



Tenure reform for better forestry: An unfinished policy agenda

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ABSTRACT

The global community is currently grappling with multiple and overlapping social and environmental threats. These include the climate emergency, COVID-19 and the threat of widespread hunger, and the accelerating loss of biodiversity. All of these threats point to an urgent need to restore and sustainably manage land and forests. Studies are pointing to the critical role of tenure reform, and in particular strengthening collective forest tenure, as an effective means to reduce deforestation, mitigate climate change, restore ecosystem services and maintain biodiversity. Since the 1970s, countries worldwide have attempted to better recognize the customary rights of local communities. Yet despite over 40 years of effort, collective forest tenure reforms have yielded only moderate results. This article draws on recent assessments conducted in 23 countries by the Food and Agriculture Organization of the United Nations (FAO) on community-based forestry and associated forest tenure regimes based on the internationally endorsed Voluntary Guidelines on the Responsible Governance of Tenure (the VGGT). The findings suggest that governments are increasingly giving legal recognition to community rights to use both timber and non-timber forest products for commercial purposes. Yet, the tenure provided to collective forestry is less robust than that held by companies and smallholders in a number of ways. These include fewer legal protections, more barriers to the use of these rights, inadequate access to justice, and less administrative support in documenting rights. Furthermore, in many cases the existing community forestry legal provisions are not implemented. The relatively successful cases suggest that with robust tenure, communities and smallholders can be potent vehicles for moving towards sustainable forest management and mitigating climate change, improving local livelihoods, contributing to timber and non-timber product economies, and achieving several of the Sustainable Development Goals. But for this, governments will need to strengthen community and local rights within their legal frameworks and mainstream implementation in government policies and practices. Non-governmental organizations, civil society organizations, donors, research institutions and academia can provide important support through policy implementation, research, and ensuring inclusive policy formulation processes.

1. Introduction

The global community is currently grappling with multiple and overlapping social and environmental threats. These include the climate emergency, coronavirus disease 2019 (COVID-19) and the threat of widespread hunger, and the accelerating loss of biodiversity. All of these threats point to an urgent need to restore and sustainably manage land and forests. Studies are increasingly pointing to the critical role of land and forest tenure reforms (Global Landscapes Forum (GLF) 2019),¹ and

in particular strengthening collective forest tenure, as an effective means to reduce deforestation, mitigate climate change, maintain biodiversity and restore ecosystem services (Fa et al., 2020a, Fa et al., 2020; Garnett et al., 2018; RRI, 2018; WRI, 2016).

Since the 1970s, there has been growing recognition worldwide of the positive role that communities have played in sustainable forest management. In response, many countries have attempted to diversify legal forest tenure arrangements in recognition of customary rights of local communities. Today, approximately 28% of forests in Africa, Asia

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¹ GLF 2019 concept https://www.globallandscapesforum.org/wp-content/uploads/bonn-2019/GLF_Bonn_2019_Concept_note.pdf

and Latin America are legally owned or designated for use by local communities including indigenous peoples (RRI, 2020). This figure encompasses communal territories of indigenous and traditional peoples and excludes areas under co-management regimes on public lands.

Numerous studies have attempted to document the effectiveness of collective tenure reforms on forest ecosystems and on local livelihoods. Meta-analyses reveal mixed results. Some collective forest tenure arrangements show success on both measures, while others show performance well below their potential on one or both of the dimensions (Arts and Konning, 2017; Pelletier et al., 2016; Baynes et al., 2015; Katila et al., 2014; Larson et al., 2008; Charnley and Poe, 2007; Pagdee et al., 2007). Despite over 40 years of implementation, why have these tenure approaches yielded only moderate results? To answer this question, this article draws on recent assessments conducted by FAO on community-based forestry and associated forest tenure regimes based on the internationally endorsed Voluntary Guidelines on the Responsible Governance of Tenure (often referred to as the VGGT) (FAO, 2012a).

