibn El-Khattab complaining to him about what Sayed had done to the boy.

Omar said to Sayed, "Return the axe and the clothes and may God's Mercy be upon you."

Sayed refused and said to Omar, "I do not give away that which the prophet has granted to me"; because he heard the prophet say, 'Everyone who finds anybody cutting the Hema, he should beat the cutter and take things away from him'.

Sayed used the axe on his farm until he passed away.

From Fouthouh Al-Buldan

Draz, 1991

the many countries of the Near East that emerged from the colonial period with French legal forms.

The variety of approaches: an explanatory model

What patterns exist in the diversity of legal forms reflected in the experiences reviewed above? Of course one cannot identify approaches to common property that are universally 'right' for all community forestry contexts. Different legal arrangements are required for different contexts, and this is why the experiences with resource tenure examined in this publication have been presented here in their historical, country context in the first instance, rather than described in more abstract terms.

But can we now usefully categorize the cases we have been dealing with, in some manner that illuminates the extent of the role played by common property strategies? One fundamental distinction, it is suggested, seems to be whether we are dealing with forests or forest lands that have been under direct control and management of the state,

or have been either in law or fact under the control of local communities.

Where the state has controlled the resource, as the taungya in Burma or Indonesia, the Guesselbodi project in Niger, most JFM sites in India, or the areas to become komuna forests in Albania, the shift of such land to community forestry appears to be hesitant and conditional. The community groups do not receive strong property rights, and their freedom of action is constrained by negotiated management plans. These are co-management approaches that rely more on continued state control than on the incentives provided by property rights. If communities have common property rights, they tend to be tenuous, and to apply to trees and non-timber forest products rather than to the forest land itself. Because the roles to be played in management are weak, one tends not to find the creation of strong organizations to manage the use of the forest.

These efforts are viewed as experiments in reforestation, and are approached cautiously. Often this is degraded land that is being entrusted to

communities for reforestation. Often, too, the land is being turned over to groups from farming communities, whose initial preference might be to farm the land, and this again limits the willingness of the state to move to radical common property approaches. Of course the reluctance of forest administration bureaucracies to 'let go', out of inertia or self-interest, is also a factor.

In Africa, where significant areas of reserved forests are used regularly by inhabitants, decentralization of real management authority over areas of forest to local communities may have the most likely prospects. This is suggested by the report of a 1993 forestry law workshop for the Sahel (see Box 19).

The limited role played by common property

strategies in the situations discussed above need not remain quite so limited as it is today, even in South Asia. If the initial projects are successful, and confidence in the ability of communities to manage these resources grows, then the time may come for a second stage of reform, in which those communities obtain longer, more secure, and less conditional tenure in the resource. A similar strategy of gradually reducing state control (*dépérissement*) has been proposed for land in large irrigation schemes, in which the state usually offers very weak tenure to those it resettles on the schemes (Bloch, 1986). The term 'tenure ladder' has been used in the literature on individual land rights to describe how squatters may become tenants and later become owners, and the idea appears transferable to communities

BOX 19 • CO-MANAGEMENT AND/OR COMMON PROPERTY IN AFRICA?

Although nearly all of the participants accepted the principle of decentralized forest management (a real shift from three years ago when the idea of decentralization in any form was still hotly contested), many disagreed as to how far decentralization ought to go. In the case studies presented state authorities typically handed over a number of management responsibilities to local groups/communities, but failed to transfer key rights and powers, such as the authority to make and enforce rules, to local populations. Similarly, although the principle that a percentage of forest revenues should remain with the managing group was applied in the co-management case study examples, in many cases the percentage that state authorities conceded was not large enough to provide an adequate revenue base for effective local management.

Again the participants tended to split into two schools of thought on this issue, with government officials advocating a very strong State role under all circumstances, and non-government participants advocating a very weak State role for certain forest contexts, and a stronger State role for other contexts. A number of participants noted that the co-management models in which the State plays a strong role require huge investments in terms of money and human resources, and thus are unlikely to be replicable on a large scale. Moreover, participants noted that the outside funding that makes such projects possible is likely to decrease in the future as the donor countries seek to shore up their weakened economies. As a result, States will need to be willing to cede more authority to local populations than they have in the past.

Many policy makers and administrators assume that local authorities currently do not manage forest resources well, and that massive amounts of time and effort will be needed to develop this capacity (hence the concern for maintaining a strong State role). Yet many of the workshop participants cited examples from their own experience of groups who already manage forest resources more or less well despite often-constraining state regulations. In many instances, the State's recognition of the legitimacy of already-existing local forest management systems would be the best and most cost-effective way to further sustainable forest management.

McLain, 1993a

in the common property and community forestry context.

Where the forest is instead legally or in fact controlled by the local communities, there are greater potentials for common property approaches. In some cases, where the forest is a modest and delimited area under the control of an indigenous institution, there is the potential for simply recognizing the indigenous property rights of the community. The Guinea Forest Code in effect does this, though it also then creates possibilities for the state to intervene if the forest is not adequately managed, and this is the intent of the ineffective by-law provisions in Tanzania. The half-hearted Syrian attempt to recognize hema after undermining them would fall in this category. As an alternative to recognizing the indigenous title, a new title under statutory law can be conferred on the community. The CFSC in the Philippines does this when it provides a leasehold right in recognition of traditional occupation and claims to an area, and the Mexican ejido is a statutory recognition of a customary institution. Of course, the local community's occupation will not always be customary. While village forestry lands in China may have long historical associations with the villages concerned, the land was vested in the village by statute at the break-up of the commune system.

But there is a somewhat different case of community occupation of the forest land, one that does not create such ready opportunities for common property strategies. The cases mentioned above primarily involve occupation by farming people of a forest of modest dimensions within a mixed farm and forest landscape. However, there are also cases of very extensive occupation of forests by forest-dwelling people, often seasonally mobile and more interested in secure access to particular resources than in property rights to specific areas of land. When forest-dwellers get protection for their forest through declaration of protected areas, the protection is as much for flora and fauna as for human inhabitants. One needs to look to the governance structures for each such protected area to determine whether the local people can be said to have attained any rights to resources or management authority. For the most part they do not, and where an attempt has been made by the communities to undertake

management, as in COFYAL in Peru, this has been problematic. Here the potential of common property approaches is directly connected to fundamental decisions taken by the state about the nature and pace of social and economic 'development' for forest-dwelling peoples.

If this provides some sense of the potential of different community forestry contexts for common property approaches, what of different organizational forms?

What determines organizational forms? Persons engaging or aspiring to engage in community forestry organize themselves (or are organized by others) for three quite different purposes:

- ▶ to get access and control of the resource, and to exclude others;
- ▶ to control the use of independent production units managed by members; and
- ▶ where a product is collectively produced and marketed, to handle collective production and/or the resulting funds.

In all cases, they must exclude and defend, and this will usually require legal personality. The first and second functions alone do not require very complex organization, and can often be handled by a village committee or association. But the third requires a more complex level of organization. If the community itself has control over the marketing of the product, a more complex form will be required. This is in part because new financial management tasks and accountability are required. The range of complexity here runs from the simple association or management committee, through the cooperative, to the corporation. The form of organization is largely a function of the job to be done, though it will be seen that there are political and historical circumstances that may dictate earlier resort to more formal organizational forms.

More complex forms of organization are required as greater management autonomy, including control over production and sales, is gained. Such autonomy is in part a function of stronger property rights, and so organizational complexity and common property will tend to vary together.

As noted in Chapter 1, competition over the use of resources is not uncommon in common property systems, and may be acerbated in the

COMMON PROPERTY CONFLICTS AND THEIR RESOLUTION

The point has been made in Chapter 1 that the creation of common property is sometimes highly conflictual, and now it is important to focus on why that is the case. Conflicts arise, in general terms, because competing claims to scarce resources are being decided. When a forest that has been in state hands is being handed over to a local community for management, there may be more than one community claiming that opportunity. People from a number of communities may have used the resource in the past, perhaps illegally, and a clear decision as to who is to manage the resource may cut off such use. Even within the community that will receive management rights, there may be competition among different individuals and organizations for the right to exercise that management.

When an indigenous group is seeking recognition of its rights to its forest territory, those in the larger society who have been encroaching on that territory will resist that recognition, because it will interfere with their often previously free access to the resources there. Indeed, their exclusion is often the primary impetus for the creation of common property. In addition, conflicts may arise among subgroups or even among individuals in the indigenous community territory. Sometimes resource use has not been carefully regulated, but has proceeded on an almost open-access basis. The creation of common property implies the creation of a management plan, and this may for the first time limit use by individuals and subgroups, and so conflict may arise. The plan may change use patterns significantly, for instance, reprioritizing uses such as production of timber and extraction of other forest products.

The territory concerned may also have been used seasonally or occasionally by other indigenous communities from outside the territory. The resident community may decide that some traditional uses by such outsiders are inconsistent with the management plan, or it may simply be anxious to gain more exclusive control of the resources in its territory.

Often, the creation or formalization of common property, management institutions and a management plan lead to a simplification of user rights. Rather than a win/win situation, it is a situation in which there are winners and losers. There is nothing in the nature of common property that strictly requires this simplification and associated losses of access by some players. In theory, one could accommodate all these rights, including those of pastoralists who use an area irregularly, as subsidiary rights. Even under formal law these can be incorporated in the form of easements, profits or rights of way. But if too many diverse interests are involved in the negotiation of common property solutions, those solutions become difficult just because transaction costs are high, and monitoring costs for some uses may be prohibitive. Hence the tendency to focus on the core user community, to simplify use patterns and to cut off some users' rights.

Robust property rights and viable organizations for the management of common property will not sustain community forestry if the conflicts and disputes around common property cannot be resolved effectively. Disputing can harass and exhaust, and ultimately lead to the dissolution of common property institutions.

This chapter attempts to characterize:

- (1) the types of conflicts that occur in shaping common property institutions;
- (2) how such conflict is managed;
- (3) the sources of disputes that threaten the maintenance of established common property; and
- (4) how those disputes can be resolved.

This chapter examines situations of conflict and dispute over resources. A conflict involves competition for a resource or a stream of benefits from a resource. It involves not inchoate competition but aggravated competition, which the participants recognize as such and can articulate. Conflicts can sometimes be managed but never entirely resolved. A dispute is even more narrowly delimited, as a rather specific confrontation expressing the conflict, based on something that happened at a given place and time, so that one can imagine the dispute being resolved in some sense. A dispute may be considered settled if all of the parties involved acknowledge the legitimacy of the disposition, and, even if they are not entirely satisfied, are willing to move on. Conflicts are less amenable to resolution, but come and go as expressions of competition, with which we just cope.

Below, first we examine the creation of common property institutions and some examples of the conflict that surrounds it. Later, we examine disputes involved in the maintenance of CPRs, which often tend to be more limited in time and space, more tightly focused and thus more easily 'resolved'. The literature in this area can only be described as fragmented and incomplete, and does not at this time permit a confident synthesis; but some insights emerge that may be helpful.

Conflict and the creation of common property

Forest resources are often the object of competing claims, and the claims are not always reconcilable. There are often winners and losers; win/win solutions are not the general rule. The intensity and timing of the conflict vary greatly from case to case. In the situation of indigenous peoples in Latin America, the struggle to create or obtain recognition for common property is both a struggle for territory and for cultural iden-

tity. Prolonged conflict is often necessary before an adequate legal framework is brought into being and the particular common property institutions are created (e.g. the three case studies from Pendzich *et al.*, 1994, discussed below).

But there will also be cases when such strong opposition does not exist, and where the changes almost take on the character of a technical experiment promoted by a donor or NGO. In those cases common property will take hold more gradually, with less overt conflict at the outset, though it may materialize at a later date (Rose and Isse, 1989; Fischer, 1992). In some cases it may be pervasive (see Box 20).

Oakerson (1992) sets out the initial tasks in the creation of a common property institution. Scarcity or a specific threat to the resource will often motivate the local community to assert the right to exclude others. To do so the community must take the following actions.

- ▶ The community must organize itself, perhaps relying initially on customary social structures, or seizing upon any vital force in the community, such as the village youth organization, as occurred in a Senegalese village (Fischer, 1992). Later, it may need to select a form supplied by national law that provides legal personality, including the ability to hold rights in land.
- ▶ The community may mobilize external support for its claims to land, and in some cases external agencies may take a proactive role in stimulating the formation of the organization itself. If the local balance of power is unfavourable to community resource management, the community will seek to mobilize forces such as national interest groups that have different priorities from local elites, different ministries with different perspectives, academic centres, foreign donors, NGOs and regional federations of comparable community groups.
- ▶ The community must delimit the resource and obtain control of the resource. But the very act of delimitation is the staking of a claim, and brings reactions from neighbours. Many disputes originate with the reactions of those whom the community asserts a right to exclude.

BOX 20 • INDIA: CHANDRI BEAT TIME LINE

- Pre-1957 Shimli Forest (Zamindari Forest) under Narasinghina Malodev, Raja of Jhargram. Some Shimli villagers worked as the Raja's forest guards and charged cutting fees.
- 1957 Zamindari Abolition Act.
- 1962-63 Shimli forest transferred to state control.
- 1964-70 WBFD [West Bengal Forest Department] closes forest to hunting and farming. Shimli village resists; Mahatos fight with WBFD guards over forest access, and six villagers are jailed for three months.
- 1970-75 WBFD begins timber felling operations in Shimli.
- 1973 Shimli villager wins felling auction and hires a few villagers to help cut timber.
- 1977-78 CPIM [Communist Party India – Marxist] wins election. Many communities around Shimli forest believe they now have rights to fell trees. Lodha villages begin commercial felling in forests around Shimli.
- 1979 Shimli villagers hold meetings and begin patrolling forests to halt felling.
- 1982-89 Heavy forest cutting by local communities and degradation in forests not protected by Shimli FPC.
- 1986 Pressures from neighboring villages increase as forest regenerates. Shimli establishes formal FPC. Frequent confrontations with Lodha communities. Shimli's authority challenged by neighboring villages.
- 1988 Shimli FPC seizes axes, saws, and carts. Fights occur.
- 1989 West Bengal government order for joint forest management passes.
- 1990 Shimli divides protected forest with six neighboring hamlets that form FPCs.
- 1991 Shimli FPC initiates mapping of forest tract and is registered by WBFD. Three villages south of highway establish FPCs.
- 1992-93 Villages east of Shimli forest unable to control forest use.
- 1994 Meetings held with eastern villages. Two new FPCs form with protection initiated in Asanbani and Kundasol.
- 1995 WBFD holds meeting with eastern communities that have not organized FPCs.

Poffenberger et al., 1996

The assertion of community control is a profoundly political process. A shift in power relations is taking place, and new claims are being asserted against the state and against competing private interests. Often a local dispute will only be adequately resolved by a resolution of policy questions at a much higher political level.

In these circumstances, what processes of conflict resolution come into play? In theory, the appeal to national policy and law through formal adjudication procedures offers a way to escape from oppressive local structures. But that system of adjudication is often difficult to access, is expensive, and at its lower, local levels, is usually dominated by local elites. More important, national law often has little to offer. The problem, in the first place, is the lack of an adequate legal framework, and it is precisely new law that is being sought through the political process. Arbitration is more able to cope with the inadequacy of existing law, but often in these situations there is no immediately available, trusted, authoritative arbitrator.

Alternative conflict resolution may be an option. This will depend to a large extent on whether sufficient political support has been mobilized for the changes sought. Equitable solutions are not available through negotiation unless there is real power on both sides (Stulberg, 1981; Wall, 1981). Otherwise, the parties will not come to the table. The emphasis in alternative conflict resolution on getting all stakeholders to the table is to reduce the domination of the process by any one interest group, and to render interest groups less monolithic. This accords well with the interests of those seeking change. These conflicts often last for years, going through several stages, and during that time processes of accommodation may at various points in time involve conciliation, mediation and negotiation.

The first serious look at conflict management in the creation of community forestry has been carried out by Pendzich *et al.* (1994) for FAO's Community Forestry Unit and Forests, Trees and People Programme (FTPP). A wide range of disputes affecting forests and communities in Latin America were identified. Three cases of conflict management were studied: the Alto Jura Extractive Reserve in Brazil (Almeida, 1994), the Chimanes Forest in Bolivia (Lehm, 1994), and

the Awá Indian Territory in Ecuador (Villarreal, 1994). In all three cases issues of legal form and legal rights to land were at issue.

The Alto Jura in Brazil. Numerous legal options were considered, including the titling of rubber-tappers individually, but in the end these were rejected and new legal models were sought through political processes, leading to the introduction of the Extractive Reserve as a new legal form, one type of Direct Use Conservation Unit under Brazil's National Conservation Unit System. This was achieved through political processes, largely through direct negotiation. Formal adjudication played no role.

The Chimanes Forest in Bolivia. Here extended conflict led to the creation of two indigenous territories in the forest, under existing law. Conciliation took place at certain points during the conflict, and ultimately the Catholic Church played an important role as a mediator, and as guarantor of the agreements reached. Adjudication played no role.

The Awá Indian Territory in Ecuador. Here a new institution was created, but it utilized existing laws. Adjudication played no role. Negotiation did play a role, as did mediation, when the supporters of the creation of a territory for the Awá were able to seize upon the availability of the Amazon Cooperation Agreement Ecuador-Columbia as a forum, which allowed the Ministry of Foreign Affairs to play the role of mediator periodically.

It is an exaggeration to describe these conflicts as 'managed'. They were largely fought out on political ground, and the results reflected new coalitions and power relationships. There were, rather, interventions at various stages in the process of conflict that sought to resolve the conflict, and were ultimately successful. Society coped with them and survived them, rather than managing them.

Looking at these cases, it seems that most of the conflict around common property arrangements is focused on their creation, that is, on issues of constitution. They are conflicts rather than disputes. While they are among the best documented we have, it is difficult to say how representative they are.

Common property disputes

If the case studies recently carried out in relation to community forestry have tended to be conflicts over the establishment and/or recognition of common property, there is a more extensive literature on disputes that tend to arise within common property contexts. These disputes often have more to do with maintaining common property than with conflicts leading up to its establishment, and the literature tends to focus more on the classification of these disputes and an understanding of their causes, than on appropriate processes of resolution. Returning again to Oakerson's framework, the community must, in the wake of organizing itself and obtaining control over the resource, maintain its common property by:

- ▶ defending its territory, practising exclusion;
- ▶ making its decisions, exercising collective choice;
- ▶ enforcing controls over members' use of the resource; and
- ▶ dealing with the state, both coping with it and using it, as necessary.

One can break down the kinds of disputes that occur in a number of ways. One suggested typology includes:

- ▶ disputes within the community;
- ▶ disputes with neighbours; and
- ▶ disputes with outside interests (Penzich *et al.*, 1994).

Here, a slightly different framework is proposed:

- ▶ disputes over exclusion from the resource and its benefits, including (1) disputes over exclusion of former users under custom, and (2) disputes based on an asserted right by an outsider to use the resource, but under national law;
- ▶ disputes over collective choice processes, and decisions about the creation of a management organization;
- ▶ disputes over rules for resource management and enforcement of rules on members; and
- ▶ disputes with the state and other outsiders over their roles.

Disputes over exclusion. As in the creation of individual property, the creation of common property is not just an exclusion of the state but an exclusion of some former customary users, who may well view themselves as having had rights. Usually, there is no serious attempt made to accommodate those rights, or compensate for their loss. Not surprisingly, disputes result. It should be noted that such exclusion from benefits is not always necessary, and that with modest effort accommodations can be reached that allow continued access to limited benefit streams by outsiders, defusing conflict.

The common property literature offers examples of such conflicts concerning pastures and forests. A community range management project in Lesotho sparked disputes when residents from neighbouring communities attempted to graze their cattle at cattle posts that they had used prior to the institution of exclusionary rules (Lawry, 1988). In a Senegalese village studied by Stienbarger *et al.* (1990), new village forest protection committees struggled to define the terms of exclusion or inclusion of Peul herdsmen who had previously used baobab leaves in the area (see also Gueye, 1994). Such disputes are based on overlapping rights of different groups and the attempt by one group to exclude others at the instigation of the state (see Box 21).

There are also users whose exclusion is sought but who rely on rights under national statute. Another Senegalese village struggled to exclude charcoal cutters, but found that its legal basis for doing so was unclear. Its Rural Council appears to have received a broad mandate to manage resources under the 1980 Local Territorial Administration Law, but the Forestry Code did not recognize any authority to exclude. The matter was treated as a political struggle, with the community mobilizing the local gendarmerie on its side, leading to the regional director of forestry conferring on the village the right to exclude, though the legal basis for this is not clear from the report (Fischer, 1992).

Collective choice disputes. Even when customary users are not strictly excluded from the resource, they may be seriously disadvantaged by the changes, and alienated by the failure to allow them to participate in the formulation of the institutional arrangements. For example, attempts to institute community management of an improved

BOX 21 • FORESTRY LAW AND PASTORALISTS' COMMONS IN SENEGAL

Conflicts over rights to trees in Thialle, Senegal, center around the right of third parties to lop baobab branches for animal forage....

Customarily, field owners generally allowed herders to remove branches to feed their livestock; however, the animals were not permitted to enter the fields. More recently, the Senegalese forest code has placed restrictions upon such rights. According to the forest code, the baobab is a protected species and all cutting rights (including noncommercial cutting) are subject to approval by the forest service (Article D.35). Moreover, as a protected species, the baobab cannot be cut for use as animal feed (Article D.24).

In 1989, the Forest Service revitalized some of the village forest protection committees, CPNs, which had originally been charged with preventing and reporting illegal bush fires. The committees' redefined function was to prevent illegal use of forest resources and to report offenders, thereafter receiving 10 percent of the fines levied on the offender turned in.

One of several conflicts developed at the beginning of the 1990 rainy season. Eight Peul herders who were cutting baobab branches were apprehended by CPN members from neighbouring Wolof (farming) villages. The Peul claimed to have obtained the authorization of the field owners prior to lopping the branches. The Wolof farmers were divided as to whether the Peul had prior authorization or not. The majority of the Wolof informants expressed the opinion that they personally did not object to Peuls cutting in their fields as long as they did not harm their crops.

The evidence suggests that farmers, both as individual and group landholders, are enforcing their rights to exclude herders, not because they object to them lopping the branches, but because they wish to avoid being fined by the forest service for allowing others to cut their baobabs. Moreover, the fact that CPN members receive 10% commission from the fines levied on the offenders they turn in may also contribute to enforcement of the Forest Code.

At the time of the study, the conflict between Wolof farmers and Peul herders had not yet been resolved. The forest service stance was that herders can collect the leaves, provided that they do not cut the branches and the field owner gives his authorization. The *sous-préfet* publicly stated that he cannot authorize any baobab branch-cutting for livestock feed, even if the landowner does not object, since the forest law forbids this practice. The CPN members claim that they are just doing their job, which is to uphold the forest regulations.

Stienbarger et al., 1990

well used by several groups of Somali pastoralists focused too much on the needs of the group with the largest local presence. While other user groups were not excluded from the use of the well, they felt that the manner in which the new well had been constructed limited their use, and that they had not been given a voice in the process. They destroyed the well (Rose and Isse, 1989).

Disputes over rules concerning use. Within a given community, differences can arise as to appropriate management regimes. Bray *et al.* (1993) describe a dispute in the Guatemalan community of Santiago Comatepec after common property forestry management was successfully instituted. Divisions arose within the community over the relative weight to be given to production and conservation, and the divisions

were reinforced by two NGOs with different approaches. In this case, since the owner of the resource was the municipio, the matter was resolved through a local election.

This third category involves disputes that ask, in essence, exactly what resource is being managed communally, and what remains to be managed by households or other social entities, such as lineages. In narrowly circumscribed community forestry programmes, for instance, where communities are being allowed carefully limited use of state forest land, the rights and responsibilities of communities and their members are often detailed meticulously. But when the battle to establish common property is also the struggle for territorial integrity of a social group, as in the case of indigenous communities in Latin America, this important question can be overlooked in early stages, and can cause trouble later.

This happened in the case of the Chaquitano indigenous community in eastern Bolivia, a regional cultural organization that spearheaded the drive for legal recognition. A timber concession was sought for the organization. Initially, it appeared there was agreement that the 21 communities involved would cede their land to the regional organization for management under the concession, and a forest management plan was prepared on that basis. Soon, however, some of the communities brought forward property rights claims to resources within their territories. Three communities withdrew from the project and demanded that their areas be respected; even those which remained asserted property rights. A major renegotiation had to take place, which clearly demarcated the area which the organization would manage and log, now set at perhaps 30 percent of the original area (Smith, 1993).

Similar issues arose in the commune of Nuevo San Juan Parangaricutiro in Michoacan, Mexico, though apparently these were caught earlier in the process and caused less difficulty. In that case, there was a clear understanding that each member retained rights over his or her resin-tapping territory, and could in fact charge a stumpage fee for timber harvested from the territory by the community forestry project (Sanchez Pego, 1995).

These issues may have been neglected in the disputes literature to date. They will be most acute

where the territory is large, with diverse uses, and certainly where more intensive uses such as farming are concentrated in particular areas. Households or lineages will usually have existing customary rights in such areas, and even forest areas may have subsisting lineage rights. There is a need to be aware of these rights, especially those in intensively used resources, and not to allow the institution of community property to wipe them out. This has been a concern in recent policy discussions in Tanzania (Tanzania, 1992).

