



**Searching:** The lessons learnt in other regions can be put to use in Africa Photo: J. McAlpine

## **Global trends in forest tenure** by Francesca Romano

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Globally, the majority of forests are still publicly owned; for most of these forests, management is conducted completely by the state or limited user rights have been granted. In all regions, a higher percentage of user rights to these forests are granted to private entities than to communities.

When it happens with a proper process, tenure reform offers many advantages and can have positive impacts on the achievement of sustainable forest management (SFM) and poverty alleviation; good examples exist, for example, in Tanzania, Central Asia (Mongolia), and Vietnam. In most cases, however, the forest sector is still very static and the majority of forest is managed by the state. Moreover, case studies in our global study reveal that when the reform process is inappropriate it does not achieve successful outcomes.

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There are some common issues across the regions. Quite often there is resistance from the state to change. This is particularly valid in high-value forests in countries where forests represent a real source of income for the state.

Another common issue is the availability of data. Many countries do not have complete data on the status of forest ownership. In FAO's 2005 global forest resources assessment, for example, neither Brazil nor Argentina were able to provide data on how much of their forest estate was public and private. Reliability and consistency are also issues: we try to use common definitions but this is not always possible; care needs to be taken,

therefore, when attempting to merge data and to compare between countries and regions.

Many countries face the problem of contradictory and un-harmonized policies; in particular, land and forest policies are often in contradiction or produce contradictory results on the ground. Also, in many cases a legal framework has been put in place but the incentive for people to go into this framework is limited. For example, the value of the resources made available to local people is often marginal, and agreements can be costly and time-consuming. Few people make the effort to go through the process when the benefits are unclear. So even when the legislation is in place there may be little change on the ground. The process used for tenure reform is as important as the tenure system chosen. It should be based on globally agreed principles and mechanisms; guidelines for such a process would be helpful.

## **Progress in Brazil** by Manoel Sobral Filho

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There are 227 Indigenous societies in Brazil—about 600 000 people. These people have rights to 107 million hectares of land, which is 13% of the national land area. The land rights of Indigenous people are recognized in the Constitution; the land titles of others are invalid if there are Indigenous people on the land. Indigenous land affords the highest level of forest protection in the Amazon. Demarcation of the land is very slow, however, which leads to encroachment and conflict. There is also insufficient support for economic development, so the people remain poor. There are many problems, even though they have legal entitlement to the land.

The Quilombolas—descendants of African slaves who escaped to form their own communities—are another marginalized group with land rights: the government recognizes their right to the land where they live but, again, the process is very slow.

The Amazon region covers 473 million hectares. Almost half (46%) of it is in conservation reserves or on Indigenous land. Theoretically, that leaves 54% for development. But there is a law that allows only 20% of a landholding to be developed for non-forest uses, so only about 10% of the Amazon is legally available for clearing. But there is plenty of illegal deforestation; moreover, there is a lack of security of tenure, and a lack of support for sustainable forest use. Thus, in Brazil we have good policies but poor implementation—good intentions and poor results.

The lack of economic development is leading directly to forest clearing. The 1-million-hectare Chico Mendes Extractive Reserve, for example, is supposed to be a model of sustainable development. Two thousand families there have the right to extract rubber, Brazil nut and other non-wood products in the reserve, but this does not generate enough money. So what are the people doing? They are raising cattle. It is ironic: Chico Mendes was murdered fighting ranchers; now the people there are ranching. Remember, there is very little legal land available for ranching in the Amazon, but already 70 million cattle are being raised there and numbers are growing twice as fast as they are in the rest of the country.

The problem in the Amazon is that there is no forest-based development, which leads to non-forest-based development and illegal deforestation. Some of the recommendations made at the Rio Branco conference, which are yet to be implemented, could help change the situation. They include:

- reducing or modifying regulations, including tax mechanisms, that impede the formation of CFES or make them uncompetitive;
- providing secure tenure and access to forest resources, including authority to make key decisions;
- building the capacity of the decentralized authority legally responsible for overseeing CFES; and
- establishing a fund to support SFM in the Amazon.

## **Collective forest reform in China**

**by Li Shuxin**

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There are two forest land ownership types in China: state-owned forest land, which accounts for 42.45% of the forest area, and collectively owned land, which accounts for 57.55%. China's forest cover was 8.6% in 1949; now it is 18.21%. Since the formation of the People's Republic of China, economic development can be divided into two phases. From 1949 to 1978, China adopted a planned economy in which government played a dominant role. In the second phase, since 1978, we have tried to establish a socialist market economy with

Chinese characteristics. In the first 30 years, forest cover grew from 8% to 12%. In the second phase—another 30 years—cover increased further, to 18.21%.