2. Recent FAO research

In 2015, FAO developed two frameworks to assess progress in tenure reforms. The first, “Assessing the governance of tenure for improving forests and livelihoods” (FAO, 2019a), provides for a review of the robustness of forest tenure arrangements against the VGGT. The second, “A framework to assess the extent and effectiveness of community-based forestry”, allows for the assessment of the various enabling conditions and effectiveness of these tenure regimes for forests and livelihoods (FAO, 2019b). The first framework assessed forest tenure using five criteria: i) recognition of rights; ii) protection of rights; iii) enjoyment of rights, that is, support for rightsholders to benefit from their rights; iv) access to justice; v) prevention of conflict (e.g. from improper allocation of rights). Each of these criteria were assessed for the policy and legal provisions, level of implementation, and administration of tenure (documenting, recording, registering of rights). The second framework assessed CBF using two criteria for enabling conditions: i) institutionalization of CBF in government and civil society; and ii) legal empowerment of local stakeholders in terms of rights and responsibilities. The CBF assessment also evaluated effectiveness of the regimes in terms of their impacts on natural capital, institutional capital and financial capital. The assessments were conducted in collaboration with Forestry Departments and civil society organizations in 10 and 20 countries respectively.² Both assessments were conducted in seven of these countries. Thus, a total of 23 countries were assessed using at least one of the two frameworks. Three of these countries provided community forestry provisions in their forestry acts, but there had been no implementation. Countries were selected based on expression of interest by the government (forestry departments), research or academic institutions, or non-governmental organizations.

3. Findings

3.1. Legal limitations and unfinished reforms

The VGGT provide important guidance for improving the governance of land, forests, and fisheries. This includes guidance on how governance can contribute to the eradication of hunger and poverty, promote sustainable livelihoods, and help ensure social stability. To that

end, the VGGT call on governments to recognize all legitimate rights to land, forests and fisheries. They define as ‘legitimate’ both legal rights and other rights that are socially legitimate and widely accepted at the local level (FAO, 2012a).

3.1.1. Rights recognition

The assessment findings show that all 23 countries have adopted tenure reforms recognizing collective rights to forests as an important aspect of strengthening public participation in forest management. Until recently, such tenure reforms were often limited to the allocation of degraded forests for subsistence use of non-timber forest products (NTFPs). Over the past decade, governments are increasingly recognizing community rights to the use of NTFPs as well as timber for commercial purposes. However, the tenure reforms adopted continue to have many limitations, hence failing to incentivize communities or produce the expected results. In particular, forestry laws do not always specify the nature of the rights, continue to emphasize conservation over livelihood needs, and fail to recognize the prevailing customary rights. This creates disincentives for local participation and can generate conflict with other customary users.

For example, in Uganda, the National Forestry and Tree Planting Act of 2003 provides for a community forest tenure regime, but it does not specify community rights to timber and NTFPs (FAO, 2019c). The 1998 Land Act provides for recognition of community rights under Communal Land Associations. This Land Act provides communal rights to a full range of forest resources, however most foresters and communities remain unaware of these provisions. In Mongolia according to the 1992 Constitution, all forests are property of the State, and under the management of the Ministry of Environment and Tourism (FAO, 2019d). The 1995 Forest Law, amended in 2007, provides for granting of use rights to forest user groups. However the law does not recognize all existing customary rights. This is leading to conflicts between formalized forest user groups and mobile herders. Furthermore, communities are required to enter into contracts to access their traditional forests, develop management plans, submit yearly reports, and obtain permits to harvest fuelwood and NTFPs. Harvest of timber for commercial use is limited to trees planted by the user groups. Commercial timber may be harvested by government-authorized timber companies only. These myriad constraints have dissuaded communities from participating in collective forestry arrangements or, if participating, from complying with the rules.

3.1.2. Protection of rights

The protection of tenure rights is a critical factor for incentivizing long-term investments, such as planting trees. The VGGT call on States to protect rights from being eliminated or changed unilaterally and unfairly (FAO, 2012a). States may reduce or withdraw rights, but only for public purposes and following due process. Thus, States should consider alternatives prior to land acquisition, hold public consultations on proposed and final decisions on expropriations, and provide prompt and fair compensation.