In addition, there are disputes that arise from simple differences in interests among households. Almost all rural communities include households pursuing livelihood strategies that are far more diverse than an observer might first assume (Lawry, 1990). No management regime will satisfy all community members or fail to disadvantage some. Lawry (1988) notes the range of livestock holdings in a community in Lesotho, and the difficulty that this posed in designing a broadly acceptable management scheme. He reports a dispute in which the chief and his neighbours resisted an attempt by range riders of the grazing association to impound his small-stock, found grazing in the cattle posts when they should have been in the village. The association chairman and the expatriate project manager took court action for trespass against the chief and five stockholders.

Disputes between communities and the state over the role of the state. Even after common property management has been initiated, the state does not drop out of the picture. It still regards itself as a stakeholder, though whether it represents a public interest or an elite, bureaucratic class interest is certainly open to question. In many cases, it has protected its stake by retaining ownership of the land for itself and conferring only management rights on the local community. But even where this is not the case, the state has regulatory authority that can in some instances override the management rights of communities in their common property, in much the same way in which they override the property rights of an individual landholder.

In a Senegalese case reported by Stienbarger *et al.* (1990), noted above, the state had recently promulgated a new Forest Code, under which the baobab was a protected species and a permit from the Forest Service was required for its

cutting. The village forest protection committee could not give such a permit, but was responsible for enforcing this rule, and received 10 percent of the fines levied in enforcing it. This was the basis that they chose to argue for the exclusion of the Peul herders.

There is a further dimension to the role of the state, that of the state as dispute settler. When disputes occur between communities and between communities and their members, communities may need the state to bring its enforcement powers to bear in support of the common property institution, as has been suggested by Lawry (1990). This would clearly be a useful role for the state.

Coping with conflict, resolving disputes

We have a variety of legal mechanisms by which we attempt to deal with conflicts and disputes: adjudication, arbitration, mediation, negotiation and conciliation. They can be divided into two basic types, those which can compel participation in resolution of the dispute and compliance with a decision, and those which cannot. Those which can compel include adjudication and arbitration, where arbitration is compulsory. Adjudication decides disputes according to law, with an emphasis on rule-enforcement; arbitration, while it is supposed to establish the legal rights of the parties, can facilitate and enforce compromises that may not strictly conform to the law.

Adjudication is that process typically used in a modern court system. One party to a dispute, even a relatively weak party, has the right, in theory, to demand redress according to the law, and can by filing suit compel the other party to come forward and state his or her case. Adjudication has a further advantage: it is authoritative. The court delivers a decision, and the parties need not agree on the outcome for it to be enforced.

But adjudication, even in advanced legal systems, is surrounded by procedural and other requirements that make it unsatisfactory in a number of ways. Pendzich *et al.* (1994) summarize some of its disadvantages: its slow pace, the high costs it can impose on poor communities and the difficulty of effectively challenging government action in a forum that is itself a part of government. In common property disputes, the

state is commonly one of the parties. In situations of conflict over common property resources, court processes have probably been used more effectively to harass those seeking to establish common property management than to defend their interests, as in Betagi in Bangladesh (Fortmann and Bruce, 1988).

Adjudication is associated with formal dispute settlement in the courts, but is also extensively practised by government agencies entrusted with dispute resolution. Often, disputes over natural resources must be dealt with administratively, at least initially. Village-level adjudicatory institutions have been created in the Derg's Ethiopia (Rahmato, 1989), socialist Mozambique (Sachs, 1983), and in Tanzania (van Donge, 1993), to name just a few. In Tanzania, it seems to be assumed without being specifically provided by law that district councils have a dispute settlement role, and this has been delegated to village and ward development committees. Ngaido (1993) has related the experience with conflict resolution commissions in Niger (see Box 22).

When disputes over natural resources are adjudicated administratively, appeals must usually be pursued through an administrative hierarchy until the highest level is reached, and only then, if at all, appealed into the court system. In Botswana, those who wish to challenge the actions of the District Land Board must appeal to the Minister of Lands. In settling disputes, officials sometimes arbitrate, rather than strictly enforcing rules, probably more by virtue of their own cultural (and practical) preference for keeping the peace than by virtue of any explicit legal mandate to arbitrate.

Formal dispute settlement has been portrayed frequently as inconvenient and costly, and inaccessible to local communities struggling to establish common property rights. In some cases, the situation is far worse. A few studies describe formal dispute settlement mechanisms operating arbitrarily and sapping the energies and resources of litigants without ever providing resolution, except perhaps by exhaustion of the weaker party (Bruce, 1976; van Donge, 1993).

Often 'modern' adjudicatory institutions compete with traditional modes of dispute settlement. Those modes, at least at village level, reflect values very similar to those of 'alternative dispute resolution' in the Western context. More emphasis

BOX 22 • CONFLICT RESOLUTION COMMISSIONS IN NIGER

Following the June 18, 1987 Decree, which regulates circulation of livestock and defines grazing rights, commissions were created at the *arrondissement* level to resolve conflicts between herders and farmers. The July 1, 1987 Arrêté N° 76/MI/MD//DAPA determined three levels of conflict resolution: village or tribe, *canton* and *arrondissement*. The commissions at village and *canton* levels, which included local institutions of the *Société de développement* and local government technicians, were chaired by village, tribe or *canton* chief. At the *arrondissement* level, the commission, which included all *commune* or *arrondissement* institutions, was chaired by the mayor or the subprefect. The members were: two CSRD (*Conseillers sous régionaux de développement*), one representative of farmers, one representative of the herders, the head of the *commune* or *arrondissement's* agricultural service, the head of the *commune* or *arrondissement's* livestock service, the head of the *commune* or *arrondissement's* wildlife and forest service, the concerned *canton* or *groupement* chief, the head of the police or the chief of the *gendarmerie* brigade. The role of these commissions extended from conflict resolution between herders and farmers to include all tenure conflicts.

These commissions were limited in their effectiveness because:

- ▶ The commissions were composed of the same people, who were the primary vested interests, traditional chiefs and members of the aristocratic families.
- ▶ Most of the conflicts resolved by these commissions were challenged over time as soon as a new subprefect was appointed.
- ▶ The conciliation that was reached was not always signed by all parties, which reduces their legal effectiveness. For example, in the *arrondissement* of Mirriah, most of the cases resolved by the commission were not signed by all parties.
- ▶ The resolution of conflicts between herders and farmers over grazing areas and corridors rarely led to the eviction of the farmers because village and *canton* chiefs were successful in rejecting the application of the sentence until the following year. The following year, the same practice was used by the farmer to secure agricultural production. As a result, farmers' ability to avoid eviction by using customary authorities fostered animosity between herders and farmers.
- ▶ Conflicts over ownership were resolved by the "land to the tiller policy" and by swearing an oath on the Koran. The former favoured use-right or tenant farmers, whereas the latter favoured alleged landowners. Indeed, the problem of use right holders and tenant farmers was that they were not sure that government measures, which granted them ownership, allow them to swear. In addition, the application of these two approaches to resolve conflict was different from region to region. For example, the Zerma rarely have recourse to swearing whereas, among the Haoussa of the Zinder region, swearing was the main means of conflict resolution. Furthermore, depending on the claimant and the mood of the local administration or traditional chiefs, one or the other was applied. Sometimes, defendants requested the use of the declaration to counter swearing and oath and allow their case to reach the judiciary system.

Ngaido, 1993

is placed on reaching a mutually acceptable solution rather than on strict rule enforcement (Rose, 1996; Rugege, 1995). The parties to the disputes are often related to each other in multiple ways, and they must continue to work with each other. As one moves up the traditional hierarchy, one may find approaches that reflect the values of adjudication. Cameroff and Roberts (1977) found the full range of dispute management approaches in traditional Tswana society.

The economy and authority of these dispute settlement mechanisms should not be underestimated, even in rapidly developing societies. Still, unless traditional mediators and judges receive legal reinforcement from the state, they will inevitably be less able to dispose of disputes effectively, as local societies open to the larger world and disputants increasingly come from outside the community (Artz *et al.*, 1986; Lawry, 1990). Such reinforcement seems to be forthcoming. Even Kenya, which has moved decisively away from traditional land tenure arrangements, was at one point driven to resort to traditional dispute settlement mechanisms (Bruce, 1993b), and the recent presidential commission on land tenure in Zimbabwe recommended returning the power to settle land disputes to traditional authorities (Zimbabwe, 1994).

Local disputants often avoid adjudication except as a last resort. Van Donge (1993) examined the situation in the Uluguru Mountains of Tanzania, and found that disputants would first take a dispute to the leader of the local party cell, then to the local reconciliation council of the village, and perhaps then to the ward secretary, leaving the shift to a new culture of dispute settlement as a last resort. Because one often has courts, administrative dispute settlement fora, traditional dispute settlement fora and even Islamic dispute settlement fora, one finds what Western lawyers call 'forum shopping': a claimant will try to take his claim before a forum that he anticipates will be sympathetic or, in a case where different law might be applied, is likely to apply the law that favours his claim.

Into this complex set of dispute settlement approaches and fora, Western project managers have recently introduced 'alternative' conflict management and dispute resolution. The American NGO Resolve and FAO's Community Forestry Unit and FTTP have been in the forefront of the exploration of the use of this

approach in the community forestry context, and in 1996 subjected disputes and their resolution to an impressive e-mail conference. This style of dispute resolution, developed in the Western context for small claims and domestic disputes, has been increasingly used to mediate large-scale environmental conflicts. Pendzich urges that all legitimate stakeholders must be included in the process, that power imbalances must be addressed, and that there must be a realization that opposing stakeholders are neither monolithic nor universally hostile (Pendzich *et al.*, 1994).

There are at least two and perhaps more literatures about dispute settlement. One focuses heavily on the approaches to resolving conflicts between groups seeking to establish common property and the state or elites, and tends to treat disputes as incidents of conflict. Pendzich *et al.* (1994) is an example, and the virtue of this literature is its focus upon resolution. An example of lessons learned from the study of disputes in the creation of the Awá Indian Territory in Ecuador is presented in Box 23. The other literature, with a more traditional anthropological orientation (an example is Rose, 1996, used extensively in preparing this section), highlights disputes within communities about their common property as much as those with the outer world. It is valuable because it is balanced, pointing out as it does the cleavages of interests within communities with regard to common property.

Both literatures would agree that the most difficult job in establishing common property, and in sustaining it, is establishing territory and the right of exclusion. Conflict in this regard appears not to be worked out through formal adjudication systems, for a variety of reasons that have been noted. Society copes with such conflict through a changing mix of conciliation, mediation and negotiation over time, and ultimately, accommodations of new interests. The overall impression is not so much of conflict 'management' as of interventions seeking to cope and keep peace at certain points in time during a much longer, largely uncontrolled political process. These conflicts, if not adequately resolved, can leave a residue of conflict that will over time destabilize the CPR. This re-emphasizes the importance of broad discussions at the inception of common property. There is a need to accommodate or compensate those who have previously used the territory, however tangentially, but will now be

BOX 23 • LESSONS FROM DISPUTES IN THE CREATION OF THE AWÁ INDIAN TERRITORY, ECUADOR

From an integrated analysis of the conflicts generated by the establishment of the Awá territory, we propose the most significant conclusions about them. We tend, however, to present the following conclusions with a hypothetical character, subject to their verification by other studies.

1. Each conflict is different

If two conflicts are exactly identical, it is certain that we are talking about the same conflict. Each conflict has something that makes it unique: the actors, the reason for the conflict, the place, the timing, or any other factor that makes the conflict different.

This premise makes us conclude that each conflict should be approached and managed according to its singularities and, obviously, it requires a strategy or association of strategies that respond to each case. This conclusion is based on the analysis of the wide range of conflicts derived from the establishment of the Awá Reserve.

2. Conflicts are dynamic

Coming from the premise that conflicts are a form of “competition”, we deduce that their conditions are constantly changing. Each actor involved tends to “accommodate” the controversial situation in a way to secure a result favorable to his interests. This creates the need to identify and manage the greatest possible number of strategies (political, legal, technical, etc.) in a way to allow the actor to “accommodate” favorably the controversy or to “neutralize” the moves of the opponent. This conclusion takes note of the experiences of the Guadualito conflict.

3. There are no “unbeatable” strategies

If a kind of strategy was successful in resolving a conflict, there is no guarantee that it will work with similar results in another controversy. This conclusion is a result of evaluating the “effectiveness” of the strategies applied in the different cases.

4. Information is critical to the success of the negotiation

The analysis of the successful negotiations for conflict resolution derived from the establishment of the Awá territory shows that such success depends on the use of the appropriate “arms” (strategies). The definition of what is appropriate to use in resolving a conflict, when and how to use it, depends, above all, on the information.

Having information, for example, on the weaknesses of the parties involved in the conflict allowed the definition of successful strategies to resolve the conflicts that surfaced with the pre-cooperative 3 de Julio or Chapas y Madera. Knowing the details of the “modes of purchase” of forests on the part of lumber companies weakened the companies’ positions at the negotiation table.

A negotiation for conflict resolution is a confrontation of arguments. The one with the best arguments resolves the conflict in his favor. This depends on who manages more and better information.



5. Unite to win, isolate to lose

Almost always, the parties directly involved in a conflict have “different proportions”: more-or-less information and arguments; institutional support; favor from public opinion; political influence; internal cohesion (when it is an organization), etc. The one with the largest “proportion”, even when justice is not on his side, has more possibilities of resolving the conflict in his favor. This makes us assume that the way in which a controversy ends also depends on the “quantity and quality” of the actors involved....

6. Each conflict should have its own table

Stemming from the previous hypothesis, when a community has different conflicts with different parties, as was the case with the Awá Indians, it is convenient to avoid a “block negotiation”. On the contrary, it is more advantageous to manage each controversy independently. What would have happened if all the actors of the different conflicts stemming from the establishment of the Awá territory would have been at the same table? They would have tipped the balance in their favor.

7. The three results of a conflict

The optimal aspiration in resolving a conflict is when “everybody wins”. This is not a convenient solution to all cases, however. Sometimes it is necessary to “win” the conflict. What would an equitable solution with the pre-cooperative 3 de Julio or Maldonado Association have meant? Probably the “fifty-fifty” formula would have reduced the Indian territory....

8. The results of dependency

If there is a fundamental kind of dependency of one of the parties to another, the dependent party may be in a vulnerable position and have less flexibility to negotiate.

The community of Guadualito, for example, did “not take sides” in its own conflict because it depended on the transportation provided by the companies which invaded its forests. In this case, it is ideal “to break” the dependency. This was done by establishing a transportation service independent from the companies.

Villarreal, 1994

excluded. Those interests can sometimes be accommodated by allowing subsidiary rights, such as easements and rights of way.

What in the West are characterized as ‘alternative’ dispute settlement approaches are traditional in most rural societies in developing countries. Their pervasiveness is due to their virtues in small, close communities, but is also a reflection of the weakness of formal adjudicatory institutions, and of the formal legal infrastructure in general. When one is working with disputes

within communities, or disputes between communities that fall within common authority structures in the larger indigenous society, there is every reason to seek to utilize local approaches to dispute resolution that seek to restore harmony.

When one is dealing with disputes between parties who do not fall under any indigenous mediating authority, then it may be useful to resort to Western models of ‘alternative’ dispute settlement. In spite of this, a certain amount of caution is needed. The ‘alternative’ models incorporate

Western values that may or may not be part of the values of stakeholders involved in the conflict. For instance, the notion that all stakeholders are equal before the law, or that all stakeholders have a right to be heard may not be part of local culture (Nader, 1978; Gulliver, 1979). There is a need to study the local culture(s) of dispute resolution, which may or may not be shared by all the conflicting groups, before proposing dispute resolution strategies and fora.

The use of such models does not for the most part involve the creation of alternative dispute settlement institutions, but the creation of alternative approaches and alternative fora, often on an ad hoc, one-time basis.

One striking fact found in the cases examined is that formal appeal to the state's adjudicatory mechanisms seems hardly to have been resorted to by those with an interest in CPRs, but it was resorted to in a number of instances by those opposed to the establishment of common property. In the highland Maya village of Paqui in Guatemala, a small group of community members, an extended family, claimed to own the vil-

lage's commons, holding that their ancestor had signed the grant from the government in his personal capacity rather than his capacity as head of the village. The suit has been prolonged, and has had a debilitating effect on common property management. Members are inclined to steal resources, and not to obey rules (Castellon, 1992). In the Bangladeshi settlement of Betagi, those who sought to assert private rights in the land brought more than 20 legal suits to harass the community, but were ultimately unsuccessful (Fortmann and Bruce, 1988) (see Box 24).

Finally, it should be noted that some disputes can be avoided or disarmed by the provision of accurate information. Much conflict arises out of lack of information or mistaken assumptions. It is important that those involved in dispute resolution know the substantive area involved, as well as process, and see their role as including the provision of information that clarifies and refines issues, rather than simply accepting the issues as initially formulated by the disputants. In this context, research is an important tool in the resolution of disputes and conflicts.

BOX 24 • STRUGGLING FOR COMMON PROPERTY: BETAGI, BANGLADESH

Professor Alim arranged for the government to give the community an annual lease to the land with the assurance that if they could bring the land completely under production within 5 years, they would get a longer term lease. Credit from the Bangladesh Krishi Bank, which provides agricultural loans was arranged. The tenurial strategy adopted had the following components:

1. Homogeneity of title holders—all recipients of land were to be landless laborers. A rigorous and mostly successful screening process was undertaken to eliminate landed opportunists resulting in a final population of 72 households.
2. Medium term security—the group was initially given a one year lease with the opportunity of a five year extension, a period long enough for fast-growing tree species to become productive.
3. Group responsibility—the lease for all the land was given to the group as a whole rather than to individuals. This had two effects. First, because it prevented outsiders from pressuring or forcing individual households into selling their land, it increased everyone's security. Second, because the whole group was endangered by any household's failure to repay the loan, the group enforced repayment. Group cohesion was witnessed by mandatory weekly meetings as well as instruction in literacy and simple accounting procedures.



Six years after the initial settlement, Betagi had more than justified its founders' vision. The ecological effects were clearly positive—the once-bare land was covered with trees and crops. And the people were running their own community with dignity and pride. But the experience had also demonstrated that establishing secure tenure goes far beyond staking out statutory rights.

Security of tenure involves access to power. In its most naked form, it means, as Zillur Rahman (1987, personal communication) has remarked of Bangladesh, that rights need to be established every day. And so it was for the people of Betagi. Their leasehold right to the land could easily have become as ineffective as had been the statutory right of the Forest Department to the long-departed trees. Security of tenure ultimately depended upon force in the face of force and the power of the village's patrons. Local elites who were evicted from the land with the establishment of the village initially waged a campaign of harassment against the villagers—beatings, house burnings, arrests. The villagers fought back and the elites switched tactics, filing some 20 court suits against the village as a whole and against the three patrons individually. The power and prominence of the patrons protected the villagers from a subversion of the justice system and their legal title was upheld in case after case after much struggle.

But security of tenure has a temporal dimension as well and at the end of five years, this became problematic for the villagers. Although the villagers initially planted fast-bearing fruit trees such as lemon and guava, they also planted (and the Forest Department wanted them to plant) long rotation evergreen and leguminous timber species. For nearly two years, attempts to renew the lease were mired in a bureaucratic morass. Once again the village was saved by prominence and patronage. Over its lifetime, as a quick reading of its guestbook demonstrates, it had become a mandatory stop on the South Asia social forestry pilgrimage. The now-international prominence of its patrons and its own status as a success story would have made it difficult for the government to evict the villagers from the land and in late 1987, the wife of the President presented the villagers with a 25 year lease to the land. Each household received inheritable title to its land, which can not be alienated.

Fortmann and Bruce, 1988

GUIDELINES: LEGAL CHANGE AND STRATEGIES

A review

This publication began with a definition of common property forestry as any forestry in which rights to use forests and their products vest in the members of a community. It has tried to examine a set of community forestry situations that at first glance appear to fit that definition, and to explore the strength or weakness of the common property arrangements in those situations.

The elements that we recognize as contributing to the success of common property arrangements, including clear delineation of the resource, management authority in the local community, the power to exclude and regulate use and security of tenure, are present to very different degrees in the cases examined. Chapter 3 of this publication suggests that it is possible to find some patterns in the extent to which common property is strong or weak in these situations.

The cases reviewed there suggest that where the key elements of common property have been historically absent, or absent even in recent years, it is difficult to achieve community-based forestry that is robust in common property terms. The forest areas are generally in the hands of the state, and the state forestry bureaucracy often has genuine doubts as to whether communities can be given autonomy in control of forests. (It is also reluctant to let go of its own prerogatives.) In these circumstances, when land is placed in the hands of local communities it is often done conditionally and with little security. Potentials for robust common property arrangements appear greater where:

- ▶ forest resources are occupied by local users;

- ▶ the resources are in relatively good condition; and
- ▶ the state's legal control has been largely nominal.

Parts of Africa and Latin America still have extensive forest and woodland commons that are technically state-owned but where state control is weak.

It is possible to explain in historical terms the extent to which common property is present in community forestry situations. But providing such a typology of situations only indicates what tends to happen; it does not suggest that these are optimal outcomes for effective natural resource management, even for the particular situations concerned. It must be acknowledged that we are still working with very little solid evidence on the key question of whether more robust common property produces better forest management.

In the absence of a large body of well-documented cases, we understandably often tend to use formal rule structures to assess the viability of common property arrangements. This is perhaps inevitable, and those rule structures are certainly important. We can see by examining them how well the machine is constructed.

However, security and autonomy are not just products of particular legal arrangements, but of interaction between those arrangements and dynamic political and social forces. For example, legally unconditional tenure may be insecure if politics undermines the rule of law, and legally weak tenure may pose no problem if the resource holder is politically unchallengeable. As a practical

matter, of course, the local community is usually less powerful than the state or elites, and so needs all the legal support it can get.

In addition, it is not possible from examining the legal structures of organization and tenure to predict the energy that flows into sustaining common property. That energy is based in part on the immediate economic incentives provided for households. A few studies of common property examine the differing incentives of different households to participate in and support common property arrangements (Lawry, 1985). Far more studies along these lines are needed.

It also needs to be acknowledged that some energies that fuel CPRs are less narrowly 'economic' and quantifiable. Some of these energies stem from the emotional pursuit of notions of territoriality and ethnicity, and the process of the creation and preservation of common property is then politically volatile. Remarkable passions can be generated over control of forest resources, against neighbouring villages or the state, which seeks to bar their access to those resources. Villagers barred from forest reserves feel a profound sense of dispossession. At a less explosive level, one finds within indigenous communities networks of kinship, or clientship or simple comity, that energize common property arrangements beyond anything that short-term individual or household incentives would have foreseen.

Having stated these qualifications, we can turn to the role of common property in community forestry under national statute law.

Securing common property under national law

It is clear that the circumstances in which common property develops are so diverse that there can be no single optimum legal arrangement within which common property management can be constructed. Nothing could be more misguided than the suggestion overheard some years ago in a donor office that, since Guesselbodi 'worked', all that was needed was for every country to have a 'Guesselbodi law'. If Guesselbodi worked, it was because it was designed with a clear vision of the potentials of the local situation.

What is needed, at national level, is a full menu of legal arrangements. That is, there is a need for a full range of organizational forms discussed in this publication. Because management of common property differs so much from case to case, that variety is not problematic, but is a necessity. It is important that this variety of options should exist in general law, and that specific provisions for community forestry should embrace, not limit those choices.

The same applies to tenure options. Workable common property does not grow in a simple way out of any one property formula, such as for private individual ownership. It grows out of security of expectations, conferring genuine autonomy in management, and this can be achieved under a range of legal arrangements. Nor is it clear that it is always feasible to move immediately to such autonomy. Conferred too immediately, it can lead to overexploitation under pressure of immediate necessities, and communities sometimes need to grow into the discipline required for sound resource use, and sometimes need to have the assistance of the state in bridging difficult times.

The diversity that calls for different legal responses exists not simply among nations, but within nations and even regions. National law must seek to cater to that diversity of situations.

It is suggested that national law should include the following menu.

- ▶ There should be constitutional protection for common property, comparable to other property rights, and protection of trees and their use from regulations that undermine the security of tenure provided by property to communities as well as individuals.
- ▶ Laws on natural resource management, including the forestry law, should recognize generally or provide for recognition in particular cases of existing indigenous forms of common property, and organization for managing them. The provisions should be sufficiently flexible to allow modification of some elements of these forms by community by-laws. It should be possible to elect to use indigenous tenure rules about use, but to reform the organizations that manage the resource, or vice versa.
- ▶ There should be a co-management regime available, recognized in the forestry law. It should allow shared management between a

state agency and one or several local communities. It could find application primarily, though not exclusively, in situations of a resource utilized by multiple communities, where it is not feasible for any one community to assume exclusive management. This regime should be available both for land that has been under community control and for land that has been under state control.