In 1998, there were huge floods, caused in part by deforestation. Also at that time, rapid economic development meant that China faced a timber-supply challenge because domestic production could not meet demand. In response, China launched six national forestry projects with the aims of protecting forests and increasing forest resources. This had an impressive effect, but many systemic problems were still evident in collectively-run forests, and farmers showed little interest in forests.

To address this, collective forest-tenure reform was initiated in 2004 in some southern provinces. The outcome has been quite positive: the reform has increased the enthusiasm of farmers for the forest and led to an increase in forest area and improved forest quality. In 2008, the Central Committee of the Communist Party of China and the State Council of the People's Republic of China issued a document on advancing forest-tenure reform across the country. Forest-tenure reform has become a top priority of all government (not just of the Forestry Department). The core content of the reform is to authorize land-use rights and tree ownership by farmers. The goals of the reform are to increase forest resources and increase farmers' income, ensure a good environment, and contribute to a harmonious society.

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To date, 28 provinces have issued documents that set out this reform, 30 provinces have designated organizations responsible for the reform, five provinces have finished the first-step reform, and 15 provinces are advancing towards this goal after successful piloting.

The elements of success include: government support; a process that respects the people's will; a reform process based on law; careful design of the reform; tailoring the reform process in light of the realities of specific regions; and the timeliness of the reform.

## **Forest and tribal tenure reform in India**

**by Arvind Khare**

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India has 300 million poor people, including most of its 90 million tribal people. Most tribal people live in or near forests; in many areas, poverty, forests, mineral resources and internal conflicts overlap. The fifth and sixth schedules of the Indian Constitution provide protection to tribal people from the alienation of their land and natural resources; the Constitution also provides social, economic, educational and political safeguards. Nevertheless, over many decades the



rights of tribal people to the forests were progressively weakened. Incremental, ad hoc responses such as joint forest management were ineffective. The creation of protected areas, and the exclusion of people from these areas, led to the loss of rights of many people. I was a complete violation of rights that were guaranteed by the Constitution.

In many districts, a mass movement of tribal people against this loss of rights resulted in violent conflicts. Civil-society organizations and tribal movements joined forces and started working together. In an affidavit to the Supreme Court on 21 June 2004, the Government of India admitted that: “the historical injustice done to the tribal forest dwellers through non-recognition of their traditional rights must be finally rectified”. This opened up political space and led to the enactment, in 2006, of the Forest Rights Act.

This is unfinished business, however. Most of the forest area is subject to claims. Therefore, the tenure must be clarified for the entire forest estate. There is also a need to streamline—to remove regulations so that people can use their resources.

The Indian experience has produced many lessons that are probably useful elsewhere. Conflicts are inevitable in the absences of rights. Law enforcement alone will not solve the problem and, eventually, an uneven distribution of power amongst stakeholders will find violent expression. Civil society can play a vital role: social organizers and civil-society organizations can help in finding more equitable solutions.

There are people in the forests in Asia, as there are in Africa. You cannot change that reality. Any tenure or management regime that excludes people will fail; I predict that carbon market initiatives that ignore people will also fail. If you exclude people you will only generate conflict and poverty and degrade human beings.

**Romano, in response to a question from the floor:** A major problem in implementing forest reform is that the legislation is often not designed for less-advantaged people, and some of the advantages of the reform are captured by the elite. The other one is capacity-building, which will vary according to the level. In central governments it is about getting them used to thinking about tenure reform; there are some signs that progress is being made, because such discussions would not have happened ten years ago. At the local level it is more a matter of building capacity to implement the legislation. Local communities often need help to respond to legal requirements such as the titling process. These are all aspects of capacity-building.

**Query from the floor to Sobral and Khare:** I have the impression you are portraying these communities as if everyone likes everyone else. Can you give some insight into the complexity between communities that hinder the simple transfer of rights?

**Sobral's response:** You say I have presented a picture of land reform in Brazil that is too rosy. But we are lucky because we have enough land for everybody. In the Amazon there are more than 450 million hectares of forest and only 20 million people, so there is enough land. It's true that, every year, a few dozen people are killed in land conflicts. But compare that with the number of people killed in criminal activity in São Paulo—it's many more. Governments have recognized the rights to land but they are not helping people to improve their livelihoods based on forests. So, more and more, these people are reverting to economic activities that lead to deforestation, and this causes conflict between the people and the government. We have to create conditions in which people can make money from the forests.

**Khare's response:** Unlike Brazil we don't have too much land in India. There are many problems. There is also a huge amount of work. But even if giving the tribal people rights to the land does not solve some of these problems, at least it gives them the right to the resource and a sense of belonging. Just from a purely human rights' perspective it is very much worthwhile.



Photo: J. McAlpine