Collective forests rarely have the same legal protections of their tenure rights that are typically accorded to industry or to farmers for their private lands. In particular, 19 of the 23 forestry laws provide little protection to collective forests from reduction or elimination of rights by the State. For example, in Republic of Kenya (2016) the Forest Conservation and Management Act (2016) notes that the Chief Conservator of Forests may terminate community forestry agreements with 30 days notice in case of the breach of the terms of the agreement. In Mongolia, forest user group contracts may be cancelled with no compensation if the government deems that communities have degraded the forest. On the other hand, there are no legal requirements for local consultation and consideration of customary tenure when allocating forests to businesses (FAO, 2019d). Likewise, in the Gambia, community forests are designated with Gazette notice and hence accorded security. However, community forests may be revoked without compensation if a Forest

² Forest tenure assessments were conducted in: China (Fujian Province only), Honduras, Mongolia, Portugal, Senegal, Sierra Leone, Tanzania, Uganda, Vietnam, and Zambia. CBF assessments were conducted in: Bhutan, Bolivia, Cameroon, Republic of Congo, Gabon, Gambia, Guatemala, Honduras, Kenya, Madagascar, Mongolia, Myanmar, Nepal, Panama, Peru, Portugal, Senegal, Tanzania, Uganda, and Zambia. Four cases were published and are available online: Honduras, Mongolia, Tanzania, and Uganda.

Department evaluation shows unsustainable management. In addition, countries that provide protection of rights in the law, do not always protect them in practice. In particular, of the 20 countries where community forestry was active, eight countries reported concessions on community lands that were operating without community agreement.

3.1.3. *Enjoyment of rights*

The VGGT note that States should facilitate the enjoyment of tenure rights through awareness raising, removal of unnecessary legal and procedural restrictions, providing various forms of assistance, or promoting production and investment models that encourage partnerships between businesses and local rightsholders (FAO, 2012a).

In practice, forestry laws contain numerous barriers to enjoyment of rights. In particular, of the 23 countries assessed, community forests in all, with the exception of China (Fujian Province), are facing common barriers. These include complex administrative procedures for obtaining legal recognition, high registration fees, requirements of complex forest management plans and forest inventories, expensive land mapping, onerous processes for obtaining permits for resource use, and high or multiple taxation on forest products (see also Larson and Pulhin, 2012). In the Republic of Congo, Uganda and Zambia, community forestry has been provided for in the forestry laws for 20, 17 and five years respectively, but as of the time of the FAO assessments no community forests had been created under these laws.

Furthermore, very rarely do countries facilitate formalization of collective tenure rights, or provide technical advice, access to loans and credits, or access to insurance and to markets. When countries do provide support, it is typically very limited and project-based, and hence, localized and short-term. This is evident in Tanzania (FAO, 2019e) and Uganda (FAO, 2019c). In Nepal, the Forest Act of 1993 has provided for relatively strong rights to forest user groups. These rights have been complemented with significant technical and financial assistance over the years and with consequent improvements in the mid-hill forests. But income generation remains relatively limited and localized, and with heavy dependency on foreign donors. China is the only exception where the government provides a wide range of support to community forests.

This situation is in stark contrast to the billions of dollars of support governments provide to large private companies for land access, production, processing, distribution, and sale of forest products. For example, with regard to land access, Notess et al. (2020) conducted a comparative analysis of 33 land formalization and acquisition procedures for communities and companies in 15 countries. They found that companies have a clear competitive advantage, with more accommodating regulatory frameworks, multiple legal options and well-funded, dedicated government offices for support. The analysis was done against eight issues: eligibility criteria and preconditions, time, monetary expense, size of lands that may be granted, duration of rights, granting of the rights in practice, maintenance of rights over time, and revocability of rights. Similarly, Overseas Development Institute research shows that government support to timber and other companies included: simplified access to good quality forests and at subsidized rates, funds for research and development, loans for plantation development and at favourable rates and repayment terms, subsidized electricity and fuel supply, financing of infrastructure such as roads and energy transmission, access to markets or government procurement that pay more than the free-market price, various tax exemptions and tax deferrals on investments, and free use of profits (McFarland et al., 2015). In Indonesia, such support for the timber industry was estimated at USD 5.8 billion annually. This reduces the cost of doing business for industry compared to communities and smallholders.