- ▶ The forestry law should allow the state to delegate control over forest resources that have been under its control. The law needs to allow for a negotiation process resulting in a contractual solution. Given the experience in these situations, it is likely that initial attempts to give communities access will be

cautious. A minimum expectation as to delegation should be stated, but the framework should be relatively flexible and should allow a good deal of fine tuning of forms to local circumstances. Community forestry provisions in forest laws can fill important gaps in general law, and can provide a more detailed range of options for forests.

- ▶ Gender issues must be addressed. Solutions include emphases on membership organizations, with membership on an individual rather than a household basis; on gender quotas in governing bodies; and on initiatives limited to women, for instance contracting areas of forest to women's village forest management committees (see Box 25).

BOX 25 • WOMEN AND COMMUNITY FORESTRY IN NEPAL

Seven years ago the Women's Development Office (WDO) began literacy classes in Sejuwal Takura. Classes were held in the evening, and those with their husband's permission attended the class. Women learned the Nepali script, and each woman learned to sign her name. Several other activities evolved from this program. The WDO also facilitated training sessions on agricultural and horticultural techniques, livestock raising and cooperative loan formation. The women planted orange and fodder trees on their private land. A livestock cooperative was implemented to provide loans, using the group's collateral, for agriculture or livestock development. Most recently the WDO helped form the women's forestry committee. They started to protect and restore the local degraded forest.

Sejuwal Takura's Forestry Committee is comprised of seven women between the ages of thirty-five and sixty. They hold village meetings, organize plantings, and protect the forest. User group meetings are attended by both men and women. From these meetings a management plan was agreed upon. The forest is open for five days a year during November. One person from each household is allowed to cut unlimited amounts of grass during this period. During July they organize plantings, and the Department of Forestry provides seedlings and technical advice. The forest has no fencing, nor any forest guards. Instead, the women watch the land, with most of the responsibility falling on those living in closest proximity to the land. Owners whose livestock is found grazing in the forest are fined. Problems tend to be from members within the community. Peer pressure takes on an important role in enforcing the plan.

Female committee members felt more at ease working on a committee with only women. They were more likely to contribute to discussions and felt a sense of importance, autonomy and identity within their group. While they did not object to the idea of men on the committee, in practice they felt that the presence of men would limit their own participation and control. Some doubted whether they would remain on the committee if men also became members.



Overall, the members of the village were pleased with the presence of the forestry committee. Women of the village who were not involved in the WDO activities felt more comfortable having an all-woman committee. According to the men of the village, the committee was a good thing: it was good that the land was being improved. However, each man interviewed thought that it would be better if men also sat on the committee. Similarly, the District Forest Officer said that the committee should be representative of its community users, and should therefore include men. Eventually men will be accepted as committee members or, as the Forestry Official said, the Forestry Office would cease to recognize this forestry committee as legitimate (it is not officially recognized at this point) and will support another committee.

The women's forestry committee has been operating for four years. The formation of the committee has greater cultural than environmental implications. The women involved in these activities feel that their attitudes and perceptions have changed. Through the literacy classes and trainings they have become confident in themselves. The women on the committee say that before their "wisdom was hidden": they were "asleep and unaware." Since their interaction with the WDO, they are not afraid to speak in public nor to go to government offices. Without the influence of the literacy classes, the women would not have become involved in the forestry committee.

Despite the great changes and effects that the committee and the WDO activities have had on the women's lives, the forestry committee has very little power. The women's committee has control of the forest because the land is degraded. At this time, no one contests their claim to manage the land simply because it has no value. In terms of property rights, this "forest" has no benefit stream and it is not difficult to enforce rights.

The forestry committee is improving its land through planting trees and protection. As the value of the land increases, it is likely that the women will not maintain control. As the forest official noted, the forestry committee needs the support of the Forestry Department, and will have to accept men to achieve legitimation and recognition by the government office. In this case, it is likely that the women do not have enough power within society to maintain their autonomy of the all-woman committee, and their control over the forest land.

Hughes, 1993

The need for flexibility runs across the menu. The law needs to provide more options and fewer required structures. For each option there should be the flexibility for a negotiation process that allows the institutional arrangements to develop over time.

What is suggested here is an openness to normative experimentation not unlike that achieved in China in the 1980s. But instead of China's semi-vacuum in law, which allowed experimentation, what is suggested is provision of a broad range of organizational and tenure forms as legal options. The extent to which each of those options is promoted from time to time by NGOs, ministries

and donors should be a matter of policy, based on experimentation.

But what can we conclude about the central question (for this publication, at least) of the need for common property and robust property rights for communities engaging in community forestry? If land in forestry had no uses other than forestry, the answer would be easier to find. One could feel fairly confident in asserting that communities with robust common property would do better in community forestry. But the concern is that forestry is not the only use for the land, that cultivation of other crops may be more profitable in the short run, or even in the long run, and that

communities cannot be allowed to make that decision solely in the light of their own interests.

The communities thus bear the cost of a public policy that the land must be kept in forests. Where they have received the land from the state, it is a cost communities may think reasonable. Where they themselves have controlled the forest in recent times, they may find it unreasonable to be compelled to keep it in forest. But so long as they lack other options, they may willingly turn their labour to community forestry.

Under this rough calculus, it seems best to give communities as much security as can be afforded them, and to impose the minimum necessary control to ensure the land remains in forests. They should have the latitude to innovate in order to increase the profitability of community forestry, for instance through greater emphasis on non-timber forest products. As community forestry operations are made more profitable, conditions can be loosened. In Chapter 3 the term 'dépérissement' was used to indicate the potential for the state to increasingly shrink controls over community forestry. Stronger tenure can be used to reward effective management.

Community strategies for securing common property

Here our perspective shifts from that of the legal reformer to that of the local community and those who assist it at the grassroots level. The problem is that where there are indigenous common property forms, they are often not recognized as legally valid and binding by national law. That lack of recognition undermines these local arrangements both in terms of enforceability among community members, and in terms of the ability of the local community to resist predation of its forest resources by neighbours, by national elites and by the state itself.

There has been a clear reluctance to recognize communities' perceived rights to forest resources that they often used intermittently and extensively, and for the most part sustainably. In the past, foresters have urged that they were wasteful, un-intensive users of the resources. Today that reluctance is fuelled by the new surge of Western conservationism, which argues that the sustainability of these use systems is being lost as population increases.

It is important to be clear about exactly what is being recognized or going unrecognized here. Throughout the literature, there is a confusion of common property with 'communal tenure', the notion of a tenure system in which the local community exercises control over land use. It has been noted earlier in this publication that tenure niches exist within the territory of the community that do constitute common property, but that there are many other niches in which individual or family property exists. Communities often boast complex systems of resource management, of which casual observers will not be aware. The task of understanding the role of different property systems in that process must be addressed on the community level, first understanding various niches and the approaches taken towards each, and then focusing on common property niches and their adequacy.

It is important to note that some of the approaches examined here really confer control over a broad landscape with many traditional tenure niches, such as the programmes noted in the Philippines. Others, such as the JFM programme in India, involve a tight focus on a particular tenure niche created by the state for local communities.

For local communities trying to work through how they can use their common property traditions in community forestry, several preliminary questions should be asked.

- ▶ Are there viable indigenous community property arrangements operating in some land use niches in the community's territory?
- ▶ Are they working well, allowing effective exclusion of outsiders and effective control of use by community members?
- ▶ Do they apply to forest resources, and, if not, can they be shifted to that resource niche, or are the circumstances of the two resources too different?
- ▶ Have the common property arrangements been recognized by national law?
- ▶ Do they have certain characteristics that raise questions about the appropriateness of using them as a basis for community forestry, such as a dramatically skewed distribution of benefits within the community?

- If so, can these be ameliorated or must another legal basis for common property management be found?

The strategies to be pursued to legally secure common property will depend on the answers to these questions.

Let us assume that there is a functioning system of common property management of a forest resource, that the community-based tenure system has been recognized by national law, and that this recognition extends to the common property niches. In these circumstances, there is a strong case that community forestry should seek to utilize existing norms and institutions to the fullest extent possible, rather than seeking to replace them with new institutions. Whatever the imperfections of the existing arrangements, by buying into them community forestry gets the benefits of the social and political dynamics that have built and sustained them.

It would not do to make this choice sound easy. There may be profoundly objectionable elements in the existing institutional framework, such as lack of participation in the control and benefits of the common property by descendants of slaves, or denial of participation by women. In such cir-

cumstances, the decision to allow forest resources to be managed by such institutions does not come easily. We are dealing with choices between goods: the good of decentralization and community autonomy and empowerment versus the good of full community citizenship for members historically disadvantaged (see Box 26).

How do we prioritize these goods, or is that perhaps the wrong question? It seems likely that the negative elements of community organization of resource use are more vulnerable to development itself, which tends to undermine them, than to our well-meant attempts to outlaw them or require that they be abandoned as a condition of collaboration with such institutions. This does not mean that such negotiations should not be used as an educational opportunity, as a chance to press new views and standards, and even to extract commitments in this regard. It means that one should be realistic in what is expected in terms of short-term behavioural change, and that in spite of such realistic expectations, one should seek to work with such institutions.

The problem is difficult where the local institution has not been recognized in national law. As suggested earlier, on the national level this

BOX 26 • INCLUDING WOMEN AND PEOPLE WITHOUT POWER

A major concern raised by both women and men participants was the question of how to include people who have no power, notably women, young men, and former slaves, into the decision-making process. The issue is particularly critical since most disempowered people rely disproportionately upon forests for their livelihoods. Given that most local forest management systems do not appear to overtly include women in the decision-making process, it seems unlikely that those systems are likely to be any more effective than the State system at ensuring that women are included in the process. Thus while one could expect that decentralized management would take women's concerns into account insofar as they are also men's concerns, if there is a conflict of interest based on gender, such conflicts are unlikely to be resolved in favour of women. Some participants suggested that one way to address this issue is to promote projects that expand the economic options available to women, thus decreasing their reliance on forest products for survival. Others felt that only efforts by the state to promote political empowerment for women and other disempowered groups would lead to full participation of these groups in forest management decisions.

McLain, 1993a

problem can be approached by attempting to secure general recognition of common property in the national law governing property and natural resources, or specifically in the forestry law. But communities and projects often lack the ability to address issues at this political level, except in the very long run. In practice, communities and projects must deal with legal situations that are unsatisfactory. Where recognition is not present, two possible strategies are suggested:

- ▶ to simply utilize the local forms and attempt to use non-legal (generally political) means to protect them. This is obviously only a wise policy where the local community has significant political power; and
- ▶ to utilize the local forms but seek to recast them, at least formally, in a form recognized by national law.

The second strategy requires elaboration. Two steps are necessary, and they are complex enough so that many communities could not accomplish them without the assistance of NGOs or other change agents. First, the community must obtain legal recognition, including recognition of its ability to hold property rights. Second, it must somehow secure rights in the forest resources.

For example, if a community administers some of its forest land as a commons, but through a committee of elders whose authority is not clear in national law, the community might be able to go through the requisite formalities to obtain recognition as an association, with the elders as its management committee, and register as such. Once the organization has legal recognition, it could seek rights over the forest resource. If the resource is technically state-owned, and national law includes provision for grants or long-term leases of land, the community could seek such a title.

When it is not possible to obtain a right over the land, perhaps it will be possible to obtain a right over the trees. There are numerous legal situations in developing countries where the state, while jealously guarding its ownership of land, has more readily recognized ownership of improvements by local land users. This may apply to residences, and by extension, to trees.

What if common property over forest resources does not exist in the community, but there is a need to establish community control? If the for-

est resource has been internal to the community, used only by its members, the matter may present no great difficulty. In many communities, there will be broad acceptance of the community's ability to impose control over use. The community legislates its control in whatever manner is traditional in the community.

If the forest has been an open access resource, utilized not only by members of the community, but by members of other communities, more difficult issues arise. By what right does the community seek to establish control over use of the resource? Obtaining acceptance of the right by other communities may be easier if some agreement can be reached that allows them to continue to use the resource, albeit in a closely regulated fashion.

In the establishment of new common property, contracting among the stakeholders may play an important role. Contract is a very different principle of law than property. A property right, recognized by the state, binds all citizens to respect it, but a contractual right binds only the parties to the contract. A contract among communities or users of forest resources binds themselves. It can provide an alternative to community legislation, especially where the legal basis for one community's assertion of a common property right is not clear. Contracts and the negotiations that lead to them can be used to sort out possible conflicts among stakeholders at the creation of new common property. Where the resource has been the subject of private, individual rights in the past, contract can be used to authoritatively record the waiving of those rights. The trick, of course, is to get all the stakeholders to the table, and to reach agreement.

The state, while it may not recognize local common property, should nonetheless enforce such agreements among the parties to them. It is not bound by them, however. The fact that local users of state land agree how to manage it does not compel the state to recognize their right to use it. To attain that, it is necessary to bring the state into the negotiations through its local agents. Involving the forestry department or local government in the negotiations, and as a signatory to the agreement, confers state recognition on the arrangement and makes it much more difficult for the state to ignore. If the local agents of the state are not willing to recognize a right that

might compromise the state's ownership of land, they may be willing to enter into agreements that establish rights in trees and other forest products.

Finally, contract may serve as a way to buttress a common property system in which community control needs to be re-established, or in which an objectionable element in the community-based tenure system may need to be addressed, or when interests of some stakeholders are being adversely affected and their compensation or their continued limited use needs to be guaranteed by contract.

Managing conflict over common property

While reconciliation-oriented dispute resolution is well known in local communities, there is often no institutional framework within which it can be carried out when disputes are taking place between communities. An ad hoc approach may be most effective in such circumstances. Care must be taken not to unconsciously import values foreign to the local society with alternative dispute settlement.

What does all this mean for the local community and those who work with it to create and maintain common property? It seems important to:

- ▶ recognize the element of conflict inherent in the creation and maintenance of common property, and learn conflict and dispute resolution skills;
- ▶ avoid disputes by recognizing and quantifying exclusions of uses that have been customary, so that these can be accommodated and compensated;
- ▶ be aware of the local culture of conflict and reconciliation, and indigenous models of dispute resolution, as well as Western models of alternative dispute resolution;
- ▶ recognize that in conflictual situations and in particular disputes there may not be a consensus between the parties as to the applicable rules, and that this seriously limits the poten-

tial for use of formal adjudication mechanisms;

- ▶ not build systems that rely for enforcement on state adjudication institutions (in practice, they will rarely be resorted to, for good reason);
- ▶ recognize that in disputes between communities there is often a lack of dispute settlement institutions deploying legal rules accepted by both parties, and that alternative dispute resolution will be especially needed in this situation;
- ▶ recognize that a similar need and opportunity exists when disputes pit community-based rules against national law, where viable solutions may require negotiated solutions rather than just the assertion of the superiority of national law; and
- ▶ actively seek opportunities, or critical moments, in conflict at which alternative dispute resolution approaches may be effective, and recognize that these approaches need not be institutionalized, but can be applied, perhaps most effectively, on an ad hoc basis.

While the advantages of alternative dispute resolution are evident, a caution is needed. Once an adequate legal framework is in place, adjudication has substantial advantages: the ability to compel participation, and the ability to enforce a settlement over the objection of one or more of the parties.

Conclusion

Ultimately, there seems to be reason to hope that introducing increasingly robust common property, with greater autonomy and greater security of tenure, will enhance community forestry management. Local communities and those working with them in community forestry need to persevere in their attempts to expand their rights in forest land. The central message of this publication is that those attempts may be short-lived unless adequate legal frameworks are provided for them.

Appendixes: Country Case Studies

This appendix contains several country studies. They were carried out as desktop studies, and several of them owe a good deal to key synthesis papers, as in the case of the Philippines (Lynch, 1992), India (Lindsay, 1994) and Syria (Mekouar, 1993).

The countries were selected for geographic breadth and to ensure that the major legal traditions were represented, casting as wide a net as possible for different legal approaches to the problems of common property.

APPENDIX A

THE ENGLISH COMMONS

The ideotype of the ‘commons’ that many Westerners have in their heads is the English commons. By ‘reception’ provisions in colonial statutes, British colonies ‘received’ large bodies of British law as of a particular date. The received law included not only statutory law but the British common law and equity, that vast and complex body of case law based on the holdings of British courts over the centuries.

One part of the law so received is the law of the commons, from which comes the English term ‘commons’. In prefeudal times, rural villages in England may have had communal pastures much like those in the developing world today (Holdsworth, 1903-72). But in the feudal period, the nature of the right of commons changed. After the Norman Conquest in 1066, the Norman lawyers declared all land the property of their king, and all rights derived from him or his feudal appointees. The commons became the property of the local feudal lord, and the right to use it was derived from him, often as an implied condition of a grant of arable land.

In the late 1700s, the enclosure movement and laws resulted in the subdivision of most village lands and their commons among the lord and the other landholders. Smallholders were anxious to place more land under cultivation, and the nobility and commercial interests were anxious to get exclusive control of large tracts of pasture on

which to engage in commercial sheep-ranching, to supply the burgeoning wool industry. ‘Enclosure’ was not just a physical process of fencing, but a legal process whereby a private act in Parliament, usually directed at stipulated commons, cancelled rights of commons, usually with some almost symbolic compensation. The rationale was to permit the landowners to engage in a more highly commercialized, large-scale, ‘modern’ agriculture.

By 1875, however, alarm over the disappearance of much of England’s open space caused Parliament to restrict enclosure in the public interest. England was becoming an urban society, and public policy for the remaining commons shifted away from subdividing them to opening them to the public of the new towns, and providing for their management and regulation by public bodies. The 1925 Law of Real Property allowed for the continuing economic use of the commons, but enacted “rights of access for air and exercise” upon them for the general public.

The Commons Registration Act of 1965 required the registration with county and county borough councils of common land, its owners and rights of commons before August 1970. These lands amount to a little over 4 percent of the total area of England and Wales. After July 1970, unregistered rights of commons expire. New commons can be created, and elaborate provisions are made

for registration of such new commons, including town or village greens. Certain large commons, such as New Forest and Epping Forest, are outside these provisions, having been separately provided for legally (Megarry and Wade, 1975).

The surviving commons are still often privately owned, with only limited members of the local community having historical rights to the economic (as opposed to recreational) use of the land.

Today, in British law, the commons is not a species of community ownership, but a legal institution whereby persons other than the owner of a piece of property have the legal right to pasture animals or gather firewood on that property. The owner of the land may be either a private or public (often municipal) landowner. Those with economic rights of commonage are in most cases

defined by a unique set of local historical circumstances, though recreational rights are more broadly distributed. It is, however, quite possible for a municipality or even a private owner to create a commons in which all residents have rights of economic use.

Because of the complex feudal antecedents of this area of law, and the emphasis in recent legislation upon recreation rather than production, the English law of the commons has limited usefulness as a model for situations in the developing world. It was the quasi-feudal right of commons that was received into the legal system of most British colonies; not surprisingly, we know of no instance in which it was effectively applied there as a tool for managing natural resources.

Sources: Holdsworth, 1903-1972; Megarry and Wade, 1975; Yelling, 1977; Neeson, 1993.

TANZANIA'S EXPERIENCE WITH VILLAGE OWNERSHIP

In 1990, the question of the legal basis for common property management was raised directly in the planning discussions for a large, multidonor Forest Resources Management Project. Early planning documents noted a need to give local communities the control and the management of local natural woodlands, but the legal basis for such control was not clear (World Bank, 1990). The tenure pattern inherited by Tanzania from the colonial period included state ownership of almost all land. Cultivators used the land under rights of occupancy granted by government or, in the case of the vast majority of rural Tanzanians, 'deemed' rights of occupancy over the land that they held under customary title. These 'deemed' rights appeared to apply to individuals' holdings, but not commons.

It is often difficult to establish whether a local community has claimed commons rights over an area, because the community will often not have thought of itself as owning the land but as having a right of access to certain products from the area. Hoben *et al.* (1992) observe that:

Natural woodlands by and large, however, are a resource only recently perceived as scarce. Today some communities have come to consider the woodlands they use as theirs, but most do not seem to have a clear sense under customary law that woodlands 'belong' to them. Rather they consider themselves to have a right to use the woodland resources, not to control it or prevent its use by others.

Tanzania has significant experience with legislating for common property. The first major experiment came with the Range Development and Management Act, No. 15 of 1964, which aimed to avert an anticipated tragedy of the commons among Masai pastoralists by creating Ranching Associations, conceived as smaller, exclusive units of range management. Membership in the associations was voluntary. Under the Act and subsequent regulations issued in 1968, 60 percent of the prospective members in an area could

apply to be registered as a Ranching Association, which would then have legal personality.

The new corporate body was entitled to a land grant of a right of occupancy. The association was then to pass by-laws to limit herd size and regulate dipping, inoculation and other improved practices. Each association was to elect its steering committee, which was responsible for the administration and management of the association. The steering committee was usually composed of representatives from different localities. Decisions being considered by the steering committee were supposed to be referred back to each member's locality to be debated by the traditional council of elders.

The project, which lasted almost a decade, encountered many unforeseen difficulties, including the radical policy shifts associated with villagization. Nevertheless, by the end of the 1980s it was clear to experienced observers that the Ranching Associations were a failure. They were "legally over-elaborate and had little to do with reality" (Tenga, n.d.). Their organization and scale took little account of indigenous institutions that functioned well and had legitimacy in the eyes of the Masai themselves (Jacobs, 1980).

In theory, the period of villagization and ujamaa should have provided new experience with legal models for common property management, but this was not the case. In fact, the new villages were propelled by a wave of administrative enthusiasm, with no legal basis for forced movements of people or the overriding of customary rights. Nor was any legal structure put in place for the new system of village land management, as admitted by James (1971), who in his review of Tanzanian land law had to rely on descriptions of their practice. James notes:

constant pressure from the ujamaa villagers for some form of incorporation.... This pressure invariably arises from the need to make applications for grants of rights of occupancy and to secure documentary and registrable titles to their land.

In spite of a lack of any urgency about legislation in the administration of the programme, he suggests alternatives for registration as: (1) trustees; (2) producers' cooperatives; and (3) agricultural associations (James, 1971). In fact, the territories of the new villages were never authoritatively defined.

The Village Act of 1975, replaced by the Local Government Act of 1982, says that the village council should administer forested areas and other unused land for future allocation. The village does not, however, have clear control over its woodlands under the law or in administrative practice.

A Villages and Ujamaa Villages (Registration, Designation and Administration) Act of 1975 says that the village council should administer forested areas and other unused land. While the Act itself did not specifically confer on village authorities any land rights or authority to allocate land, it did contain a provision calling for the village "to plan and coordinate the activities of and render assistance and advice to the residents of the village engaged in agricultural, horticultural, forestry and other activities..." The regulations under the 1975 Act do not refer to land management, but a Direction under the Act (GN 168 of 1975) sets out a scheme under which land is to be allocated to the village by the District Development Council, out of which the village council is to allocate to each *kaya*, or household, a piece of farmland, according to need and ability to develop it. A household could not transfer the holding without approval of the village council.

While the Direction does not specify the fate of customary rights (deemed rights of occupancy), it seems to assume that they are abrogated and replaced by land administration by the village council. As one author has commented:

The Village Council is somehow assumed to begin work on a *tabula rasa*... The Act never confronted these thorny issues and no machinery for the exercise was provided. The effect of this lacunae has been to let villages abide by the customary law and rights which existed hitherto (Ndosi, n.d.).

The Villages Act was repealed in 1982, and was replaced by the Local Government (District Authorities) Act of 1982. The entire scheme set out in the Direction would appear to now have no

legal force. The new Local Government (District Authorities) Act of 1982 provides the legal basis for an administrative law, rather than a property rights approach to community resource management. A community can enact by-laws pursuant to its authority under section 142(2)(c) of the Act, which provides for coordination of the use of natural resources in the same general terms as the Villages Act.

The village council retains its authority to regulate by by-law the use of village woodlands or any other resource in which individual deemed rights do not exist. But any administrative solution provides no real protection against the arbitrariness of higher-level authorities. More specifically, the provisions for review and approval of local by-laws, given the administrative culture of prescription and standardization, are problematic. In most cases, the efforts of villages to enact by-laws seem to have failed, due to the requirement that village by-laws be approved by the Prime Minister's office and, more generally, because of the reluctance of officials at any level in the administration to delegate authority to village government.

Hoben *et al.* (1992) cite the case of Endagwe village, between Lake Babati and the Duru Hills. In 1989, intact miombo forest remained on only a couple of ridges within the village boundaries. An active forester influenced the village council to try to prevent further clearing. The village council decided to conserve two areas as 'village forest'. They drafted a by-law and announced that cultivation was prohibited in those areas, and that nobody should be allocated land there. The by-law was approved by the village council and properly announced. When an encroacher cleared some of the forest to cultivate it, and the matter came to litigation, the court found that the 'encroacher' had not violated any law, that he could go on cultivating the land, and that the village even had to pay him compensation. Hoben *et al.* note that the village had not been demarcated and had no title to its land. The by-laws had not been approved in the district and the Prime Minister's office nor returned to the village, and indeed no by-laws from the district had ever been returned after being sent for approval.

Not only does district government generally fail to reinforce village control over woodlands, in some cases it responds to requests for assistance

by gazettement the land as District Forest Reserves, thus alienating it from the village, which was trying to manage it more effectively. The villagers find that they can no longer charge fees for charcoal-making and must themselves pay fees to the district to use resources to which they believe they have customary rights. Hoben *et al.* note two cases, one from Vikonje Hill, east of Dodoma town (Gerden *et al.*, 1989), the other from Kibaoni-Longoi village, near Mount Chambogo. In the first case, a sacred forest was involved, and a pre-existing local management plan approved by district authorities was overridden in a takeover of the forest by the district as a Local Authority Forest Reserve. In the latter case, after a long contest between village and district control, a management plan was developed by the SECAP project in the district. It gave nearby village councils rights to all harvesting, subject to a management plan. But it was not clear who can approve such a management plan unless the reserve is gazetted as a Local Authority Forest Reserve (Hoben *et al.*, 1992).

Throughout the period after villagization, local communities have been plagued in efforts at management of woodlands by the lack of any authoritative definition of their boundaries. The idea of demarcating villages received a major impetus during the villagization operation, when the demarcation and registration of all Tanzanian villages became a mandatory part of public policy under the Village and Ujamaa Village Act of 1975. Implementation was hurriedly carried out as an 'operation' under the direction of party officials, and the results, where records remain, are now considered to be technically unsatisfactory for purposes of issuing titles.

In 1983 the new Agricultural Policy of Tanzania called once again for the demarcation and registration of villages. The justification given for titling had changed markedly, from providing a framework for socialist society in ujamaa villages to improving the security of tenure for individual farmers so that they would have incentives for increased production and better land management. The Agricultural Policy also called for land use planning in all villages.

Little progress was made until after 1987. In that year, the party issued a directive ordering the government to complete the demarcation and titling of all villages in the five-year period from

1987 to 1992 (TANU, 1994). Their major concern is said to have been protecting villagers' lands from encroachment by the expansion of commercial agriculture, but the party was also concerned with strengthening the village institutions it had created.

Responsibility for implementing the five-year programme was given to the Ministry of Lands. Within the Ministry, primary responsibility was given to the Surveying and Mapping Department, while the Town and Country Planning Department was to develop land use plans. Implementation procedures have not been well coordinated or entirely standardized and appear to have created bureaucratic bottlenecks at certain points. Luscombe (1990) has described the four ways boundaries are demarcated and surveyed and the lengthy and cumbersome procedures through which a draft map, legal description, title, and certificate of occupancy are prepared, signed by officials at many administrative levels, and eventually registered in the zonal registrar's office.

Hoben *et al.* (1992) note that early in programme implementation, a sharp difference of opinion developed between the Surveying and Mapping Department and the Town and Country Planning Department. The former, which had line responsibility for demarcation, preferred to rely on the villages themselves to identify their boundaries. The Planning Department, by contrast, maintained that it should first prepare land use plans for each area, based on the land resources required by the present and expected future population, and that village boundaries should then be demarcated, based on this information. Implicit in this argument is that public land should be left between villages to be allocated later for development. The first approach has been used in most areas, as the second is far too time-consuming and is generally not acceptable to villagers, who usually have a clear idea of their village boundaries.

In most areas, it seems that it has been comparatively easy for village officials, elders working with district officials and surveying teams to agree upon intervillage boundaries, though resolving disputes has caused delays in the demarcation process. It is evident from the ratio of surveyed to registered villages that the main bottleneck in the programme is not in demarcation

but in the ensuing bureaucratic process. There are some districts, however, in which boundary disputes have proven more intractable and have even led to physical violence. Disputes are common in Mara Region, where ujamaa village boundaries were not traditional and where many villages have been further subdivided since villagization. There have also been problems in areas, including Babati, where there was extensive resettlement at the time of villagization and where there are endemic conflicts over use rights between different ethnic groups, particularly between pastoralists or agropastoralists and settled cultivators.

An interministerial committee evaluation of the programme recommended that disputes be settled in each district by a committee, to include the District Commissioner, the District Advisor, the Member of Parliament, the council member, the location secretary, the sub-location secretary, two members from the party and the District Land Officer. It also recommended that villagers be “educated and motivated to cooperate with the programme by explaining to them its current and future advantages” (Tanzania, 1991).

As of December 1990, only 1200 of Tanzania’s more than 8500 villages had been demarcated and surveyed. Only 1303 of these were issued certificates of occupancy and less than 200 had been registered. In January 1991, an interministerial committee was formed to investigate why the programme has proceeded at “a slow pace with low standards and at a high cost” (Tanzania, 1991). The committee report enumerates many technical, financial and organizational problems.

The programme has been criticized heavily by the Presidential Commission of Inquiry into Land Matters (Tanzania, 1992), as disregarding villagers’ perceptions of their own boundaries and as accomplishing expropriation of village lands by the government. The Commission rejected village titling because it formalizes customary rights and turns them into rights derived from the state. This, it is argued, is a diminution of customary rights in areas of the country where these have evolved to something very like private ownership. The Commission pressed for acceptance of customary rights.

In every village visited by Bruce during his 1994 consultancy for the Ministry of Lands, there was

a positive reaction to the idea of an authoritative demarcation of village boundaries. This was almost always in the context of vexing boundary disputes, from which most villages seemed to suffer. Villagers are more interested in demarcation and authoritative boundaries, rather than in whether a title is granted to the village. They did not distinguish between a certificate of title and some other legally effective way of ensuring village boundaries (Bruce *et al.*, 1994).

Fieldwork conducted in 1991 had also found a positive view of village demarcation in areas in which it had been carried out: Hoben *et al.* (1992) have this to say:

Village leaders interviewed in areas where demarcation had taken place were positively disposed towards the titling program, though rather unclear on its implications for land tenure. They all expressed the view that having a title would enable them to keep outsiders from encroaching on their land. They were less clear what control it would give them over woodlands and pasture. All of them had been involved in the process of demarcation and seemed to think that the process had been carried out fairly. The MLHUD [Ministry of Lands, Housing and Urban Development] evaluation committee reports that leaders in some pastoral areas were opposed to demarcation if it were to limit the movement of their herds. Ordinary villagers are unclear about the purpose and implications of village titling.

The position of the MLHUD on these issues was clarified in a new National Land Policy issued by the Ministry on 1 March 1995, following a National Workshop on Land Policy held at Arusha on 16-18 January 1995. The document calls for: (1) the demarcation of village land; (2) the titling of specific common property resources to the village; and (3) compulsory registration of the customary rights of land users.

Behind all these legal formulas, a struggle has been going on between different conceptions of rural development. One seeks to create preconditions for the participatory development of these resources, the other seeks to break resources out of village control and make them available for large-scale commercial production. The key question remains: what resources will the villages

obtain in this process of demarcation and titling? The answer will determine the future of community forestry in Tanzania.

While the policy reform process continues, it should be noted that some communities working with donors seem to have made significant progress towards effective control of their forests. At Duru-Haitemba in Babati District, by-laws have been enacted and are being implemented, though whether they have gone through the full formal process of approval by govern-

ment is not clear. This last point may be less of a concern because the community is about to obtain a long-term leasehold title over the community forest, as part of the general titling of the territory to the village under the village registration programme (Wily, 1996).

Sources: James, 1971; Jacobs, 1980; Gerden *et al.*, 1989; Luscombe, 1990; World Bank, 1990; Tanzania, 1991; Hoben *et al.*, 1992; Tanzania, 1992; Bruce *et al.*, 1994; TANU, 1994; Wily, 1996; Ndosi, n.d.; Tenga, N.d..

INDIA'S JOINT FORESTRY MANAGEMENT PROGRAMME

It has been estimated that in the nineteenth century, up to two-thirds of the land in India was under community control, but Arnold and Stewart (1989) caution that:

contrary to what is often asserted, the tradition of actual control over village commons by the villagers is not strong – these lands were either controlled by the government, or by the zamindar. It was generally only in remote areas, where the presence of the state or landlord was not felt, that community traditions sometimes emerged, though as will be seen there is some uncertainty as to the extent of such control.

Colonial land settlements based on different pre-colonial tenure patterns have given different regions of India different patterns of government and local land ownership. Political histories concerning control of land and natural resources differed significantly at the most local level, and the British found a remarkably complex mosaic of rights and duties regarding forest use. The rights of local principalities prior to the British period can be debated, for example (Guha, 1994). Nor was British policy uniform. There was an extended debate in colonial forestry circles in India during the 1880s and 1890s over the need for state control and the question of whether local communities did in fact have legal rights to forest use. Quite different approaches were taken in different areas in early land settlements. In some cases, community use rights appear to have been recorded and confirmed (Hobley, 1992). In time, however, a clear tendency emerged to stress the creation of forest reserves and protected forests, and to seek to reduce access by local users.

The reservation of the lands did not by itself eliminate century-old patterns of community forest use. Practice under the successive colonial forestry acts saw the Forestry Department accommodating such use more fully in some periods and less so in others, but always insisting that it be practised not by right, but as a privilege

granted and revocable by the government. Some of the forestry acts made reference to village forestry, but the concept did not have much credence with colonial forestry officials, and little was made of these provisions (Lindsay, 1994).

The state now has complete and exclusive rights to trees in 40 million ha of reserved forest. In an additional 22 million ha of protected forest, people can gather firewood and other subsistence products (1986-87 data; Arnold and Stewart, 1989). These protected forests have seriously deteriorated in many regions through overuse by shifting cultivators and others, and they, together with uncultivated lands belonging to the villages, have been the main focus of the social forestry programme. Some reserved forests have suffered similarly, but have been only marginally affected by the programme.

In the early years after independence, the state still saw itself as the protector of forests in the colonial mould. As extensive deforestation came to public attention in the 1970s, the central government asserted itself. This was the period of the state of emergency declared by Indira Gandhi, and in 1977 forestry became not just a state, but a concurrent subject under the constitution, that is, a subject on which both states and national government can legislate and make policy (Hobley, 1995a). At first there were calls for more stringent restrictions on forest use, and these were embodied in a new Forest Bill in 1980. Broad public opposition caused the failure of the bill, and instead a Forest Conservation Act of 1980 focused on reducing the conversion of forest land to non-forest uses, with some success.

The call for social forestry to relieve growing pressure on the reserves received a critical endorsement in the report of the National Commission of Agriculture in 1976 (Hobley, 1995a). In the following decade, interest in and experience with social forestry grew. The shift in policy was in part the product of numerous social movements in the 1970s, the largest being the

Chipko movement, which drew attention to the plight of forest dwellers and forest-dependent populations.

Policy discussion drew upon experience with several models, including the van panchayats in Uttar Pradesh, an earlier social forestry programme. Lindsay (1994) suggests that the JFM most directly traces its roots to experiments that occurred in the Arabari Region of West Bengal in the 1970s. The Forest Department sought to regenerate a harvested sal forest by altering incentives for local villagers, who had previously cut the annual growth for subsistence purposes. They formed village forest protection committees, and were allowed to gather a wide range of non-timber forest products and were promised 25 percent of the revenue from the harvesting of the timber.

The success of this programme and others encouraged the government to issue, in June 1989, a circular order on Involvement of Village Communities and Voluntary Agencies in Regeneration of Degraded Forests (No. 6.21/89-F.P.). While not the first order on JFM, it set the programme in its present form. The order took place in the context of a shift in forestry from a state competence to a joint competence of state and federal government. States are encouraged but not required to participate in the programme.

The 1989 order provides a broad framework for community forestry, detailed by Rudrappa (1994a/b). It allows for the provision of usufructuary (use) rights to local communities, but not transfers of ownership or leases of forest land. The use rights are to be held communally. Access to use rights is only for members of the community who are registered in a people's organization. This people's organization can be the panchayat (the local government), a cooperative, or the Village Forest Committee, and any villager may belong. In some cases, one individual from each family in the village is registered as a member of the forest protection committee (FPC), while in others all adults in the village become members. An executive committee is elected by the members. However, the local Forest Department representative, the revenue official, the village schoolteacher, a representative from an NGO and the village head man are made de facto members of the Committee.

No more grazing or agriculture is permitted on forest land. Instead beneficiaries are allowed to

collect non-timber forest products and are promised a share of the proceeds of the sale of the timber. The site is selected with the cooperation of the state government's Forestry Department, and it is worked in accordance with a scheme approved by the Department. The Forestry Department closely supervises the works, and helps enforce rules of protection. The Department also pays for the raising of nurseries and preparation of land for planting. The scheme is operational for a period of ten years, after which it can be renewed or revised.

The states that decided to participate in the JFM programme had considerable latitude in framing their guidelines, and this resulted in an extraordinary era of experimentation with community resource management in India, which is still being evaluated. The spread of the programme in the various states up until 1992 has been documented (Society for the Promotion of Wastelands Development, 1992), beginning with the year of the state's JFM resolution, associating it with the programme (see Table 3).

Since that time, Himachal Pradesh, Kamataka, Tamil Nadu and Punjab have passed resolutions committing themselves to the programme (Hobley, 1995a).

As Poffenberger and Singh (1992) have pointed out, the programme builds upon local experience with forest use and community forestry, and may be characterized as having provided a de jure status for de facto management systems. There are important variations from state to state. For example, the amount of timber profits to be returned to local communities by the Forest Department varies: 25 percent in Jammu and Kashmir, 33.3 percent in Bihar, 50 percent in Tripura, 60 percent in Rajasthan and 80 percent in Gujerat.

In West Bengal and Andhra Pradesh, membership in committees is limited to economically backward groups of people, while in others it is open to any villager. Gujerat requires two women members on the FPC, and in Maharashtra the executive committees must include at least two women and two other members from disadvantaged castes. In West Bengal, there have been calls for more effective involvement of women in the committees (Roy, 1992). In Madhya Pradesh, the state resolution limits the committee to the

TABLE 3 • THE JOINT FOREST MANAGEMENT PROGRAMME IN INDIA

Year	Location	No. F.P. Committees	No. Hectares
1988	Orissa	6058	1 518 800
1989	West Bengal	2055	300 000
1990	Haryana	32	8000
1990	Bihar	413	200 000
1990	Tripura	11	748
1991	Gujerat	312	20 000
1991	Rajasthan	47	30 000
1991	Madhya Pradesh	200	105 000
1992	Maharastra	–	–
1992	Jammu and Kashmir	–	–
1992	Andhra Pradesh	–	–

role of distributing proceeds, while elsewhere a more active role in management is anticipated. The specific non-forest products that can be taken free are designated differently from state to state, and in some states, such as Madhya Pradesh, communities can share in profits from the sale of minor forest products, as well as timber. In some cases, there is a size limit on sites, as in Rajasthan, where only forests up to a maximum of 50 ha can be used as commons (Rudrappa, 1994a/b).

While there are differences from state to state, there are some fundamental similarities. Everywhere the programme is focused on reforestation of degraded lands. For the most part, these are protected forests; it is exceptional for a degraded reserved forest to be entrusted to a local community, though this is legally possible and has occurred on a small scale in several states, including Kamataka (Hobley, 1995b). While the programme focuses clearly on community incentives, it does not stress community autonomy in forest management. Though it has the potential to move in that direction, as it stands it can best be characterized as a co-management regime, with the state Forest Departments still in a very strong supervisory role. For our present purposes of

assessing common property arrangements, two elements of the programme are striking: (1) the very limited degree of institutionalization of community forest management; and (2) low security of tenure by the FPCs.

The FPCs in most states remain informal institutions, with no legal personality or status outside of their relationship with the Forestry Department and other government agencies. This is pronounced in West Bengal, where the committees are placed by the state resolution under the supervision of the Land Use Committee of the Zilla Parishad, the elected body of subdistrict representatives, which can dissolve committees that fail to hold up their end of the agreement (Poffenberger and Singh, 1992). Study of the committees there suggested that there was little local initiative involved in the creation of the committees, and interviews by Rudrappa in 1993 suggested that villagers often saw the programme as another method by which the Forest Departments are organizing labour to improve public lands, with only limited freedom to manage the plantation (Rudrappa, 1994a/b).

In terms of formal organizational autonomy, Haryana and Rajasthan strike a very different

note by requiring that the committees be registered under the Indian Societies Act (Poffenberger and Singh, 1992). This appears promising, and a study of this approach as implemented in the Shiwaliks is forthcoming (Hobley, 1995b).

As always, opponents of further devolution of authority to local communities cite a continuing need for the technical expertise provided by the Forestry Department and the need to ensure that communities do not make unwise decisions. But there has also been a debate based on equity considerations. Rudrappa (1994a/b) summarizes the discourse on this issue of institutional autonomy in terms of the impact of JFM on poorer elements of communities and tribal peoples:

Many Indian villages exhibit significant socio-economic inequities. Village panchayats tend to concentrate power in the hands of the rural elite (Sen and Das, 1987). In light of this, Brinkman *et al.* (1991) have questioned how equitable common property arrangements are. Often rules for the use of resources are not a result of general consensus, but of interventions by powerful individuals or interest groups within the community. Therefore, Sen and Das (1987) suggest that there be some control on the part of the Forest Department over the panchayat. A possible alternative put forward is that community plantations be established exclusively around the economically weaker sections of the village. Some resolutions (West Bengal and Andhra Pradesh) specify that only members of poorer sections of the community be allowed to participate in the committees. This may be justified since it is the poorer sections of a village that tend to rely on the commons (Jodha, 1990).

The discussion raises a critical issue: how to create the community autonomy necessary to common property management, while at the same time framing a continuing role for the state in ensuring that benefits accrue to the poor.

Land tenure arrangements for common property management can be empowering to local communities, but again the JFM programme is rudimentary in this regard. The 1989 order establishing the programme specified that communities could be given use rights over land, but not ownership or leasehold rights. The rationale for this

limitation is not clear from the literature but may simply be a reflection of the tentative approach to a new concept of forest management. Access to the resource is entirely dependent upon the agreement between the Forestry Department and the people's organization. In some cases the agreement does not specify a time period. In Jammu and Kashmir, it is tied to a growing cycle, with the agreement remaining in effect until 30 days after the distribution of the profits from the cutting. In Madhya Pradesh, the management plans are for five years. All the Forest Departments preserve a right to withdraw from an agreement unilaterally if they decide the community is not implementing the agreement satisfactorily. The Gujarat agreement allows the forestry office to withdraw all benefits of the programme without compensation if "it is noticed that the beneficiary organization encroaches upon the programme area, does not exercise due care to prevent grazing or does not appear to satisfactorily implement the directives given" (Lindsay, 1994).

Often, the time before real benefits materialize from reforestation is ten years or more, but the entire JFM programme has a ten-year time horizon and is up for reconsideration in the year 2000. Given the history of mistrust between communities and the Forestry Departments, it is not surprising that many villages feel no secure expectation that they will benefit from the programme (Rudrappa, 1994a/b). That security is not provided by property rights, nor through the vesting of long-term contractual rights in benefits, nor even in a stable policy framework. Nor is it clear how market forces will affect the ultimate benefit flows to local communities; the early West Bengal pilots are just beginning substantial harvesting, and the price of the sal woods involved is lower now than at the project's inception (Hobley, 1995b).

In 1994, government put forward a new draft forestry law to replace the 1927 legislation. Called the Conservation of Forests and Natural Eco-Systems Act, the draft generated a public debate on the issues of natural resource management. The proposed act retained the three-way classification of forests as reserves, protected forests and village forests. While it incorporates many of the ideas from the 1988 policy declaration and the 1990 order, it does not make any sig-

nificant changes on institutionalization of local management or security of tenure in resources.

While some assessments of the draft law have been positive (Kulkarni, 1994), Guha (1994) has warned that the new act would seriously limit the growth of community forestry. He noted that the draft would prohibit the creation of village forests from forest reserves. This is allowed, even if rarely done, under the 1927 law. The draft would give the state Forestry Departments great rule-making power over village forests. It would allow the state to take over village forests, and to acquire sacred groves. The provisions on village forestry are nested within a general framework dictated by a strong conservationist perspective that would still rely primarily on state power for protection of forest resources (Guha, 1994; Chhatre, 1994). It has been suggested that its provisions would seriously compromise the future of forest-dependent *adivasi* (native) communities

(Baviskar, 1994). While the draft act has not been formally withdrawn, government is not currently pressing for its passage (Hobley, 1995b).

A decade ago, Commander (1986) framed his call for better management of Indian forests in terms of the need of local communities for property rights, and proposed long-term leaseholds. In spite of the considerable progress that has been made in the last two decades, this call has so far fallen on deaf ears.

Sources: Commander, 1986; Sen and Das, 1987; Arnold and Stewart, 1989; Jodha, 1990; Brinkman *et al.*, 1991; Hobley, 1992; Poffenberger and Singh, 1992; Roy, 1992; Society for Promotion of Wastelands Development, 1992; Baviskar, 1994; Chhatre, 1994; Guha, 1994; Kulkarni, 1994; Lindsay, 1994; Rudrappa, 1994a; Rudrappa, 1994b; Hobley, 1995a; Hobley, 1995b.

THE PHILIPPINES' COMMUNAL FOREST STEWARDSHIP CERTIFICATES

Spanish colonial law in the Philippines sought to wipe the legal slate clean of customary land rights. The Regalian Doctrine holds that when Magellan 'discovered' the archipelago in 1521, local sovereignty ended and all natives became squatters on the land of the Spanish crown. Even today, the official view is that all lands not covered by documents of title are presumed to be owned by the state (Lynch and Talbott, 1988; Royo, 1988). Later decrees modified this to some extent, such as a Royal Decree of 1754 that stated that "justified long and continuous possession" by local populations entitled them to title of cultivated land. Through the American colonial period state rights were asserted forcefully, with more than 90 percent of the nation's land classified as government-owned. Later a series of court decisions and other enactments allowed upland people to obtain title for land that they cultivated. But these were always for individual holdings of agricultural land, and did not provide a basis for community ownership or management of forest resources (Ganapin, 1987; Lynch, 1992).

Today the Philippine state still claims ownership of more than 62 percent of the nation's total area. Of a total of 18.6 million ha of government land, 0.88 million ha is unclassified land, 2.71 million ha are classified as agricultural and certified as alienable, while 15.01 million ha are classified as forested (Lynch and Talbott, 1988). These classified forests, over 50 percent of the nation's land mass, are managed by the Bureau for Forest Management, Department of Environment and Natural Resources.

The agenda for social forestry in the Philippines was set in 1975 with the passing of the Revised Forestry Code. A Forestry Management Programme implemented in 1975 granted occupancy rights by permit to land where farming was not affecting public forests adversely. In turn, farmers were required to undertake forest protection activities in accordance with the

Bureau's plans (Cruz and de los Angeles, 1988; Gibbs *et al.*, 1989). In 1979, a taungya programme called Family Approach to Reforestation was implemented as part of a contract reforestation scheme. The Bureau entered into short-term contracts with families to establish tree plantations on one to five ha of public land. The families were required to interplant their crops with tree seedlings, and once the trees were established, they would move onto a new site, where they repeated the whole process. Families were paid in instalments, based on the number of seedlings that survived. By 1981, only 33 000 ha had been affected by these projects (Gibbs *et al.*, 1989).

In 1981, conscious of the poor results of these programmes, the Bureau instituted an Upland Development Working Group to develop a learning approach to social forestry, involving not only Bureau staff but also staff of NGOs and foundations. A Social Forestry Division was established in the Bureau in the same year (Gibbs *et al.*, 1989). The Working Group advised that a social forestry programme, to be effective, would need to truly empower local institutions and frame tenure arrangements more compatible with the diverse local traditions and agriculture practices in the uplands (Poffenberger, 1990). Out of this work came the Integrated Social Forestry Programme (ISFP), based on government policy "to democratize the use of public forests and to promote more equitable distribution of the forest bounty" (La Vina, 1990). The programme received official sanction by LOI 1260 of 1982.

In the new programme, tenure security is provided in two forms, Certificate of Stewardship Contracts (CSCs) and CFSC leases. The former provide 25 years of entitlement to up to seven ha for individual farm owners. The latter recognize communal management and use of forest resources, also in the form of 25-year leases. In the early stages of community organization by Bureau field workers, the two options are

discussed and the community indicates what route it wants to take. Opting for CSCs for farms does not prevent the community from also seeking a CFCS on public lands (Upland Development Program, 1989; hereafter called Manual, 1989). The captain of Paitan pointed out that a communal lease is an effective means of fighting encroachment in that the surveying of one single large tract of land is a quick process, as opposed to claiming and registering individual parcels (Rudrappa, 1994c). This urgency is recognized in the Manual (1989), and truncated procedures are provided to accommodate it.

The community holding the communal forest lease has the exclusive rights for 25 years to possess, cultivate and enjoy all the produce of the land, and to restrict outsiders from using these communal resources. It has full rights to non-commercial use of forest resources. The certificate is renewable for an additional 25 years. The community has the right to allocate the land among its members in accordance with its custom. Within one year of the signing of the agreement, the community is to submit a development plan to the Bureau, and it is to implement ecologically sound practices. The community is also required to aid and cooperate with the Bureau in protecting areas immediately adjacent to the communal forests (Manual, 1989).