3.1.4. *Access to justice*

Access to dispute resolution systems is an important aspect of tenure security in case rights are breached. The VGGT call on States to provide equal access to formal dispute resolution systems such as judicial bodies that are affordable, accessible and provided in local languages (FAO,

2012a). For the poor, the vulnerable and women, they call on States to provide affordable legal aid, support of paralegals and mobile services for remote or mobile communities. The Guidelines also call on States to provide systems of alternative dispute resolution (ADR) (e.g. mediation, arbitration) at the local levels that provide a reliable and accessible means to quickly resolve disputes. These systems should be effective, enforceable, and recognized by formal dispute resolution bodies.

The analysis found that only four of the 23 countries provide for dispute resolution in forestry laws, and all of these are through existing ADR systems. While Civil Laws fill this gap in theory, in practice, cases related to forestry do not get sufficient attention. In addition, ADR systems even where strong are not always effective when the disputes are with outsiders or with the State. This is due to weak enforcement, lack of local knowledge of formal law, or when ADR decisions are not respected in formal courts. For example, in Sierra Leone, the Forestry Act (GoSL 1988) and draft Forestry Bill (GoSL 2015) are silent on mechanisms for resolving disputes (FAO, 2017). Tanzania provides strong ADR systems, but community forestry groups have been unable to have their concerns addressed when their community forests are converted to forest reserves. Likewise, in Vietnam a strong ADR system exists, but there is a disconnect between ADR and formal dispute resolution systems. In Honduras, the law provides for several formal mechanisms of dispute resolution, but they are located mostly in urban areas and conducted only in Spanish, rather than local (indigenous) languages (FAO, 2019f). Application of the Conciliation and Arbitration Law (2000) is also limited because centers are only located in major cities, environmental cases do not receive priority, and mediation agreements are not enforceable. Special prosecutor's offices are provided to serve women, ethnic and other marginalized groups, but they work with very limited resources. Some countries provide communities recourse when rights are reduced or terminated, but typically it is through the Forest Departments themselves, such as the Forest Service in Kenya. Such mechanisms do not provide neutral spaces for resolving disputes.

3.1.5. *Prevention of conflicts and proper allocation of rights*

The VGGT call on States to provide accessible and reliable recording systems for information on tenure rights. This is necessary to increase tenure security and prevent conflict. The VGGT call on States to provide backup systems in case original records are lost in natural disasters (FAO, 2012a). However, many forestry laws are silent on this. In particular, 14 countries made no mention of registration of community forest rights. Eight countries mention registration of community rights in the law, but the States provide no support. Instead, the systems for recording are excessively bureaucratic in all of these countries. Hence collective rights are often not registered, titled, mapped, or valued, leading to unsustainable open access use or de facto State control. For example, in Uganda the National Forestry and Tree Planting Act has provided for the recognition of community forest rights since 2003. However, guidelines for rights registration were not developed until 2007. To address challenges with implementation, the government with donor support in 2015 published simplified versions of the guidelines for popular use. Yet, no community forest has been registered to date (FAO, 2019c). In Portugal, over 90% of forests are held by smallholders and communities, but only 50% are registered and titled. Those that have received title are mainly smallholder forests (Skulska et al., 2019). Portuguese Law no. 75/2017 provides for the creation of an electronic platform for the registration of community forests (*baldios*), but it does not designate an institution responsible for its development and maintenance. Hence these lands are not demarcated, and many boundary conflicts prevail. Only China provides easily accessible support for registration of community forest rights.

In addition to the limitations of the legal frameworks, many other issues weaken collective forestry. These include weak government institutions to support tenure reform and implementation, weak community organizations, and lack of adequate information and awareness of communities regarding the tenure provisions. Many such tenure regimes

are supported by donors and non-governmental organizations under short-term projects rather than streamlined in government programs (see Monterroso and Larson, 2018a, 2018b for an example from Peru). As a result, very few collective regimes show significant improvements in forests and local livelihoods (Larson et al., 2019), especially at the national level. In the meantime, policy objectives set for collective forestry remain very ambitious with regards to performance on the environmental, livelihoods and financial indicators. These expectations are often higher for community forests than those set for State forests, company concessions and smallholder forests (FAO, 2016).