As with the individual CSC holders, the community is expected to maintain vegetation cover on lands within 20 m on each side of rivers and streams. The agreement prohibits the community from subleasing any part of the land, and requires the community to pay an annual fee of 10 pesos per ha of cultivated land, after the sixth year of the agreement. In turn, the Bureau maintains the right to permit the opening of roads, though it will pay compensation to the community for any damages. The Bureau's representative also has free access to the area for supervision and monitoring purposes, and is responsible for extending technical assistance and other extension services to the community (Manual, 1989).

Cornista and Escueta (1991) say that by 1988 a total of nine communal forest leases had been issued to upland communities, including ethnic minorities such as the Igorots, Mangyans and Ikalahan, as well as to Islamic and migrant communities of Mindinao. The lease areas range from 50 to 15 000 ha, but most fall in the range

of 1000 to 4000 ha. In 1993, the Alangan Mangyans of Paitan, Mindinao, leased 20 000 ha of land. While details on more recent leases are not available, Lynch (1992) indicates that by mid-1992 21 agreements had been signed, covering 67 757 ha.

Community organization by the Bureau's project field coordinators has played a key role in initiating CFSCs. An NGO is selected through competitive bidding to assist in organizing the community, and is expected to phase itself out after initial implementation of the management plan. Guiang (1993) notes:

Very few NGOs have the organization capacity and experience to organize, train, and equip communities in and nearby the forest resource so that they become ready for the terms and conditions of the CFMA [community forestry management agreement]. Those NGOs that have the capacity are already overloaded with their own activities and some are hesitant to get involved with DENR [Department of Environment and Natural Resources]. The proliferations of NGOs under the ADB [Asian Development Bank] Forestry Loan 1, however, resulted in a few newly-organized NGOs who are committed to assist upland communities. Most of the NGOs which were tapped by DENR to assist communities are between two and three years old. Their financial management systems and internal control systems are not yet in place. The so-called 'socioeconomic-oriented' NGOs are very hard to find.

The community that is to be the beneficiary of the CFSC can be either a cultural community or forestry association, and it is required that the constituents be identified in an appended census that forms an integral part of the agreement. Organizers have initiated local organizations modelled on institutional forms introduced by NGOs, including missionaries, and traditional labour-sharing organizations. In the Ikalahan case, a Kalahan Educational Foundation was formed to register an area as private property in 1969. It is governed by an elected board of trustees and registered itself with the Securities and Exchange Commission in 1973 (Cornista and Escueta, 1991). In 1974 it became the first recipient of a communal forest lease for 14 000 ha (Eder, 1985).

In the case of the six first CFSCs (and the others, to the best of our knowledge), a community-

based NGO has been formed and then incorporated as a non-stock, non-profit corporation with the Securities and Exchange Commission in Manila. Lynch and Talbott (1988) argue that the community incorporation process, while needed to confer legal personality, is “too complicated and imposes many complex legal requirements on people ill-prepared to meet them.” They argue that there should be two overlapping owners: the corporation and the community as defined by the census. This, they suggest, would:

...protect the communal title from outside challenges, If the communal title is officially perceived as being solely owned by the corporation, corporate dissolution will become an attractive way for powerful land grabbers to disenfranchise communal property owners. By having the corporation dissolved on such grounds as failure to file with the SEC the minutes of the annual membership or board of directors meeting, the existence of the communal property rights would become ambiguous at best or extinguishable at worst.

From the point of view of the local communities, the leases are stopgaps to prevent displacement until their claims to ancestral domains are fully recognized by government. Unfortunately, while touting the success of the CFSCs, the Bureau does not seem disposed to recognize these ancestral rights (Lynch and Talbott, 1988; Gatmaytan, 1989).

The legal bases for community forestry in the Philippines have continued to expand in recent years, and are now probably the most varied of any nation. Of special importance are new provisions for Certificates of Ancestral Domain Claims, provided in response to pressure from grassroots activists and donors. Under Administrative Order No. 2 of 1993 of the Department of Environment and Natural Resources, a process was laid out for delineating ancestral domains, the continuing validity of which was established under a long-ignored 1909 court decision that land occupied from time immemorial never became public land. The ancestral domains are perpetual, cannot be cancelled for failure to meet standards of the Department, and so constitute a much stronger community entitlement than grants under the other programmes. A 1991 National Integrated Protected Areas Act provides clear legal safeguards for ancestral domains in biologically critical areas. The Department has, however, lacked resources to make a significant impact in the demarcation of ancestral domains (Lynch and Talbott, 1995).

Sources: Eder, 1985; Ganapin, 1987; Cruz and de los Angeles, 1988; Lynch and Talbott, 1988; Royo, 1988; Gatmaytan, 1989; Gibbs *et al.*, 1989; Upland Development Program, 1989; La Vina, 1990; Poffenberger, 1990; Cornista and Escueta, 1991; Lynch, 1992; Guiang, 1993; Rudrappa, 1994c; Lynch and Talbott, 1995.

GUATEMALA: EJIDO FORESTRY IN AN UNFRIENDLY LEGAL ENVIRONMENT

Most community forest management in Latin America is carried out by public sector organizations. The region's history has provided opportunities for community forestry to rural people in some countries through a common property institution of Castilian origin: the *ejido*. In Latin America, public land is either *ejido* or *baldia* (Grisham, 1993). *Ejido* land consists of land that belonged to the municipalities at the time of colonization, and municipal lands subsequently acquired. This land cannot be sold or mortgaged. *Baldia* land consists of land belonging to the government that is not *ejido* land and that has no other legal owner. The government may sell or assign this land. If the government assigns the land to a municipality, it becomes *ejido* land (Grisham, 1993). Below, the experience with the *ejido* institution has been quite different in different national contexts; here that of Guatemala is examined.

Common property management is unusual in Guatemala. Even in the lowland jungle of Peten in northern Guatemala, the trees from which the chicle is harvested are treated as an open access resource. The *chicleros* (chicle harvesters) have no cohesive community organizations, and while *chicleros* often have territories assigned by foremen for chicle jobbers, there is no enforcement of exclusive territories (Schwartz, 1990).

But a unique system of communal forestry management exists among the Quiche Maya living in the highlands of the Cuchumatanes Range along the continental divide in southwestern Guatemala. This system has proven to be exceptionally effective in terms of forest preservation in the departments of Quiche, Totonicapan and Solala (Veblen, 1978). As much as 25 percent of the land in these departments is held communally (Lebot, 1976).

The communal right to the CPRs is based on the *Reducción* or Congregation process undertaken by the Spanish, beginning in the eighteenth century and continuing to the present day. This was a systematic attempt to facilitate the westernization

of the native population by organizing them into Spanish-style communities. Although some new communities were created, for the most part the communities were built on or near existing sites, and therefore helped solidify the older system of social organization, of which communal resource management was an integral part (Naylor, 1967).

Spanish notions of common property interacted with the Quiche Maya social landscape. Many Castilian villages owned common property that was administered by village authorities. These lands, known as *ejidos*, were used mostly for threshing, garbage disposal and other general necessities. Thus it was that during the *Reducción*, forested land that had been managed communally in pre-Columbian times was awarded to the village as *ejido*, to be owned and managed by the village. These assets were vested not at the *municipio* (township) level, but at the level of the *pueblo* (town), usually the main settlement in the *municipio*, and the *aldeas* and *caserios* (villages) around the *pueblo* (Hill and Monaghan, 1987). In some other cases, the communal forest grew out of several *parcialidades* (family holdings). In the early 1960s many villages voted to consolidate their family holdings to make forest management more practical (Castellon, 1992).

These entities were closed corporate communities, with membership based on birth in the community. Community governance is by a *junta directiva* (village council) elected each year by the *junta general* (village assembly), which consists of all male heads of households. The council is expected to manage the communal forest for the benefit of the community members. Council members assess requests to extract trees, oversee the activities of the forest guards, create and enforce the rules, deal with other communities and, in some cases, manage village nurseries. Each village's *ejido* has a well-defined territory, and communities defend it against poaching by patrolling the forest. If a poacher is caught, he is sent to his own village's council for punishment; usually a fine is paid to the aggrieved village and

a formal apology is presented (Castellon, 1992; Hill and Monaghan, 1987).

The idea of communal property has been challenged repeatedly, beginning with the liberal reformers of the mid-nineteenth century who instituted laws disallowing communal ownership of land. These laws were actually directed primarily against the Catholic Church, which held extensive properties on this basis. Both liberal and military governments have made periodic attempts to institute cadastral surveys, which would individualize all property (Lebot, 1976).

The second challenge to communal management of the forests has come from the Forest Service (Direccio General de Bosques – DIGEBOS), which in theory has legal control over any use of forest products. DIGEBOS management plans rarely take community wishes into account, but DIGEBOS must sometimes negotiate with communities in implementation. DIGEBOS is forced to rely upon the village councils because of their effectiveness in managing the forests and its own

limited capacity. There is, however, a continuing ideology in official and business circles in Guatemala that communal ownership is an obstacle to efficient management (Lebot, 1976; Castellon, 1992).

Communal management has been remarkably durable in the face of both cultural and population pressure. Farmers work tiny parcels of less than a hectare, and can only subsist by using forest products in the production of handicrafts. Villagers rely on the common property resource to supply firewood, forest compost for fertilizer, incenses and resins for religious and industrial purposes and medicinal plants. The Department of Tetonicapan is the most densely populated area of Guatemala, yet satellite and aerial photos taken over a long period of time offer convincing evidence that the village councils are very effective managers (Castellon, 1992).

Sources: Naylor, 1967; Lebot, 1976; Veblen, 1978; Hill and Monaghan, 1987; Schwartz, 1990; Castellon, 1992; Grisham, 1993.

MEXICO: EJIDO FORESTRY WITH A CONSTITUTIONAL MANDATE

While the ejidos in Guatemala have had to struggle to maintain themselves in a basically hostile legal environment, the ejido was made the model for the Mexican land reform. Ejidos existed in Mexico from an early date, as in Guatemala, on a base of indigenous common property. But soon after the success of the Mexican Revolution, President Cardenas codified the ejido in Article 27 of the 1917 Mexican Constitution.

Grisham (1993) describes the process. Peasants organized into a population nucleus could apply to the government for a grant of land, or ejido, for the members. Title to the land remained with the state, and the ejido received an indefinite usufructuary title. The land was in part allocated to members, who had use rights only, and could not sell, lease or mortgage the land. Some areas of land, including substantial forest, were retained in collective management. Presently, there are approximately 29 000 ejidos in Mexico, covering about 50 percent of the national territory. Since 1930, only about 600 of the 29 000 have received usufructuary titles to their land.

Under a new Ley Agraria of 1991 (D.O. 920811) the individual allotments of *ejidatarios* (ejido members) can be taken out of the common pool in private ownership, and bought and sold like other land. Indigenous ejidos are excused from this change. This is the aspect of the law that has attracted the most public attention, but the law also has important implications for the management of those resources retained in collective management. Rather than usufructuary rights, the ejido will now receive full ownership of the land. The ejidos are governed by a group assembly, an ejido board, and an enforcement advisory group. The new law allows residents who are not members of the original ejidatario families to participate in decision-making in the ejido, and women are recognized as ejido participants and owners. In order to promote productivity and development, ejidos now may form corporations, partnerships, unions or associations.

The commons areas may generally not be subject to commercial transactions, but the board can lease out the use of the land for as long as 30 years, and may authorize a pledge of the usufruct in favour of a commercial institution. In the case of breach of a guaranteed obligation, the creditor may foreclose on the usufruct. At the conclusion of the usufructuary term, the property reverts to the ejido.

More than 70 percent of Mexican forests are on ejido lands, but the potential of the ejido as a forest management institution was realized only in the 1980s. Prior to that time, a 1947 forestry law allowed vast concessions by the government to logging companies, which were often foreign, with only a nominal rent paid to the ejidatarios and with no assurances of jobs. The administration had the authority to grant forestry concessions on ejido property without consulting the ejidatarios or their assembly. This led to unsustainable cutting and ultimately to a rejection of the concession system (Arzola and Fernandez, 1993).

In 1983, when the concessions in southern Mexico's states of Peten and Yucatan were due for renewal, the ejidatarios negotiated a new use and management framework with the Secretariat of Agriculture and Water Resources (SARH). These ejidos were members of a strong regional Society of Ejido Forest Producers (SPFE). This is an autonomous, non-profit organization, financed by the ejidos and SARH, and consisting of two representatives from each ejido. SPFE provides technical assistance to the ejidos and recruits foresters for the ejidos, though each ejido in the end decides which forester will work for them. SPFE decides on the forestry and marketing policies for all ejidos, though they are implemented by the individual ejidos.

These ejidos have a highly centralized management structure. The general assembly of the ejido chooses four coordinators who are responsible for administration and marketing, field operations,

processing and maintenance, and it oversees the performance of their duties. The assembly employs some but not all ejidatarios in these operations. The head of field operations is responsible for implementing the management plan and makes the day-to-day decisions regarding resource use with the technical assistance of the SPFE. The ejidos do a yearly land use planning exercise, during which they demarcate the different use areas.

In accounting for success of the ejido system in these regions, Richards (1992) cites as the first three factors:

- ▶ stability of tenure;
- ▶ flexible management institutions; and
- ▶ strong and cohesive producers' groups.

Bray *et al.* (1993) describe this process of change in the state of Quintana Roo, where the Maya compose about 25 percent of the population and occupy half its territory. They find themselves hemmed in by encroaching economic development and the contingencies of conservation. In the 1950s, in the Mayan zone exploitation of the forests was in the hands of small contractors who struck deals with the ejido for a fraction of the value of the mahogany and cedar extracted.

Change came in the early 1980s. A 30-year forestry concession expired in the southern, non-indigenous part of the state, and grassroots protests helped defeat its renewal. The Gesellschaft für Technische Zusammenarbeit or German Agency for Technical Cooperation (GTZ) assisted in helping ejidos manage their own forests. The Plan Pilote for Quintana Roo was initiated with GTZ's assistance. The Union of Forestry Communities and Ejidos of Oaxaca (UCEFO) was established in 1986, after several years of mobilizing. This was created as a non-profit organization, thereby freeing it from the control by the Ministry of Agrarian Reform (Forster and Stanfield, 1993).

Initially, the Plan Pilote was viewed with suspicion by the Maya. The Maya community itself went through a period of conflict involving the break-up of corrupt ejido unions that had been marketing forest production. In December 1986, the Organización de Ejidos Producción Forestal de la Zona Maya de Quintana Roo (OEPF-Zona

Maya) was established, with 14 founding member ejidos. Silva (1994) describes this process for the community of Nohbe. In that case the ejido established a cooperative to manage its forest. Throughout Quintana Roo, simple control over marketing brought vast returns in increased prices and new prosperity in the first years after the changes, and by 1994 the ejidos were moving into milling.

There were parallel developments in the Zapotec ejidos in Oaxaca State (Arzola and Fernandez, 1993). Government attempted to renew two 25-year concessions, in 1981 and 1982. After civil disobedience, the government rescinded attempts at renewal. Initially, the ejidos' traditional unsalaried leadership threatened to be overwhelmed by the job of forest management, so salaried leadership was hired. Each community forestry enterprise (CFE) has an oversight committee that conducts audits; it is elected by the assembly, rotating annually. There is a *comisariado*, an elected official in charge of communal property, the CFE coordinator and the chief of finances, who jointly manage funds. Later, ten ejidos with CFEs formed the Organización Comunitaria de Empresas Forestales de Oaxaca (OCEFO), which provides technical assistance and training.

Similar CFE structures have allowed non-indigenous people to develop community forestry. The commune of Nuevo San Juan Parangaricutiro, in Michoacan State, developed a strong enterprise after forming a CFE in 1981 (Sanchez Pego, 1995). From the 1950s, the forest was divided into individual cuarteles for resin tapping, and each member is still responsible for a parcel of forest. This did not prove an obstacle to communal logging, agreements being reached between the enterprise and individuals on the following terms:

- ▶ each member retains their 'property' within the forest;
- ▶ each member continues resin extraction there; and
- ▶ each member collects a stumpage payment when timber is harvested from his property.

The enterprise has created employment for 800 of 1228 community members, and the entire community benefits from the profits generated by

timber sales, which are reinvested in productive activities and public services for all communal residents.

The communal assembly is the governing authority for the indigenous community, and since 1981 it has determined the direction of the forestry enterprise. The assembly acts as a mediator between the community and the enterprise. It does not have decision-making authority, but it is in the assembly that consensus about where the enterprise is going is forged (Sanchez Pego, 1995).

While the new Forestry Law of 1986 led to a proliferation of community forestry experiments based on the ejidos, the North American Free Trade Agreement (NAFTA) and the danger of

import of cheaper American and Canadian wood products is threatening their viability. In connection with NAFTA, there has been a constitutional amendment that would allow joint ventures between ejidos and foreign companies, in the name of increasing efficiency in these enterprises. The December 1994 devaluation of the peso was disastrous for the competitiveness of these enterprises. Those community forest enterprises with the ability to do so are moving into finishing products as rapidly as possible.

Sources: Mexico, 1991; Richards, 1992; Arzola and Fernandez, 1993; Bray *et al.*, 1993; Forster and Stanfield, 1993; Grisham, 1993; Silva, 1994; Sanchez Pego, 1995.

GUINEA: PROPERTY RIGHTS REFORM AND COMMUNITY FOREST MANAGEMENT

Villagers in Guinea saw wild fluctuations in policy on their use of forest resources during the First Republic. In the years immediately after independence, Sekou Toure sought to eradicate much of the institutional structure of the colonial period (also undermining customary structures). As part of this campaign he revoked the forest classification and reserve legislation, opening up forest reserves to agricultural exploitation. Later, when it became clear that forest was rapidly being depleted, he attempted to reinstate controls, sometimes in a draconian manner (Fischer, 1994/95). In practice, local people commonly continue to farm in the forest, often maintaining patterns of land use that antedate the classification of the area as forest (McLain, 1992b, 1993b).

The Second Republic moved early to amend the law in this area. As a result, Guinea has one of the most recently revised forest codes in Francophone Africa, the Code Forestier of 1989. This code, drafted with assistance from FAO, incorporates some of the lessons of the last decade. Forests may be classified as state or local community forests or may be unclassified (Art. 12). There is express provision for the transfer of classified forests or parts thereof to local communities (Art. 27-35). Community forests may be managed by local communities subject to a management plan developed with the technical assistance of the Forest Service (Art. 43-45). The state Forest Service can intervene if the local community fails to properly manage its forest, but otherwise management can be left to the community under the terms of the plan (Art. 30 and 39, Decree 227/PRG/SGG/89). The code prescribes that revenues from forest products go to the community after deduction of administrative expenses incurred by the state (Art. 38, 43). Generally, forest management plans are created to respond to local situations, but within the framework of national and regional forest plans and policies promoting an equilibrium between development

and environmental preservation, as set out in the code (Art. 1-10, 33) (Tabachnick, 1994).

Application of these provisions would in many cases mean a rationalization of current peasant use of land within classified forests. A study (McLain, 1993b) has explored their potential for the Nialama Classified Forest in the Koundou Watershed in Guinea. The study emphasizes the growing pressure on the forest for new land for cultivation, the current lack of incentives for local communities to husband forest resources carefully, and the unlikelihood that the Guinean Forest Service (DNFC) will be able to marshal the resources to protect the forest. The model of cultivation permits for individual farmers practised on a GTZ project at Mt. Kakoulima just outside Conakry could not, the author suspected, be maintained effectively by DNFC at Nialama. Transfer of the forest to a local community would take years to complete, and so a co-management agreement was recommended. Since effective management of the forest would require collaboration between several villages, a new intervillage institutional arrangement is considered necessary.

The McLain report notes that while there are traditional institutions that are capable of policing their own people, they are powerless against outsiders and have no legal status in official fora. There are Rural Development Committees now functioning in the area, but they have only been in place for two years, and they have not yet proved themselves as representatives of local interests, rather than as agents of the state.

The future of community forestry in Guinea is not confined to the classified forests, but extends to the extensive areas of land with trees that are unclassified to date. The future of forestry of this land is intimately involved with the general development of land tenure policy and law in Guinea, and there have been important changes in the post-Toure era.

In the spate of reform legislation immediately after independence, the Land Nationalization Law of 20 October 1959 awarded rights over all land to the state. Private property was rejected, and efforts were made to undermine customary tenure institutions that embodied invidious distinctions between former slaves and their owners. Under the Second Republic, Article 13 of the 1990 Constitution recognized private property in land. In 1992, a new Land Code was enacted. Initially two texts were prepared in different ministries, one for urban and one for rural areas. Later it was decided to have a single code for the country, and this was based largely on the urban text. Fischer (1994/95) notes:

The 1992 Code, highly urban-based and focusing more on technical questions than on broader tenure issues, is explicit about detailing state property rights and the mechanisms for securing individual ownership, registering property, and issuing title deeds. In contrast, the Code is very ambiguous in explaining how rural landownership rights will be defined. The deficiency is glaring; the majority of Guinea's population lives in rural areas.

The government has endorsed the *terroire villageois* concept as the basis for its natural resource management programmes. There is great uncertainty about how the concept of private ownership and the *terroire villageois* approach will be melded in practice. Examples of the difficulties posed can be drawn from the new USAID-funded natural resource management project in the Fouta Jalon. This area has a long history of domination of other groups by the Fuble within a hierarchical society. Many communities have segments composed of the descendants of former slaves. Under the First Republic, the rights of the former slaves were strengthened, but their status as landholders still suffers from their ancestors' having initially acquired land from their former masters on ambiguous terms. Those former masters still assert their ultimate ownership of the land, and seek to control its use. While those of slave origins have land over which they have long-established use rights, they can be prohibited by the nobles from making major improvements on the land (including tree planting) (Fischer, 1994/95).

The news of restoration of private ownership of land is leading the noble populations to reassert

rights over the land of former slaves, and this poses an important threat to the cooperation needed for management of village resources. The *terroire villageois* approach, piloted in Sahelian areas with villages with greater ethnic homogeneity, may not be workable in the Fouta because of the fundamental unresolved land tenure conflicts there.

Research carried out for the project by the Land Tenure Center has found that there are virtually no economic common property niches under the traditional tenure systems in the Fouta. Where 'waste' areas appeared to exist, it was determined that there were subsisting rights in long fallow. In some areas, however, there are sacred groves, areas that have been protected by their designation as the habitat of spirits, and there have also been villages that have prohibited the cutting of trees in local protected zones to allow them to regenerate. Generally, there is extensive use by villagers of resources outside village territories. The project has increasingly focused less on the *terroire villageois* concept and more on: (1) intravillage cooperation as a mechanism for natural resource management; and (2) the use of land contracts to create smaller, discrete areas for community management (Fischer, 1994/95, 1995).

Under these contracts, the villages persuade individuals and families to cede land to the villages for communal management. This is embodied in a written contract of cession that is translated into both French and Arabic and certified by a government notary. These cessions are in the nature of long-term loans, not transfers of ownership, with stated terms of between 20 and 30 years. The process has been time-consuming both in terms of identification of the parcel to be acquired, and of ascertaining that all the right-holders in the parcel are parties to the agreement. There are clear limitations to the amounts of land that can be acquired in this manner (Fischer, 1994/95, 1995; Diallo, 1995).

These contracts are an interesting departure. They have been resorted to in part to escape the dilemma posed by the strong persistence of customary law, unsatisfactory elements in that custom and the current government's reluctance to see the future in terms of anything other than private

individual ownership of land. It is not at all unusual to find dilemmas posed by conflicts between statutory law concerning natural resources and local custom, and such a contractual approach avoids that dilemma. While not pro-

viding a long-term solution to such problems, it may be a useful tool in the project context.

Sources: Guinea, 1989; McLain, 1992b; McLain, 1993b; Fischer, 1994/95; Tabachnick, 1994; Diallo, 1995; Fischer, 1995.

CHINA: DECOLLECTIVIZATION AND COMMUNITY FORESTRY

In China, the basic organizational form for management of common property is the village economic cooperative. In the reforms of rural production organization in the late 1970s and the 1980s, the large people's communes were broken into smaller units, often units from which they had been formed in an earlier consolidation of small cooperatives. These earlier cooperatives had commonly been based on prerevolutionary village units. The 1982 Constitution (Art. 8 and 92) calls for a careful distinction between government and collective enterprise, the village as government and the village as economic cooperative (Rui Mu, 1983). This distinction is more or less real as one goes from village to village. The economic cooperative, as distinct from government, was responsible for the management of these resources.

In these reforms land remained a public good, but the reforms clarified the nature and locus of public ownership and management authority over land and associated resources. The 1982 Constitution (Art. 10) and the National Land Administration Law, which came into force in 1987 (Art. 8 and 12), confirmed that the new administrative villages had succeeded to ownership of the land, and that land might be assigned to smaller units or households for management. The land included 'waste' and hilly land as well as cropland.

The Chinese reforms have been characterized by considerable village-level experimentation with scale and institutional arrangements for resource management. Initially the 'production responsibility' reforms sometimes vested farmland in smaller, hopefully more readily manageable groups of farmers, often old work teams or brigades from the former commune. Land was administratively assigned, and the teams were given significant management autonomy in return for an obligation to produce a quota at a fixed price. As the reform proceeded, however, communities opted for the 'household responsi-

bility system', in which land was assigned to households. Household farming has now become the almost universal form of production organization, encompassing 95 percent of all farm households. The initial policy reforms by the Communist Party's Central Committee in its Rural Work Document, Document No. 1 of 1994, called for leaseholds from the village economic cooperative to users for a minimum of 15 years (Bruce and Harrell, 1989), and the maximum duration has been regularly extended. The same policy document recognizes the need for longer contractual terms for "projects with a long production cycle, such as fruit trees, woods and forests, denuded hills and wasteland..." (Bruce and Harrell, 1989).

Contracts in such situations have often been written to run from 30 to 50 years, and recently terms of up to 70 years have been endorsed by government. Leaseholds have become increasingly marketable, usually, but not entirely, within communities, since a 12 April 1988 amendment by the National People's Congress of the Constitution (Art. 10) to allow transfers of land use rights. Production obligations are falling away, and appear on the verge of abolition; policy documents urge ever longer leasehold terms (Prosterman and Hanstad, 1993).

Household production is clearly the future of irrigated agriculture in China, but there is continuing and intense experimentation with scale and production organization on the mountainside land. There are large areas of mountainous land suitable for forest production or orchards. Under the commune system, these areas tended to be neglected and, as often happens with open access resources, denuded. Afforestation efforts in China are usually conceived in large part as land reclamation. The responsibility system reforms have experimented with both household and common property management of reforestation of these areas, and with interesting hybrid systems. The preparation of this land is very labour-

intensive, and it is often organized by villages in a 'campaign' mode, with substantial support from provincial government agencies. But responsibility for management, based on the use rights over the land, are often vested in smaller units and in households.

This has required a major shift in legal bases for forestry management. The Forestry Act of 1979 virtually prohibited anything other than collective or state forestry. Following the land tenure reforms of the late 1970s and early 1980s, and the 1982 Constitution, a new Forestry Law was enacted in 1984 (Richardson, 1990). Article 23 provides that trees planted by the cooperative belong to the cooperative, and that "trees planted by rural inhabitants around their houses and on private plots and hills under their management belong to themselves." It continues:

In the case of barren hills and uncultivated land suitable for afforestation owned by the whole people and by the collective that are contracted by the collective or individual for planting trees, the forest trees planted by the contracting collective or individual belong to themselves, unless otherwise provided for in the contract.

From a policy standpoint, a key issue in the transition has been how the rights to forest land should be distributed within the community. For agricultural land, initial subdivisions of the farmland among households was rigorously egalitarian and resulted in exceedingly small, fragmented holdings. Should the same be done for forest land?

Villages and development projects have experimented with at least three types of management units as alternatives to simple household management, which can be discussed as common property management. The first is the economic cooperative itself. The unit is public, functions as an owner/manager, institutes a unified system of resource management, and can readily be considered a public common property institution. It can run a forest as a single unit, or decentralized operations, as may prove efficient, much as a corporation would run a production forest. Some village forests are still managed on this basis, and it is still utilized as an approach in reforestation. The second is the private forestry concern, often developing out of a 'specialized household',

which is given long-term management contracts by the economic cooperative. The third is the shareholder association, which may be public or private in nature but is generally organized by the village. Its private version is larger than most other private forestry, and its public version is distinguished from collective management by both voluntariness of participation and the large degree of management autonomy conferred on the association.

If one examines a given locality, one finds a considerable variety of experience. Beginning in 1981, households in Huaihua Prefecture in Hunan Province were given small plots on 'responsibility mountains', in a pattern similar to that for grain production areas under the household responsibility system. In the early years, through 1984, there was a positive response in terms of afforestation, but by 1985, when the system had been generalized, this seemed to falter. Only households with considerable excess labour were able to develop their forest holdings, and only short-term contracts were available. Limited tenure security led to cutting of standing timber by some households, and considerable deforestation. Planners discussed the possibility of wiping the slate clean of the smallholdings and reallocating the land to specialized operators, but were concerned about the popular reaction.

Spontaneous developments rendered this unnecessary. In the years since 1985, as 15-year and then still longer leases became available and transfers of leasehold became possible, there began a process of voluntary consolidation of these holdings. Roughly half the land has been involved in transactions. One pattern involved consolidation of mountain land leaseholds in the hands of a limited number of households with larger holdings, specializing in forestry and the management of orchards. The other solution, affecting an almost equal amount of land, has been for households to pool their land in shareholding units. Research indicated uncertainty on the part of the holders as to the precise nature and content of their rights, and a need for greater formalization. Government in 1992 was pursuing a programme of demarcation and registration of holdings and standardization of contracts (Liu Shouying, 1995).

The Red Soils Project, a land reclamation effort spread over several provinces of south China, has

experimented with both cooperative and household organization of reforestation. The effort stresses planting of orchards and other tree crops on hillside land that was abandoned as over-worked waste land for generations. Approaches in Jiangsu and Fujian provinces illustrate the different management strategies. In Fujian, local villages mobilized efforts in land preparation and tree planting on the hills belonging to each village. Managers for community forests were selected competitively, and contracts were signed with them that included a level of income for the village but also provided incentives for the manager. There were excellent results in orchard creation. In Jiangsu, by contrast, the hillsides were reforested as part of a major resettlement programme, initially moving in settlers from other areas onto smallholdings (2 mu) with 15-year leaseholds. Later, because of feelings on the part of local paddy rice farmers that they had been excluded, holdings were rearranged, with locals given priority. Terms of the new leases were extended between 30 and 50 years. Transactions in the leaseholds were permitted, but few have occurred to date. The Jiangsu model has produced a more modest and spotty reforestation, which is nested within a mixed farming system, as the holders pursue their food needs and tree production opportunities at the same time (Zeng He, 1994).

Some villages have opted for large-scale operation of their forestry resources, but instead of collective management on the old work brigade and team model, they have opted for a new institutional form called a shareholders union. A shareholders union involves all or some subset of the households in a village. Membership is theoretically voluntary. Management of the forest resource is vested by the village economic cooperative in the shareholders union, a separate legal entity similar to a share company. The union plans a unified forestry production process, but each household has its own forestry farm and acts as a contract production unit of the village forestry shareholder union. Villages operate their forest holdings on a contract farming basis for their own union (Bruce *et al.*, 1995).

When the forest shareholder unions were instituted, for example in Sanming City in Fujian Province (Sun Changjin, 1990), two types of shares were usually issued: basic shares and

investor shares. Two-thirds of the basic shares were distributed to forest farmers, while the remaining one-third were turned over to the village economic cooperative to become part of the village's accumulation fund. Because the accumulation fund profits were not shared, this arrangement was later dropped. Now basic shares have been divided into mountain land shares, for those who hold mountain land, and common shares, for all members of the community. Investor shares are issued for investments of cash, technological innovation, labour and tree planting (Lei Zhang and Sheng Di, 1993).

The establishment of shareholder units has also taken place in the wake of unsuccessful attempts at smallholder forestry. In Huaihua, much of the scaling up is taking place through transfers to specialized households, but creation of shareholder units is also reported by Liu Shouying (1995):

One common method is: One unit (a collective, or an enterprise or a government institution) works as a[n] organizer; farmers become shareholders by contributing their own mountainous areas and the finance for development comes from the state afforestation fund. Therefore, the shares of a forest farm can be classified as land share, labor share, capital share and accumulated share. Among which, the land and labor shares account for the larger percentage.

The quote gives some sense of the extraordinary mix of public and private initiative involved in these development efforts.

Similar arrangements can develop out of state farms, in a process of decentralization of management that does not affect the state's property right. In the Weihe State Forestry Bureau of Heilongjiang Province, reforms maintained ownership in the state but allocated parcels of forest land to households from the farm's labour force. Households practise multiple uses, including a wide variety of non-timber forest products (e.g. medicinal herbs), and household incomes have grown substantially. Enterprises for purchasing and processing of timber and a variety of non-timber products are being organized as autonomous profit and loss centres (Weihe Bureau of Forestry, 1987).

Between household agroforestry and the shareholder organizations there are, however, a considerable variety of institutional forms available for private enterprises specializing in forestry. Some such operations begin as household operations, which have received leases to substantial holdings of forest land from their collectives, and/or are accumulating forest land through the market in such leaseholds. When the scale of operations expands, the enterprise may hire labour, or it may group together a number of households. The latter is the more common case. The households may be very loosely organized, collaborating on activities as needs arise, or they may pool resources, and different households may be assigned different tasks. The partnership as a form of organization is also known (Howard, 1987). These arrangements and their operations are an important area for further study.

The wide range of institutional forms available under Chinese law today is the result of the promulgation by the State Council of Regulations for the Registration of Industrial and Commercial Enterprises (7 July 1982) (Rui Mu, 1983). The organization forms are only gradually being codified. Forms of organization are being created by 'charter', an agreement of those concerned that is made a matter of public record. These enterprises are created by registration. At a minimum, the registration must record the name(s) of the founders of the enterprise, the scope of the enterprise's business, the capitalization of the enterprise and the number of employees. Interesting efforts are under way at the provincial level to derive models from the practice in these charters (World Bank, 1988).

The new organizational forms and expanded tenure options do not signal an abandonment by government of its predilection to closely regulate economic activities. Forestry is tightly regulated on the basis of both national law and local decision. The 1984 Forestry Law does not require a permit for cutting scattered trees on a holding, but for land contracted for forestry a cutting permit must be obtained from the Forestry Department (Art. 28) (Richardson, 1990). This applies to both households and community management. Permit requirements are set out in greater detail in the Implementing Regulations of the Forest Law of the People's Republic of China. Forestry operations require approval at

country level or higher, and those over 2000 mu (13.4 ha) in size require approval of a design by the State Council (Art. 1). Tree felling also requires permits, beyond fuelwood cutting on the peasant's privately managed mountains (Art. 17-18). In some provinces, as in the Forest Counties in Fujian, the Forest Department has a virtual monopoly of timber marketing (personal observations, 1997). Some commentators have questioned whether these permit requirements and other regulatory measures are not undermining the management autonomy in theory gained through the creation of new forms of enterprise and new property rights (Menzies and Peluso, 1991).

What can be learned from the Chinese experience with common property management? On the public side, the well-defined legal framework of the village economic cooperative has made rapid development of mountain land under forestry possible. On the private side, the 'lack of law' and the freedom that this provides for experimentation appear to have been valuable in a moment of profound transition. The local experimentation with shareholding units, for instance, contrasts favourably with experiences in more legally formal systems in which the state will not recognize the validity of local action unless it fits comfortably into a few generalized forms of organization and opts for one of a very limited set of property options recognized by law. Tenure terms for both individual and common property management of forests were initially inadequate, but this has improved substantially over the past decade.

On the other hand, those participating in the experimentation have often had their expectations upset by political vacillation and confusion over the permissible limits of experimentation. Project managers have had to work in an uncertain context in which political shifts within the party can suddenly constrain, then encourage experimentation (Zeng He, 1994). Such an atmosphere in the end probably discourages collective action and common property arrangements, which are more complex to manage than the household operation.

The critical issue today is whether greater formalization is now appropriate, and most research appears to suggest that the time has

come to consolidate both organizational forms and property rights, and buttress them against overregulation by government, which undermines the new autonomy and incentives.

Sources: Rui Mu, 1983; Central Committee of the Communist Party of China, 1984; China,

1986; China, 1987; Howard, 1987; Weihe Bureau of Forestry, 1987; World Bank, 1988; Bruce and Harrell, 1989; Richardson, 1990; Sun Changjin, 1990; Menzies and Peluso, 1991; Lei Zhang and Sheng Di, 1993; Liu Shouying, 1995; Prosterman and Hanstad, 1993; Zeng He, 1994; Bruce *et al.*, 1995.

ALBANIA: TOWARDS LOCAL GOVERNMENT AND VILLAGE FORESTRY

If China represents significant but incremental economic reforms in a society still politically dominated by the party, Albania represents the 'big bang' version of reform. There, a non-communist government came to power in 1991 and embarked on a dramatic land reform. First the collective farm sector and now the state farm sector are being subdivided into smallholdings. The former collective land is being distributed in private ownership, the former state farm land in long-term use rights. Government is embarking on a major programme of land registration and titling to promote a land market (Stanfield and Raco, 1994).

Albania has an extensive forestry sector. Figures from 1991 show that a total of 37 percent of the land in Albania is classified as forest and other wooded land, of which 32 percent is high forest and 5 percent is other wooded land (FAO, 1994). The forestry sector, while affected by these changes, has remained closely controlled by the state, at least in theory and law. Until 1992, a 1968 Forest Law (Law No. 4470, 25/6/68) (Land Tenure Center, 1995) governed forest management. All forests were controlled by a State Forestry Administration (SFA), consisting largely of production forests organized as localized 'forest enterprises' managed directly by the state (FAO, 1992).

In the virtual hiatus in state control after the fall of the communist government, rural people moved against the state forests to which they had always been denied access. With the failure of state delivery of other fuels, villagers depended on firewood for heat in winter, and large areas were deforested. The reaction by government is embodied in a new law, Forests and Forest Service Police, enacted as Law No. 7223 of 13/10/92. Drafters worked from the 1968 law and inserted provisions from the Austrian, French, Greek, Italian, Rumanian and Turkish forest legislation (FAO, 1992).

The new law provides that trees planted on privately owned land belong to the landowner, and

so provides a legal foundation for private forestry and agroforestry. It also provides a basis for local management of some forests. A number of reports (FAO, 1992; Ruzicka, 1994) have identified shortcomings of the new law. The concept of 'tenure' and its incentive effects for communities is hardly a concept in the new law. Moreover, the law lumps all private forests and communal forests together with state forests in a 'forest estate' over which the SFA is given extensive control. Nor, as will be seen, is the situation regarding community forestry satisfactory.

This author had the opportunity to spend several weeks in Albania in November 1994, exploring community forestry issues; assertions here for which no other authority is cited are based on personal communications during that visit.

There are precedents for community forestry in Albania. Historically, prior to and to some extent during Turkish rule, there were clan forest areas in Albania that could be termed communal. The emphasis on state forestry was, however, pronounced in the 1923 Forestry Law, the first after Albanian independence, and these early communal forests have had no legal recognition by the state since that time.

Collective forestry was theoretically possible under the 1968 Forestry Law; a collective could have a forest of up to 1000 ha and could manage it without financial obligations to the SFA but subject to its regulations. In fact, such collective forests were very limited, because the collectives had been built up out of farms, and forested land had been excluded (FAO, 1992). It is not clear to what extent early notions of communal forestry rights have survived in the minds of villagers. For some areas one is told that old clan property rights in what are now state forests are clearly remembered, while in other areas this does not seem to be the case. In any case, there appears to be a consensus that the clan is a much weakened institution, and no longer has the capacity to act as a resource manager.

However, there are also patterns of use of state forest resources by the villages. These local customs include local perceptions of rights of use that should be taken into consideration in planning community forestry. Forests do not lie within village lands. Districts are divided into komunas, and the komunas into villages. State forest land is divided with other land into districts and komunas, but village boundaries were drawn around agriculturally relevant land, and forest and pasture resources were excluded. Villagers have, however, tended to have priority of access to state forest resources within their village boundaries, if only due to proximity. They have been allowed to graze and lop shrub and coppice for fodder and firewood. This was controlled through the designation by local forestry agents of certain areas as available for use.

In recent years, fees have not been effectively collected for such use, and use has often not been limited to authorized areas. In fact, there is an ongoing breakdown of local control; a member of the forest police estimated in November 1995 that perhaps only 5 percent of the violations he identified actually resulted in the levying and collection of fines. On the other hand, villagers in some areas have sought to exclude people from other villages from forest resources over which they claim priority, even building fences in a few cases.

What is the potential for community forestry under the 1992 Forestry Law? Article 4 in most English translations speaks of 'communal forests', which can be created out of existing state forests and can be turned over for communal management but not ownership. But Article 4 in the authoritative Albanian version specifies 'komuna' as a particular administrative unit. The English translation of komuna as 'communal' is misleading, in that 'communal' suggests a broader range of possibilities, for instance, village forestry as well as komuna forestry. Those in the General Directorate for Forestry (GDF) who had been involved in translation of the law into English affirmed that the intention was indeed to specify 'komuna' as the unit for locally managed forestry, and not for a broader range of possibilities.

Based on the assumption that community forestry efforts will be initiated under the 1992 Forestry Law, the attribution of forest land by the

state must be to the komuna and not to the village. Indeed, many GDF foresters urge that it is essential to vest basic management authority at komuna rather than village level, in spite of the acknowledged weakness of the komuna level of public administration. They express concern that villages cannot be trusted to manage the resources sustainably in light of urgent short-term needs. These fears are grounded in the difficulty that they are having controlling cutting by villagers in the present institutional and tenure context.

Some GDF foresters, including the coordinator of the communal forestry programme, also suggest that the distribution among villages of forest resources (shrub, coppice and high forest) is so uneven that the access of each village to the diverse forest resources it needs can be maintained only by forest management at komuna level. It was difficult for them to imagine a system under which villages with diverse forest resources could exchange access to those resources with one another.

Most government foresters appear to favour continued state management or the contracting out of forests for management by commercial firms. Foresters who have left government are creating such firms and are seeking business from their former colleagues. Some argue that communal forest management is problematic, in part because adequate laws defining the structure and powers of the komuna and village levels of government still are not in place. The Ministry of Local Government has plans to progressively direct larger proportions of locally generated state revenues to the komuna, at the expense of the central government. This is part of a broad effort to build up the komuna as an effective unit of local government. As for the village, there have been no studies of village authorities, decision-making processes and effectiveness, and so this point is difficult to resolve.

It is fair to say that both forest administrators and local people may have difficulty at the outset grasping the concept of autonomous local resource management, and that villages may experience difficulty in regulating the activity of their members. Often there seemed to be a sense that the policy choice was between local authorities and the state, without recognition of the fact that any local management system must have the

backing of state law and law enforcement mechanisms.

Under current law, forest land allocated to the komunas would remain state land. (The Ministry of Local Government is preparing legislation that would allow komunas to own land in their own right.) In turn, the komunas will turn over all or part of that land (for instance, certain classes of land, such as shrub and coppice) either to individuals or to villages for management. Article 4 makes it clear that in neither case would ownership pass to the manager. Village or individual management could be instituted through contracts from the komuna, which would specify a management plan, responsibilities and distribution of benefits. When the contract was held by an individual, a part of the revenue might still go to the village.

While such contracting will provide considerable control over use, it is not clear that it will engender confidence or enthusiasm on the part of the villagers. The vesting of property rights might do this more effectively, but that, of course, carries the risk of unsustainable use arising from problems with community self-control. In any review of the Forestry Law, consideration might be given to at least introducing the possibility of conferring land in ownership for community management. This would open the way for approaches such as assignment to villages on a probationary basis with controls, and sustainable use could eventually be rewarded by conferring ownership on the village.

Communal forestry is to be developed under the proposed World Bank/FAO Integrated Forest Management Project (FAO, 1994). The communal forestry effort is a relatively small component of the overall project, representing only US\$0.9 million out of \$31.8 million. Bank consultants have worked with the GDF staff since 1992 to design this component (Guyon, 1993a, 1993b; Goussard, 1994). At the outset of the planning, district forestry offices prepared proposals for a Communal Forestry Working Group in the GDF. The GDF prepared a set of recommendations, suggesting that about one-fifth of Albania's state forest resources be set aside for komuna management (about 200 000 ha out of 1 million ha), of which about one-seventh would be high forest, the remainder being roughly equally divided between shrub and coppice.

The project would deal in an integrated way with villagers' use of both pasture and forest resources. It would focus on the village as the key management unit, based on the assumption that it is at that level that local participation will be greatest, and that villagers will respond to incentives posed by new institutional arrangements for management and benefit distribution (Guyon, 1993b).

In mid-1994, three komunas (Tregan, Gjinar and Kayan) in Elbasan District were identified as the locations for a pilot project to be carried out by the Rural Development Foundation working with GDF staff in Elbasan. Over a six-month period, management planning would be carried out in the villages in those komunas (Goussard, 1994).

Over five years, the project would extend to 55 komunas (about one-sixth of 315 nationally): 21 in the lowland areas; 22 in hilly areas; and 4 in mountain areas. The World Bank will fund only investment works, and these will affect relatively modest amounts of land. The projection for the full five years is for afforestation of 2500 ha, conversion of 1000 ha to fast-growing species, fodder tree plantations of 1700 ha, pasture improvement on 11 200 ha, and 26 new water-points in summer pastures (FAO, 1994).

The project involves a relatively modest investment in very limited areas, couched within an ambitious programme for reorganization of forest and pasture management in Albania. The success of the former is acknowledged to depend upon the latter, but the real costs of the latter component do not seem to be appreciated. It is not clear how the costs of shifting from centralized to decentralized management systems will be borne.

For example, reworking the geographic organization of forest management will be required for institution of community forestry, but this will not be easy. The Forestry and Pastures Research Institute (FPRI), which falls under the Ministry of Agriculture and Forestry's General Directorate of Research and Training rather than the GDF, maintains the forest cadastre. The state forest is divided into 375 'working circles' (also called 'forest economies'). These are units for forest management, which are in turn subdivided into smaller circles, with management plans on file for each. Each district would have several circles, but such circles are purely for forest management purposes, and can cut across district and komuna

boundaries. While district boundaries have recently been mapped, many komuna boundaries are new and unmapped and are often defined by natural features. Village boundaries are better known at local level, and at least partial maps of village territories were prepared in connection with the land reform a few years ago. However, neither komuna mapping nor village mapping has been integrated with mapping of forest resources, except in local, special-purpose exercises, and pasture mapping is poor.

There is much in the present situation and attitudes regarding forestry in Albania that has its roots in a long tradition of state control of forests. In China, where local villages own the forested

lands in question, villages have experimented with a variety of approaches to local management, including common property arrangements. In Albania, there is no room yet for such experimentation; there is only a struggle to devolve some forest resources for local management. Significant institutional experimentation and reform appear to depend upon a state forestry bureaucracy with vested interests in the present system of state forestry.

Sources: FAO, 1992; Guyon, 1993a; Guyon, 1993b; FAO, 1994; Goussard, 1994; Ruzicka, 1994; Stanfield and Raco, 1994; Land Tenure Center, 1995.

SYRIA: ISLAMIC LAW AND COMMUNITY RESOURCE MANAGEMENT

The role of local authorities in resource management underwent a dramatic change in the years after independence in 1946. During their mandate (1925-1946), the French had recognized tribal authorities and territories and regulated these through special acts. Tribes were legally recognized and their territories mapped. Even before independence, land use on the steppe had begun to change in important ways. In the years after 1940, mechanization for wheat cultivation spread rapidly in these rangelands. The government of independent Syria considered nomadism a backward way of life, and nomads were pressured to settle. New villages were created and landholdings allocated. Boreholes and earth dam construction increased water availability for livestock. Act No. 166 of 28 September 1958 abolished the tribal administration and effectively brought an end to the hema system of tribal land use regulation in Syria. The provision of new water sources in the absence of social control of land use gave rise to widespread degradation of the land resource (Masri, 1991).

In 1965, Draz, then an FAO adviser in Syria, visited Saudi Arabia and observed the hema system. He was struck by its potential and the religious sanction behind the system. On his return to Syria he began to promote the restoration of tribal control of grazing. Act No. 140 prohibited the expansion of cultivation and ordered that in the future all state steppe grazing land was to be managed under Range Improvement and Sheep Husbandry Cooperatives (Draz, 1978). Masri (1991) describes the programme:

The cooperatives created under the decree were identified according to geographical distribution instead of by tribal name. Homogeneity of members was maintained. Cooperative boundaries were mapped. The cooperatives' hema were demarcated on the ground by piles of stones and by ploughed strips along the perimeters. The borders of the cooperative hema were announced in a ministerial decree. Cooperative boards were mainly elected from among the sheiks and arafeh

(dispute settlers) of the tribes. Individual licenses bearing the member's photo were distributed as grazing permits. Natural resources, such as trees on the range, were put under the supervision of the cooperative, marked and inventoried.

While a promising start was made, the programme lost its impetus through political changes. In 1974 the cooperatives became part of the Peasant Union, a syndicalist group that reoriented the programme towards water provision and other projects, rather than effective range management. There was widespread failure to enforce the prohibition of trespass on cooperatives' land, on the ground that revival of the system could revive tribal antagonisms. The hema system still continues to be applied effectively on private rangelands, and some cooperatives maintain the winter-summer rotation, though their hema areas are not guarded in their absence. The condition of the range has deteriorated (Masri, 1991).

Prospects for community forestry in Syria must be seen in the context of these experiences. A comprehensive report on the situation of forestry in Syria was provided by FAO in 1993 (Mekouar, 1993). Today, 723 000 ha (3.8 percent of the country's surface) is in forest: of this, 230 000 ha are in plantations and only 60 000 ha are judged to be productive. The Constitution recognizes state, collective (such as cooperatives and social organizations) and individual property. The Forestry Law of 1953 (Decree No. 66 of 21 September 1953) creates a presumption of state ownership of forest land. In practice, 99 percent of the forest land is considered owned by the state.

Sections 35 and 37 of the Forest Law allow people who live permanently in forest areas or within 5 km of their limits to use the neighbouring forest resources to the extent necessary to meet their own needs. This includes the grazing of animals, excluding goats and sheep. The process required, however, includes a decree for each

forest area, considering its carrying capacity, determining the use rights that may be appropriate. Such use must be licensed on an individual basis after an investigation. Mekouar (1993) observes that:

The above-described procedures are obviously too complicated for the users, costly for the administration and time-consuming for all. Actually they are, quite understandably, almost never complied with. In reality, the taking of fuel wood is always free, as is animal grazing in natural forests usually.

Section 87 of the Forest Law provides for the establishment of 'village forests'. It does not make it clear how such forests are to be established, or what property regime would exist for them. It simply provides that forest products legally taken from the forests pertaining to villages are to be distributed according to local customs and traditions. There are also provisions that villagers may carry out afforestation work on state lands in the vicinity of their villages, and

those who take part in the reforestation are to be entitled to use such land. Mekouar (1993) notes that no land has been allocated to villagers for reforestation and no real [economic as opposed to recreational] village forests have been created so far.

A draft of a new Forestry Act under consideration in 1993 did not mention village forests, and the draft contained a provision (Art. 33) stating that the transfer of state forest lands to local communities is normally forbidden (Mekouar, 1993).

The report concludes by recommending that government initiate either self-managed village forests or contractual arrangements between the state and local communities for co-management of forest, and, except where pressure on resources is exceptionally high, that it repeal the licensing requirement for customary use of forest products.

Sources: Syria, 1953; Draz, 1978; Masri, 1991; Mekouar, 1993.

Glossary

<i>adivasi</i>	native
<i>agdal</i>	pasture
<i>aldeas</i>	villages
<i>caseros</i>	villages
<i>chicleros</i>	chicle harvesters
<i>comisaridado</i>	elected official in charge of communal property
<i>comuneros</i>	community members
<i>cuartel</i>	district
<i>dépérissement</i>	strategy of gradually reducing state control
<i>Dina</i>	system of resource management
<i>ejido</i>	village-owned land
<i>ejidatarios</i>	ejido members
<i>haramayn</i>	sanctuary regions
<i>hema</i>	reserve (seasonal pasture) set aside to allow regeneration
<i>junta directiva</i>	village council
<i>junta general</i>	village assembly
<i>komuna</i>	local government
<i>ladinos</i>	areas inhabited by Europeanized inhabitants
<i>mouza</i>	tax region
<i>municipio</i>	township
<i>panchayat</i>	local government
<i>parcialidades</i>	family holdings
<i>pueblo</i>	town
<i>Seyfo</i>	chief
<i>terroire villageois</i>	village lands
<i>ujamaa</i>	communal productions
<i>van panchayat</i>	local government
<i>wakf</i>	Islamic charitable endowment

Bibliography

- Adhikari, J. 1990. Is community forestry a new concept? An analysis of the past and present policies affecting forest management in Nepal. *Society and Natural Resources*, 3: 257-265.
- Albania. 1992. Law on forests and the Forest Guard Service. Law No. 7623 of 13 October 1992. Tirana, Government Printer.
- Almeida, de, M.B. 1994. The creation of the Alto Jura extractive reserve: conflicts and alternatives for conservation - Brazil. *In* C. Pendzich, G. Thomas & T. Wohigenant, eds. *The role of alternative conflict management in community forestry*, p. 55-79. Forests, Trees and People Working Paper No. 1. Rome, FAO.
- Arnold, J.E.M. & Stewart, W.C. 1989. *Common property resource management in India*. Report to the India Agriculture Division, World Bank.
- Artz, N., Norton, B. & O'Rourke, J.T. 1986. Management of common grazing lands: Timahdite, Morocco. *In* *Proceedings of the conference on common property management, 21-26 April 1985*. Washington, DC, National Academy Press.
- Arzola, R.L. & Gerez Fernandez, P. 1993. The permanent tension. *Cultural Survival Quarterly*, Spring: 42-44.
- Azhar, R.A. 1989. Communal property rights and depletion of forests in northern Pakistan. *Pakistan Development Review*, 18(4): 643-651.
- Bagader, Abubakr Ahmen, Abdullatif Tawfik El-Chirazi El-Sabbagh, Mohamad As-sayyid Al-glyand, Mawil Yousuf Izzi-Deen Samarrai & Othman Abd-ar-Rahman Llewellyn. 1990. *Basic paper on the Islamic principles for the conservation of the natural environment*. 2nd ed. Joint publication of the International Union for Conservation of Natural Resources and the Meteorology and Environmental Protection Administration of the Kingdom of Saudi Arabia. Gland, IUCN.
- Baviskar, A. 1994. Fate of the forest: conservation and tribal rights. *Economic and Political Weekly*, 17 September 1994: 2493-2501.
- Benavides, M. & Paruiona, M. 1995. The forestry enterprise of the indigenous community of Nuevo San Juan Parangaricutiro. *In* *Case studies of community-based forestry enterprises in the Americas*. Papers presented at the Symposium on forestry in the Americas: community-based management and sustainability, University of Wisconsin-Madison, 3-4 February 1995. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Bloch, P.C. 1986. *Land tenure issues in river basin development in sub-Saharan Africa*. LTC Research Paper No. 90. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Bocoum, A. 1992. *Étude de cas de Boré: décentralization de la gestion forestière*. Bobo-Dioulasso, Atelier Regional sur les Codes Forestiers au Sahel.
- Bourbouze, A. & Rubino, R. 1992. *Terres collectives en Méditerranée; histoire, législation, usages et modes d'utilisation par les animaux*. Joint publication of Réseau FAO Ovins et Caprins and Réseau Parcours Euro-africain. Villa d'Agri, FAO.
- Bray, D.B., Carreon, M., Merino, L. & Santos, V. 1993. On the road to sustainable forestry. *Cultural Survival Quarterly*, Spring: 38-41.
- Brinkman, W. *et al.* 1991. Communal management of forest lands. *BOS Newsletter*, 10(1): 22-39.
- Bromley, D. 1992a. Property rights as authority systems: the role of rules in resource management. *In* P. N. Nemetz, ed. *Emerging issues in forestry policy*, p. 453-469. Vancouver, University of British Columbia Press.
- Bromley, D. ed. 1992b. *Making the commons work: theory, practice and reality*. San Francisco, Institute for Contemporary Studies Press.

- Bruce, J.W. 1976. *Land reform planning and indigenous tenures; a case study of the tenure Chiguraf-Gwoses in Tigray, Ethiopia*. S.J.D. dissertation. Madison, School of Law, University of Wisconsin-Madison.
- Bruce, J.W. 1993a. Do indigenous tenure systems constrain agricultural development? *In* T. J. Bassett & D.E. Crummey, eds. *Land in African agrarian systems*, p. 35-56. Madison, University of Wisconsin Press.
- Bruce, J.W. 1993b. The variety of reform: a review of recent experiences with land reform and the reform of land tenure, with particular reference to the African experience. *In* H.S. Marcussen, ed. *Institutional issues in natural resources management*, p. 13-58. International Development Studies Occasional Paper No. 9. Roskilde, Roskilde University.
- Bruce, J.W. & Fortmann, L. 1989. *Agroforestry: tenure and incentives*. LTC Paper No. 135. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Bruce, J.W. & Fortmann, L. 1992. Property and forestry. *In* P.N. Nemetz, ed. *Emerging issues in forestry policy*, p. 471-496. Vancouver, University of British Columbia Press.
- Bruce, J.W., Fortmann, L. & Nhira, C. 1993. Tenures in transition, tenures in conflict: examples from the Zimbabwe social forest. *Rural Sociology*, 58(4): 626-642.
- Bruce, J.W. & Freudenberg, M.S. 1992. *Institutional opportunities and constraints in African land tenure: shifting from a 'replacement' to an 'adaptation' paradigm*. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Bruce, J.W. & Harrell, P. 1989. *Land tenure reform in the People's Republic of China, 1978-88*. LTC Research Paper No. 100. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Bruce, J.W., Kamala, C., Kidata, A., Limbumba, T., Mgogolo, A., Nyakiha, A.W.M., Simba, I. & Sinda, S. 1994. *Individualization, titling, and registration of land rights and national land policy in Tanzania*. A study for the Ministry of Lands, Housing and Urban Development. Gainesville, Tropical Research and Development.
- Bruce, J.W. & Migot-Adholla, S.E., eds. 1994. *Searching for land tenure security in Africa*. Dubuque, Kendall/Hunt.
- Bruce, J.W., Rudrappa, S. & Zongmin, L. 1995. Experimenting with approaches to common property forestry in China. *Unasylva*, 180: 44-49.
- Bruce, J.W. & Tanner, C. 1993. Structural adjustment, land concentration and common property: the case of Guinea Bissau. *In* H.S. Marcussen, ed. *Institutional issues in natural resources management*, p. 101-112. International Development Studies Occasional Paper No. 9. Roskilde, Roskilde University.
- Cameroff, J. & Roberts, S. 1977. The invocation of norms in dispute settlement: the Tswana case. *In* I. Hammett, ed. *Social anthropology and law*. Monograph No. 14. American Society of Anthropologists, Academic Press.
- Casanova, R.V. 1990. *Derecho agrario*. 5th ed. Merida, Universidad de los Andes, Facultad de Derecho.
- Castellon, M. 1992. *Communal forest preservation in Totonicapan*. Master's thesis. Madison, University of Wisconsin-Madison.
- Central Committee of the Communist Party of China. 1984. Rural Work Document. Doc. No. 1 of 1984. Beijing.
- Cernea, M.M. 1988. Land tenure systems and social implications of forestry development programs. *In* L. Fortmann & J.W. Bruce, eds. *Whose trees? Proprietary dimensions of forestry*. Boulder, Westview Press.
- Chanock, M. 1985. *Law, custom and social order: the colonial experience in Malawi and Zambia*. Cambridge, Cambridge University Press.
- Chanock, M. 1991. Paradigms, policies and property: a review of the customary law of land tenure. *In* K. Mann & R. Roberts, eds. *Law in colonial Africa*, p. 63 -66. London, James Currey.
- Cheater, A. 1990. The ideology of 'communal' land tenure in Zimbabwe: mythogenesis enacted? *Africa*, 60(2): 188-206.
- Chhatre, A. 1994. Draft forest legislation; missing the wood as well as the trees. *Economic*

- and *Political Weekly*, 17 September 1994: 2473-2474.
- China. 1986. *The constitution of the People's Republic of China*. Beijing, Publishing House of Law.
- China. 1987. *Land administration law of the People's Republic of China, adopted at the 16th meeting of the standing committee of the sixth national people's congress and promulgated by order 41 of the president on June 25, 1986, effective January 1, 1987*. Beijing, Foreign Languages Press.
- Colson, E. 1971. The impact of the colonial period on the definition of land rights. *In* L.H. Gann & P. Duignan, eds. *Colonialism in Africa: 1870-1960*, vol. 3, Profiles of change: African society and colonial rule, p. 193-221. Cambridge, Cambridge University Press.
- Commander, S. 1986. Managing Indian forests: a case of the reform of property rights. *Development Policy Review*, 4: 325-344.
- Cornista, L.B. & Escueta, E.F. 1991. *Communal forest leases as a tenurial option in the Philippine uplands*. Institute of Agrarian Studies Occasional Papers Series No. 36. Laguna, University of the Philippines-Los Banos.
- Cruz, W. & de los Angeles, M.S. 1988. Forest and upland resources management: a policy framework. *Journal of Philippine Development*, 15(1): 1-13.
- Cultural Survival Quarterly. 1990. Land and Resources. 14(4).
- Cultural Survival Quarterly. 1995. Culture, resources, and conflict. 19(3).
- Davis, S.H. & Wali, A. 1994. Indigenous land tenure and tropical forest management in Latin America. *Ambio*, 23(8): 485-490.
- Demsetz, H. 1967. Towards a theory of property rights. *American Economic Review*, 57: 347-359.
- Diallo, M.D. 1995. *Insecurité foncière et gestion des ressources naturelles: la stratégie adoptée par le projet LTC-Guinée I*. Présentation du Centre Canadien d'Études et de Coopération Internationale. Atelier Regional sur la Problématique Foncière et la Gestion des Ressources Naturelles au Fouta-Djallon, Labé, 13-16 Fevrier 1995. Conakry, CECI.
- Draz, O. 1978. *Revival of the hema system of range reserves as a basis for the Syrian range development program*. Proceedings, First International Range Congress, Denver, Colorado.
- Draz, O. 1991. *The tradition of hema as a land tenure institution in arid land management: the Syrian Arab Republic*. FAO/ESH Working Paper on Pastoral and Agropastoral Societies No. 12. Rome, FAO.
- Eder, J.F. 1985. Agricultural development and social equity in the upland Philippines. *In* S. Fujisaka, P.E. Sajise & R.A. Castillo, eds. *Man, agriculture and the tropical forest: change and development in the Philippine uplands*. Bangkok, Winrock International.
- Eighmy, J.L. & Ghanem, Y.S. 1982. *The hema system: prospects for traditional subsistence systems in the Arabian Peninsula*. FAO/ESH Working Paper on Pastoral and Agropastoral Societies. Rome, FAO. Shortened version in *Culture and Agriculture*, 16 (Summer 1992): 10-11.
- Elbow, K. & Lawry, S. W. 1989. *End of tour report: forest policy and legislation*. Dakar, SECID/Louis Berger.
- Elbow, K. & Rochegude, A. 1990. *A layperson's guide to the forest codes of Niger, Mali and Senegal*. LTC Paper No. 139. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Espinoza, L. & Murillo, I. 1994. *Estructuras legales para el manejo de los recursos naturales de propiedad comun basada en la tierra*. San José, Centro de Derecho Ambiental y de los Recursos Naturales.
- FAO. 1992. *Albania: Forestry Sector review and forestry project*. Report on a reconnaissance mission by the investment centre, FAO/World Bank Cooperative Programme. Rome, FAO.
- FAO. 1994. *Albania: integrated forest management project*. Preparation report. Vol. 1. Report No. 15/94 CP-ALB 12, 8 February 1994. FAO/Investment Centre, FAO/World Bank Cooperative Programme. Rome, FAO.
- Feeney, D. 1992. Where do we go from here: a research agenda. *In* D. Bromley, ed. *Making the commons work; theory, practice, and*

- policy, p. 267-292. San Francisco, Institute for Contemporary Studies Press.
- Fischer, J.E. 1992. Charcoal production in the common woodlands in the Middle Senegal River Valley: conflict over land use rights. Typescript.
- Fischer, J.E. 1994/95. Tenure opportunities and constraints in Guinea; resource management projects and policy dialogue. *Land Tenure Center Newsletter*, 72: 1-7.
- Fischer, J.E. 1995. *Report on natural resource management practices and tenure constraints and opportunities in the Diafore watershed, Fouta Jalon, Guinea*. LTC Research Paper No. 122. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Forster, N. & Stanfield, D. 1993. *Tenure regimes and forest management: case studies in Latin America*. LTC Paper No. 147. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Fortmann, L. 1990. Locality and custom; non-aboriginal land claims to customary usufructuary rights as a source of legal protest. *Journal of Rural Studies*, 6(2): 195-208.
- Fortmann, L. & Bruce, J.W., eds. 1988. *Whose trees? proprietary dimensions of forestry*. Boulder, Westview Press.
- Fortmann, L. & Riddell, J. 1985. *Trees and tenure; an annotated bibliography for agroforesters and others*. Madison, Land Tenure Center, University of Wisconsin-Madison, and Nairobi, International Council for Research on Agroforestry.
- Freudenberger, M.S., REMAPS Institutional Collaborators & Local Collectives. 1993. *Land tenure, local institutions and natural resources in Senegal: synthesis*. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Ganapin, Jr., D.J. 1987. Forest resources and timber trade in the Philippines. *In Proceedings of the conference on forest resources crisis in the Third World, 6-8 September 1986*. Penang, Sahabat Alam.
- Gatmaytan, A.B. 1989. A critical appraisal of the social forestry program. *Philippine Natural Resources Law Journal*, 2(1): 9-12.
- Gerden, C.A. & Mtallo, S. 1990. *Traditional forest reserves in Babati District, Tanzania; a study in human ecology*. Forests, Trees and People Programme, Community Forestry Section, Ministry of Lands, Natural Resources and Tourism, Working Paper No. 128. Uppsala, International Rural Development Center, Swedish University of Agricultural Sciences.
- Gerden, C.A., Siria & Tobias. 1989. *Indigenous and government forest conservation in Ugogo*. Draft report. Government of Tanzania, Community Forestry Section, Forest Division.
- Gibbs, C., Payuan, E. & del Castillo, R. 1989. The growth of the Philippine social forestry program. *In* M. Poffenberger, ed. *Keepers of the forest: land management alternatives in southeast asia*. West Hartford, Kumarian Press.
- Gilles, J.L., Hammoudi, A. & Mahdi, M. 1986. Oukaimedene, Morocco: a high mountain agdal. *In Proceedings of the conference on common property resource management, 21-26 April 1985*. Washington, DC, National Academy Press.
- Goussard, J.J. 1994. Aide-memoire. Proposed integrated forest management project: pilot project for communal forest and pasture management. First preparation mission: 9-29 August 1994.
- Grisham, M. 1993. *Guatemala: communal forestry management among the southwestern highland Maya*. Draft. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Gueye, M.B. 1994. *Conflicts and alliances between farmers and herders: a case study of the 'goll' of Fandene village, Senegal*. Drylands Network Issue Paper No. 49. London, International Institute for Environment and Development.
- Guha, R. 1994. Forestry debate and draft forest act; who wins, who loses? *Economic and Political Weekly*, 20 August 1994: 2192-2196.
- Guiang, E.S. 1993. *Community-based forest management: its evolution, emerging prototypes, and experiences from the Philippines*. Paper presented at the Fourth Annual Common Property Conference, 15-19 June, Manila, Philippines.

- Guinea. 1989. Code Forestier. Ordonnance 081/PRG/SGG/89, 20 December 1989. Conakry, Secrétariat Général du Gouvernement, République de Guinée.
- Gulliver, P.H. 1979. *Disputes and negotiations: a cross-cultural perspective*. New York, Academic Press.
- Guyon, G. 1993a. *Report of the mission of Gaston Guyon in Albania, from 5 to 11 June 1993*. Albania Forestry Project, Community Forestry Component.
- Guyon, G. 1993b. *Report of the mission of Gaston Guyon in Albania, from 19 to 29 July 1993*. Second part of the mission. Albania Forestry Project, Community Forestry Component.
- Hardin, G. 1968. The tragedy of the commons. *Science*, 261: 1243-1248.
- Hardin, G. 1994. The tragedy of the unmanaged commons. *Trends in Ecological Evolution*, 9: 199.
- Heermans, J. 1985. The Guesselbodi experiment: bushland management in Niger. *Rural Africana*, 23/24: 67-77.
- Heermans, J. & Fries, J. 1992. Natural forest management in semi-arid Africa: status and research needs. *Unasylva*, 168(43): 9-15.
- Hendrix, S.E. 1995. Property law innovation in Latin America with recommendations. *Boston College International and Comparative Law Review*, 18(1): 1-58.
- Hendrix, S.E. 1996. *Legal structures for the management of land-based common property natural resources in Latin America*. LAC TECH Bulletin No. 17. Washington, DC, Agency for International Development.
- Hill, R. & Monaghan, J. 1987. *Continuities in highland Maya social organization: ethnohistory in Sacapula, Guatemala*. Philadelphia, University of Pennsylvania Press.
- Hoben, A., Bruce, J.W. & Johannson, L. 1992. *Rural land policy in Tanzania: issues paper*. Prepared for the World Bank.
- Hobley, M. 1992. *Policy, rights and local forest management: the case of Himachal Pradesh, India*. Rural Development Forestry Network Paper 13b. London, Overseas Development Institute.
- Hobley, M. 1995a. *Institutional change within the forest sector; centralized decentralization*. London, Rural Development Forestry Network, Overseas Development Institute.
- Hobley, M. 1995b. Personal communication, 13 July 1995.
- Holdsworth, W.S., Sir. 1903-1972. *A history of English law*. Vol. 3. London, Methuen.
- Howard, P. 1987. *Cooperation in a market context: the impact of recent rural economic reforms in China*. Paper presented at the Association for Asian Studies Annual Meeting, Boston, Massachusetts, 10 April 1987.
- Hughes, E. 1993. Women's role in community forestry in Nepal. *Tropical Resources Institute News*, 12(2): 47-50.
- Jacobs, A. 1980. Pastoral development in Tanzanian Maasailand. *Rural Africana*, 7: 1-14.
- James, R.W. 1971. *Land tenure and policy in Tanzania*. Dar es Salaam, East Africa Literature Bureau.
- James, R.W. 1976. Land tenure reform in developing countries: from westernization to indigenization. *East African Law Review*, 9: 1-46.
- Jodha, N.S. 1990. Rural common property resources - contributions and crisis. *Economic and Political Weekly*, 30 June 1990.
- Kulkarni, S. 1994. Proposed forest act: an assessment. *Economic and Political Weekly*, 23 July 1994: 1909-1912.
- Land Tenure Center, University of Wisconsin-Madison. 1995. *Albanian land markets*. Unofficial translation.
- La Vina, A.G.M. 1990. Democratizing access to forest resources: a legal critique of national forest policy. *Philippine Natural Resources Law Journal*, 3(1-2): 2-17.
- Lawry, S.W. 1985. Land tenure issues in livestock development and range management. In *Proceedings: Lesotho Land Act Policy Seminar*. LTC Paper No. 125. Madison, Land Tenure Center, University of Wisconsin-Madison.

- Lawry, S.W. 1988. *Private herds and common land in Lesotho, Southern Africa*. Ph.D. dissertation. Madison, Land Resources, University of Wisconsin-Madison.
- Lawry, S.W. 1990. Tenure policy towards common property natural resources in sub-Saharan Africa. *Natural Resources Journal*, 30: 403-421.
- Lazaro, M., Pariona, M. & Simeone, R.. 1993. A natural harvest. *Cultural Survival Quarterly*, Spring: 48-51.
- Lebot, I. 1976. Tenencia y renta de la tierra en el altiplano occidental de Guatemala. *Estudios Sociales Centroamericanos*, 13 (February/April): 69-95.
- Lehm, Z. 1994. The Chimanes forest: a stage for social conflict (1986-1993) - Bolivia. In C. Pendzich, G. Thomas & T. Wohigenant, eds. *The role of alternative conflict management in community forestry*, p. 87-109. Forests, Trees and People Working Paper No. 1. Rome, FAO.
- Lei Zhang & Sheng Di. 1993. Community forestry development, policies and legislation in China. In K. Warner & H. Wood, eds. *Policy and legislation in community forestry*. Proceedings of a workshop, 27-29 January 1993. Regional Community Forestry Training Center Report No. 11. Bangkok, RECOFTC.
- Lindsay, J.M. 1994. *Law and community in the management of India's state forests*. Lincoln Institute for Land Policy Working Paper. Cambridge, Lincoln Institute for Land Policy.
- Liu Shouying. 1995. Changes in the property rights system in mountainous regions and farm households' responses. In *Transition of China's rural land system: papers from international symposium on rural land issues in China*. Sponsored by Development Research Center of State Council, People's Republic of China, and Land Tenure Center, University of Wisconsin-Madison, 8-10 October 1992, Beijing. LTC Paper No. 151. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Luscombe, W. 1990. *Tanzania: forestry resource management project. Village surveys and titling, and resource information management components*. Appraisal Mission Working Paper. Washington, DC, World Bank Environment Department.
- Lynch, O.J. 1992. *Securing community-based tenurial rights in the tropical forests of Asia*. Issues in Development Report. Washington DC, World Resources Institute.
- Lynch, O.J. & Talbott, K. 1988. Legal responses to the Philippine deforestation crises. *New York University Journal of International Law and Politics*, 20(3): 679-713.
- Lynch, O.J. & Talbott, K. 1995. *Balancing acts: community-based forest management and national law in Asia and the Pacific*. Washington, DC, World Resources Institute.
- Masri, A. 1991. *The tradition of hema as a land tenure institution in arid land management*. Rome, FAO.
- McKean, M. & Ostrom, E. 1995. Common property regimes in the forest: just a relic from the past? *Unasylva*, 180 (1995/1): 3-15.
- McLain, R.J. 1992a. *Recommendations for a new Malian forest code: observations from the land tenure center's study of land and tree tenure in Mali's fifth region*. LTC Paper, No. 109. Madison, Land Tenure Center, University of Wisconsin-Madison.
- McLain, R.J. 1992b. *La gestion décentralisée des forêt de Boré et du Tarabé*. Programme Forestier de Douentza.
- McLain, R.J. 1993a. *Report on the LTC/CILSS Sahelian Forest Code Workshop, 18-20 January 1993, Bobo-Dioulasso, Burkina Faso*. Madison, Land Tenure Center, University of Wisconsin-Madison.
- McLain, R.J. 1993b. *Nialama classified forest management study: preliminary findings, Koundou Watershed, Guinea*.
- Meek, C.K. 1968. *Land law and custom in the colonies*. 2nd ed. London, Oxford University Press and Frank Cass.
- Megarry, R.E. & Wade, H.W.R. 1975. *The law of real property*. 4th ed. London, Stevens and Sons.
- Mekouar, M.A. 1993. *Mission report on forestry legislation in Syria*. GCP/INT/539/ITA. Rome, FAO.

- Menzies, N.K. 1988. A survey of customary law and control over trees and wastelands in China. *In* L. Fortmann & J.W. Bruce, eds. *Whose trees? proprietary dimensions of forestry*, p. 51-62. Boulder, Westview Press.
- Menzies, N.K. & Peluso, N.L. 1991. Rights of access to upland forest resources in Southwest China. *Journal of World Forest Resource Management*, 6: 1-20.
- Messerschmidt, D.A. 1986. Conservation and society in Nepal: traditional forest management and innovative development. *In* P.D. Little, M.M. Horowitz & A. Endre Nyerges, eds. *Lands at risk in the third world: local-level perspectives*, p. 337-397. Boulder, Westview Press.
- Messerschmidt, D.A. 1993. *Common forest resource management; annotated bibliography of Asia, Africa and Latin America*. Community Forestry Note No. 11. Rome, FAO.
- Mexico. 1991. Ley Agraria (D.O. 920811). Mexico City, Government Printer.
- Moore, S. F. 1978. *Law as process*. London, Routledge & Kegan Paul.
- Moorehead, R. 1989. Changes taking place in common-property resource management in the inland delta of Mali. *In* F. Berkes, ed. *Common property resources*, p. 256-272. London, Belhaven Press.
- Mumtaz, S. & Nayab, D. 1991. Management arrangements of the Chaprote forest and their implications for sustainable development. *Pakistan Development Review*, 30(4): 1075-1086.
- Mustafa, Z. 1971. *The common law in the Sudan; an account of the 'justice, equity and good conscience' provision*. Oxford, Clarendon Press.
- Nader, L. 1978. The direction of law and development of extra-judicial processes in nation-state societies. *In* P.H. Gulliver, ed. *Cross-examinations: essays in memory of Max Gluckman*. Leiden, E.J. Brill.
- Naylor, R. 1967. Guatemala: Indian attitudes towards land tenure. *Journal of Inter-American Studies*, 9(4) :619-639.
- Ndosi. N.d. Land tenure system in Tanzania. *In* A. Hoben, J.W. Bruce & L. Johannson, eds. *Rural land policy in Tanzania: issues paper*.
- Neeson, J.M. 1993. *Commoners: common right, enclosure and social change in common-field England, 1700-1820*. New York, Cambridge University Press.
- Ngaido, T. 1993. *Implementing the rural code: perceptions and expectations in rural Niger*. LTC Cooperative Agreement with USAID/Niger, Discussion Paper No. 7. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Niger. 1990. Arrêté No. 048/MAG/EL/CNCR du 16 Mai 1990, détaillant les droits d'usufruit accordés aux communautés villageoises qui participent à la gestion des ressources naturelles de leurs terroires. Niamey, Government Printer.
- Oakerson, R.J. 1986. A model for the analysis of common property problems. *In* *Proceedings of the conference on common property resource management*. Washington, DC, National Academy Press.
- Oakerson, R.J. 1992. Analyzing the commons: a framework. *In* D. Bromley, ed. *Making the commons work: theory, practice and policy*. San Francisco, Institute for Contemporary Studies.
- Ostrom, E. 1986. *Issues of definition and theory: some conclusions and hypotheses*. Panel on common property resource management, Board of Science and Technology for International Development, Office of International Affairs, National Research Council. Proceedings of the conference on common property resource management, 21-26 April 1985. Washington, DC, National Academy Press.
- Ostrom, E., Gardner, R. & Walker, J., eds. 1994. *Rules, games and common pool resources*. Ann Arbor, University of Michigan Press.
- Painter, T.M. 1991. *Approaches to improving natural resource use for agriculture in Sahelian West Africa; a sociological analysis of the 'aménagement/gestion des terroirs villageois' approach and its implications for non-government organizations*. CARE Agricultural and Natural Resources Technical Report Series No. 3. Washington, DC, PVO/NGO NRM Project, USAID.

- Pendzich, C., Thomas, G. & Wohigenant, T., eds. 1994. *The role of alternative conflict management in community forestry*. Forests, Trees and People Working Paper No. 1. Rome, FAO.
- Philippines. 1989. *Implementation manual for participatory ISF projects*. Quezon City, Upland Development Program, Forest Management Bureau, Department of Environment and Natural Resources.
- Pinctel, S. 1993. Some origins of French environmentalism: an exploration. *Forest and Conservation History*, 37: 80-89.
- Plant, R. 1994. *Land rights and minorities*. Manchester, Minority Rights Group International.
- Poffenberger, M. 1990. *The evolution of forest management systems in Southeast Asia*. West Hartford, Kumarian Press.
- Poffenberger, M., Bhattacharya, P., Khare, A., Roy, A., Roy, S.B., Singh, N. & Singh, K. 1996. *Grassroots forest protection: eastern Indian experiences*. Asia Forestry Network Report No. 7. Berkeley, Asia Forestry Network and the Center for Southeast Asia Area Studies, University of California.
- Poffenberger, M. & Singh, C. 1992. Emerging directions in Indian forestry policy: legal framework for joint management. *Wasteland News*, February-April: 4-11.
- Prosterman, R.L. & Hanstad, T. 1993. *Land reform in China: a fieldwork-based appraisal*. Seattle, Rural Development Institute.
- Rahmato, D. 1989. *Rural resettlement in post-revolution Ethiopia*. Paper prepared for conference on population issues in Ethiopia's development, July 1989, Addis Ababa, Ethiopia.
- Raintree, J., ed. 1987. *Land, trees and tenure: proceedings of an international workshop on tenure issues in agroforestry*. Madison, Land Tenure Center, University of Wisconsin-Madison, and Nairobi, International Council for Research on Agroforestry.
- Richards, E.M. 1992. *The forest ejidos of south east Mexico: a case study of participatory natural resource management*. Rural Development Forestry Network Paper No. 13c. London, Overseas Development Institute.
- Richardson, S.D. 1990. *Forests and forestry in China: changing patterns of resource development*. Washington, DC, Island Press.
- Rose, L. 1996. *Disputes in common property regimes*. LTC Paper No. 154. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Rose, L. & Isse, A.M. 1989. *Socio-ecological considerations in construction/maintenance of range reservoirs*. Report prepared for the Government of Somalia by the Food and Agriculture Organization of the United Nations. Rome, FAO.
- Roy, S.B. 1992. Forest protection committees in West Bengal. *Economic and Political Weekly*, 18 July 1992: 1528-1530.
- Royo, A.G. 1988. Regalian doctrine: wither the vested rights? *Philippine Natural Resources Law Journal*, 1(20): 1-8.
- Rudrappa, S. 1994a. *Legal issues involving community property resources: case study of India*. Draft. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Rudrappa, S. 1994b. *Legal issues in community forestry: the case of India and the Philippines*. Research Assistant paper written for J.W. Bruce. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Rudrappa, S. 1994c. *Legal issues in common property arrangements in the upland Philippines*. Draft. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Rugege, S. 1995. Conflict resolution in African customary law. *Africa Notes* (Institute for African Development, Cornell University), October: 1-3.
- Rui Mu. 1983. New developments in China's economic legislation. *Columbia Journal of Transnational Law*, 22: 61-76.
- Ruzicka, I. 1994. *Sustainability without a big stick: a study of forestry policy in Albania*. Cambridge, Harvard Institute for International Development.
- Sachs, A. 1983. *Introduction to the Mozambican land law*. Cambridge, Harvard University, Committee on African Studies.

- Sanchez Pego, M.A. 1995. The forestry enterprise of the indigenous community of Nuevo San Juan Parangaricutiro. *In Case studies of community-based forestry enterprises in the Americas*, p. 137-150. Papers presented at the Symposium on forestry in the Americas: community-based management and sustainability, University of Wisconsin-Madison, 3-4 February 1995. Madison, Land Tenure Center and Institute for Environmental Studies, University of Wisconsin-Madison.
- Schwartz, N. 1990. *Forestry society: a social history of Peten, Guatemala*. Philadelphia, University of Pennsylvania Press.
- Seidman, R.B. 1976. *The state, law and development*. London, Methuen.
- Sen, D. & Das, P.K. 1987. *The management of people's participation in community forestry: some issues*. Social Forestry Network Paper 4d. London, Overseas Development Institute.
- Sheehan, N. 1995. *Disputes and dispute settlement in the Gambia*. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Shepherd, G. 1991. The communal management of forests in the semi-arid and sub-humid regions of Africa: past practices and prospects for the future. *Development Policy Review*, 9: 151-176.
- Shepherd, G. 1993. Africa: semi-arid and sub-humid regions. *In* D.A. Messerschmidt, ed. *Common forest resource management: annotated bibliography of Asia, Africa and Latin America*, p. 99-192. Community Forestry Note No. 11. Rome, FAO.
- Silva, E. 1994. Thinking politically about sustainable development in the tropical forests of Latin America. *Development and Change*, 25: 697-721.
- Smith, R.C. 1993. Indians, forest rights and lumber mills. *Cultural Survival Quarterly*, Spring: 52-55.
- Society for Promotion of Wastelands Development (SPWD). 1992. *Joint forest management regulations update*. New Delhi, SPWD.
- Stanfield, J.D. & Raco, M. 1994. Creation of Albanian land markets. *Land Tenure Center Newsletter*, 71: 1-8.
- Stienbarger, D. M., Diop, B., Lo, H. & McLain, R.J. 1990. *Report on tree use rights and the potential impact of the proposed forestry code*. Senegal Afforestation Project, Land Tenure Policy Series, p. 17-18. Report submitted to Land Tenure Center, University of Wisconsin-Madison, in conjunction with USAID Project 685-0283.
- Stulberg, J. 1981. The theory and practice of mediation: a reply to professor Susskind. *Vermont Law Review*, 85(6): 91-94.
- Sun Changjin. 1990. Community forestry in southern China: from people for the trees to trees for the people. *Journal of Forestry*, 90(6): 35-40.
- Syria. 1953. The Forestry Law of 1953, Decree No. 66 of 21 September 1953.
- Tabachnick, D. 1994. *A review of natural resource laws and implementation of the land code in Guinea*. Report prepared for USAID/Guinea. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Tabachnick, D. & Bruce, J. W. 1994. *Forestry law reform: lessons from the Sahel and francophone Africa*. Draft. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Tanzania. 1991. *Report on evaluation of villages survey, demarcation and titling*. Draft translation. Dar es Salaam, Ministry of Lands, Housing and Urban Development.
- Tanzania. 1992. *Report of the presidential commission of inquiry on land matters*. Dar es Salaam, Government of Tanzania.
- Tanzania. 1995. *National land policy*. Dar es Salaam, Ministry of Lands, Housing and Urban Development.
- Tanzania African National Union (TANU). 1994. Party Directive on Economy and Social Development, 1987-1992: Section 74. Dar es Salaam, TANU.
- Tenga, R.W. N.d. *Pastoral land rights in Tanzania: a review*.
- Thomson, J.T. 1983. *Participation, local organization, land and tree tenure: future directions in Sahelian forestry*. Club du Sahel, Sahel D(83)190. Paris, OECD/CILSS.
- Upland Development Program, Forest Management Bureau. 1989. *Implementation manual for participatory projects*. Quezon City, Department of Environment and Natural Resources.

- van Donge, J.K. 1993. The arbitrary state in the Uluguru Mountains: legal arenas and land disputes in Tanzania. *Journal of Modern African Studies*, 31(3): 431-448.
- Veblen, T. 1978. Forest preservation in the western highlands of Guatemala. *The Geographical Review*, 68(4): 417-434.
- Villarreal, C. 1993. The creation of the Awá Indian territory - Ecuador. In C. Pendzich, G. Thomas & T. Wohigenant, eds. *The role of alternative conflict management in community forestry*, p. 115-152. Forests, Trees and People Working Paper No. 1. Rome, FAO.
- Wall, J.A. 1981. Mediation: an analysis, review and proposed research. *Journal of Conflict Resolution*, 25(1): 157-180.
- Weihe Bureau of Forestry. 1987. *A draft report on the development of the comprehensive reform in the Weihe Forestry Bureau of Heilongjiang Province*. Translation for the Research Center for Rural Development, Beijing.
- White, C.M.N. 1953. Terminological confusion in African land tenure. *Journal of African Land Administration*, 10: 124-130.
- Wily, L. 1996. Good news from Tanzania: village forest reserves in the making - the story of Duru-Haitemba. *Forests, Trees and People Newsletter*, 29 (November): 28-37.
- World Bank. 1988. *China: rural sector adjustment loan. loan implementation*. Vols. 1 and 2. Supplement to Report No. P-4801-CHA, The President's report and recommendation for a loan and credit to support rural sector adjustment in China. Washington, DC, China Department, Agricultural Operations Division.
- World Bank. 1990. *Tanzania forest resources management project: preparation mission*. Washington, DC.
- Yelling, J.A. 1977. *Common field and enclosure in England, 1450-1850*. Hamden, Archon Books.
- Zeng He. 1994. *Land issues in the Red Soils Development Project*. Visiting Fellow's Paper, draft. Madison, Land Tenure Center, University of Wisconsin-Madison.
- Zimbabwe. 1994. Report of the commission of inquiry into appropriate agricultural land tenure systems. Harare, Government Printer.

Related Community Forestry Publications

The Community Forestry Unit (CFU) and FTTP have developed a series of documents supporting the understanding of local tree and forest management and focusing on three aspects: tenure; institutional and legal analysis; and communal management. These materials address a range of issues related to communal management of tree and forest resources. It is intended that these documents will be relevant to policy-makers as well as practitioners in forestry programmes. The entire set of documents will be useful to universities and training centres.

Tenure. A concept paper examines and clarifies the issues of tenure related to community forestry (Community Forestry Note 5, *Community forestry: rapid appraisal of tree and land tenure*, 1989). A field manual presents rapid appraisal tools for field use Community Forestry Field Manual 4, *Tree and land tenure: rapid appraisal tools*, 1994). A case study from Nepal adapts and illustrates the use of the methodology to obtain tenure information useful for project management (Community Forestry Case Study 9, *Tree and land tenure in the Eastern Terai, Nepal. A case study from the Siraha and Saptari Districts, Nepal*, 1993). A case study from Madagascar illustrates the use of the field manual in policy level analysis (Community Forestry Case Study 10, *Tree and land tenure: using rapid appraisal to study natural resource management. A case study from Anivorano, Madagascar*, 1995).

Institutional and Legal Analysis. A concept paper analyses elements for understanding rules followed by stake holding groups related to attributes of the tree resource and to incentives or disincentives for community members to expand or to manage tree and woodland resources (Community Forestry Note 10, *A framework for analyzing institutional incentives in community forestry*, 1992). A field manual applies these concepts to field conditions for increasing successful

planning, implementation and evaluation of forestry activities (Community Forestry Field Manual 7, *Crafting institutional arrangements for community forestry*, 1997). A working paper is being developed which analyses the legal environments in which local forest management takes place and in what ways these often vulnerable systems can be supported through laws and regulations (to be published in 2000).

Communal Management. This group of publications starts with an analysis of relevant literature from Latin America, Asia and Sahelien Africa (Community Forestry Note 11, *Common forest resource management: annotated bibliography of Asia, Africa and Latin America*, 1993). This publication raised issues confirming that literature from the various sites in different or even the same regions was not comparable as consistent data had not been collected from site to site. FAO initiated development of a data collection list and a relational data base for organizing and analysing data, the International Forestry Resources and Institutions (IFRI) Programme, developed at Indiana University with the collaboration of a number of institutions and with an international network of research centres and researchers. A working paper about the information developed through IFRI has been published (Forests, Trees and People Programme Working Paper 3, *Forest resources and institutions*, 1998.) Another recently published study brings together available information about the role of common property as a system of governance and its present relevance to forest management and use. It reviews the historical record of common property systems that have disappeared or survived, examines the experience of selected contemporary collective management programmes in different countries, and identifies the main factors that appear to determine success or failure at the present time (FAO Forestry Paper 136, *Managing forests as common property*, 1998).

Community Forestry Publications

Community Forestry Notes

- 1 Household food security and forestry: an analysis of socio-economic issues, 1989 (Ar/E/F/S)
- 2 Community forestry: participatory assessment, monitoring and evaluation, 1989 (E/F/S)
- 3 Community forestry: rapid appraisal, 1989 (E/F/S)
- 4 Community forestry: herders' decision-making in natural resources management in arid and semi-arid Africa, 1990 (E°/F)
- 5 Community forestry: rapid appraisal of tree and land tenure, 1989 (E/F/S)
- 6 The major significance of 'minor' forest products: the local use and value of forests in the West African humid forest zone, 1990 (E°)
- 7 Community forestry: ten years in review, 1991 (E/F/S°)
- 8 Shifting cultivators: local technical knowledge and natural resource management in the humid tropics, 1991 (E/F/S)
- 9 Socioeconomic attributes of trees and tree planting practices, 1991 (E/F**/S)
- 10 A framework for analyzing institutional incentives in community forestry, 1992 (E/F/S)
- 11 Common forest resource management: annotated bibliography of Asia, Africa and Latin America, 1993 (E/F**/S**)
- 12 Introducing community forestry: annotated listing of topics and readings, 1994 (E)
- 13 What about the wild animals? Wild animal species in community forestry in the tropics, 1995 (E)
- 14 Legal bases for the management of forests as common property, 1999 (E)

Community Forestry Field Manuals

- 1 Guidelines for planning, monitoring and evaluating cookstove programs, 1990 (E/F/S°)
- 2 The community's toolbox: the idea, methods and tools for participatory assessment, monitoring and evaluation in community forestry, 1990 (E/F/S)
- 3 Guidelines for integrating nutrition concerns into forestry projects, 1991 (E/F/S)
- 4 Tree and land tenure: rapid appraisal tools, 1994 (E/F/S)
- 5 Selecting tree species on the basis of community needs, 1995 (E/F**/S)
- 6 Marketing information systems for non-timber forest products, 1996 (E)
- 7 Crafting institutional arrangements for community forestry, 1997 (E)

Community Forestry Case Studies

- 1 Case studies of farm forestry and wasteland development in Gujarat, India, 1988 (E)
- 2 Forestland for the people. A forest village project in Northeast Thailand, 1988 (E)
- 3 Women's role in dynamic forest-based small scale enterprises. Case studies on uppage and lacquerware from India, 1991 (E°)
- 4 Case studies in forest-based small scale enterprises in Asia. Rattan, matchmaking and handicrafts, 1991 (E°)
- 5 Social and economic incentives for small-holder tree growing. A case study from Murang'a District, Kenya, 1993 (E)
- 6 Shifting cultivators of Indonesia: marauders or managers of the forest? Rice production and forest use among the Uma' Jalan of East Kalimantan, 1993 (E/Vietnamese)

- 7 Peasant participation in community reforestation. Four communities in the Department of Cuzco, Peru, 1993 (E)
- 8 The impact of social and environmental change on forest management. A case study from West Kalimantan, Indonesia, 1993 (E)
- 9 Tree and land tenure in the Eastern Terai, Nepal. A case study from the Siraha and Saptari Districts, Nepal, 1993 (E)
- 10 Tree and land tenure: using rapid appraisal to study natural resource management. A case study from Anivorano, Madagascar, 1995 (E)
- 11 Shifting cultivation in Bhutan: a gradual approach to modifying land use patterns. A case study from Pema Gatshel District, Bhutan, 1995 (E)
- 12 Farmer experimentation and innovation. A case study of knowledge generation processes in agroforestry systems in Rwanda, 1996 (E)
- 13 Developing participatory and integrated watershed management. A case study of the FAO/Italy Inter-regional Project for Participatory Upland Conservation and Development (PUCD), 1998 (E)

Community Forestry Working Papers

- 1 The role of alternative conflict management in community forestry, 1994 (E)
- 2 Participatory approaches to planning for community forestry, 1995 (E)
- 3 Forest resources and institutions, 1998 (E)

Community Forestry Conflict Management Series

- Proceedings: electronic conference on “addressing natural resource conflicts through community forestry,” January-May 1996, (E)
- Integrating conflict management considerations into national policy frameworks. Proceedings of a satellite meeting to the XI World Forestry Congress, 10-13 October 1997, Antalya, Turkey, (E)

Community Forestry Guidelines

- 1 Women in community forestry: a field guide for project design and implementation, 1989 (E/F/S)
- 2 Integrating gender considerations into FAO forestry projects, 1994 (E/F**/S)

Community Forestry Audio Visuals and Slide Booklets

- Forestry and food security, 1993 (E/F/S)
- Fruits of our work: women in community forestry, Tanzania [slide booklet], 1991 (E)
- Gender analysis for forestry development planning - why? & how?, 1996 (E)
- Gender analysis for forestry development planning - why? & how? [slide booklet], 1997 (E)
- What is a tree?, 1994 (E/F)
- What is a tree? [slide booklet], 1995 (E)
- Women and community forestry in Sudan [slide booklet], 1991 (E)

Community Forestry Cartoon Booklets

- 1 Food for the future, 1990 (Bahasa/Burmese/Ch/E/F/Hindi/Lao/Malaysian/Portuguese/Sinhala/S/Vietnamese)
- 2 Our trees and forests, 1992 (Ch/E/F/S)
- 3 I am so hungry I could eat a tree, 1992 (Ch/E/F/S)
- 4 Fabulous forest factories, 1993 (Ch/E/F/S)

Other Community Forestry Publications

- Community forestry posters, 1997 (E)
- Forests, trees and food, 1992 (E/S)
- Forests, trees and people programme [brochure], 1998 (E/F/S)
- Forestry and food security [brochure], 1996 (E/F/S)

- Forestry and food security [poster], 1996 (E/F/S)
- The gender analysis and forestry training package, 1995 (E)
- People and forests: community forestry at FAO, 1997 (E/F/S)
- Restoring the balance: women and forest resources, 1991 (E/F/S)

FAO Forestry Papers

- 7 Forestry for local community development, 1978 (Ar^o/E/F/S)
- 64 Tree growing by rural people, 1985 (Ar/E/F/S^o)
- 79 Small-scale forest-based processing enterprises, 1987 (E/F^o/S^o)
- 90 Forestry and food security, 1989 (Ar/E/F/S^o)
- 136 Managing forests as common property, 1998 (E)

Ar – Arabic
S – Spanish

Ch – Chinese
** in preparation

E – English
^o out of print

F – French

Our publications and videos are available from your regional focal point:

- Anglophone Africa:** FTPP/FAN
Forest Action Network
P.O. Box 21428
Nairobi, Kenya
Fax: (254-2) 718398
E-mail: fan@fanworld.org
Internet: <http://www.ftpp.or.ke/>
- Central America:** Facilitador subregional para Centroamérica
Apdo. Postal 8198 - 1000
San José, Costa Rica
Fax: (506) 280-2441
E-mail: cbrenes@sol.racsa.co.cr
Internet: <http://polux.sdn.org.pa/~rfc>
- Europe:** The Editor, FTP Newsletter
Swedish University of Agricultural Sciences
Box 7005
S-75007 Uppsala, Sweden
Fax: (46-18) 673420
E-mail: daphne.thuvesson@lbutv.slu.se
Internet: <http://www-trees.slu.se/>
- Francophone Africa:** Facilitateur régional pour l'Afrique francophone
FTPP@IPD-AC
Institut Panafricain pour le Développement
B.P. 4078
Douala, Cameroun
Fax: (237) 403068
E-mail: ftppass@camnet.cm
- Latin America and Caribbean (Spanish):** Revista Bosques, árboles y comunidades rurales
Av. Manuel Gómez 634
Apartado 11-0152
Lince, Lima, Perú
Fax: (51-1) 265-0441
E-mail: ftpp@sifocom.org.pe
Internet: <http://www.cnr.org.pe/fao/index.htm>
- North America and Caribbean (English):** FTPP/NACARCE
North American & Caribbean Regional Center
5400 Grosvenor Lane
Bethesda, Maryland 20814, USA
Fax: (301) 897-3690
E-mail: istfiusf@igc.apc.org

- South Asia:** FTTP Facilitator for South Asia
FTTP@WATCH
Women Acting Together for Change
P.O. Box 5723
Baneshor, Kathmandu, Nepal
Fax: (977-1) 473675
E-mail: watchftp@wlink.com.np
Internet: <http://www-trees.slu.se/nepal/watchindex.htm>
- Southeast Asia:** FTTP@RECOFTC
Regional Community Forestry Training Center
Kasetsart University
P.O. Box 1111
Bangkok 10903, Thailand
Fax: (66-2) 561-4880
E-mail: ftccor@nontri.ku.ac.th
Internet: <http://www.recoftc.org/>
- Other regions:** The Senior Community Forestry Officer
Forestry Policy and Planning Division
Forestry Department
Food and Agriculture Organization of the United Nations
Viale delle Terme di Caracalla
Rome 00100, Italy
Fax: (39-06) 5705-5514
E-mail: ftpp@fao.org
Internet: <http://www.fao.org/waicent/faoinfo/forestry/ftpp/default.htm>