Finally, it is important to note that conflicting interests have delayed and obstructed this long-standing policy agenda. These include interests in forests as strategic resources for the State, and for conservation and environmental services. But they also include private interests and elite appropriation of land and resources (Adams, 2004; Larson and Ribot, 2007; Larson and Pulhin, 2012). There is also opposition both from those who see national development and “progress” as driven by large-scale private investments, and from conservationists who fear communities will act as drivers of deforestation (Larson and Springer, 2016).

3.2. Towards remedy: Some evidence of success

A comparative historical analysis of tenure reforms in Peru and Indonesia found that sympathetic governments, or actors within government, were important for breakthrough moments that overcame resistance to reforms supporting collective rights (Larson et al., 2017). These moments arose in response to political pressure. Sometimes a change in ideology, often fostered by grassroots movements and organizations, drove the creation of new laws and enabling conditions for collective forest tenure. Donor support has further facilitated such reforms.

The FAO assessments show that community forest tenure reform in 14 of the 23 countries has been effective with respect to reducing deforestation, illegal logging, wildlife poaching, forest or bush fires, agricultural encroachment, land grabs from outsiders, and over-exploitation of NTFPs at the local levels. In three countries there had been no implementation of community forestry to assess effectiveness (Republic of Congo, Uganda, Zambia), while in three others no data were available to assess impact. With regards to livelihoods and financial gains, all 20 countries where community forestry has been implemented show effectiveness in meeting subsistence needs. Only ten countries show effectiveness in generation of income; in eight of these countries the effectiveness was highly localized due to the limited scale of implementation and heavy reliance on donor funds. The cases discussed below show that strong rights to communities can improve forests and livelihoods. But this will happen only when the rights are accompanied by multi-dimensional support, such as protection of rights, and support to communities to ensure they benefit from those rights.

For example, China initiated forest tenure reforms in the 1980s by devolving forest rights to communities and strengthening their management rights. Starting from 2000, several provinces allowed communities to further allocate these forests to individual households (Xu et al., 2010). Communities have been given full rights to timber and NTFPs for subsistence or sale, and all taxes are eliminated including on timber. The government has set up one-stop service centers to facilitate the transfer of forest tenure rights, register rights, conduct forest asset appraisals, provide market information and micro-credit, issue logging permits, broker trade of forest products, provide technical support and extension services as well as skills training (FAO, 2012b, FAO, n.d.). Additionally, Fujian province provides communities and smallholders subsidies for tree planting, thinning and insurance, and funds to upgrade infrastructure for protection from forest fire and construction of roads to improve market access (Liu, 2016). As a result, reforestation increased by an average of nearly 10% across the provinces between 2000 and 2006, albeit in the form of plantations (Xu et al., 2010). This has provided an important source of raw material for domestic construction and

furniture industries, small-scale processing plants and for large-scale chip mills and paper plants (FAO, 2016).

Likewise, Vietnam has made legal provisions to facilitate community and smallholder access to forest lands and finances to establish plantations. Rightsholders are exempt from taxes and fees on land, can retain 100% of revenues from the sale of NTFPs, and can receive payments from ecological services (Le, 2016). Smallholder effectiveness in improving forests is significant, but community forestry reforms are too nascent to determine impacts. In Uganda, the Sawlog Production Grant Scheme, although largely donor supported, provides similar incentives for plantation forestry. It does so by providing security of rights, subsidies, technical support, and training to individual rightsholders and communities. This has led to the establishment of 42,108 ha and 3960 ha of plantations respectively (MWE, 2016). In China, Vietnam and Uganda however, support provided to communities is much less than that provided to smallholders.

4. Conclusion

Collective forest tenure reforms continue to be potent vehicles for moving towards sustainable forest management, mitigating climate change, improving local livelihoods, promoting rural development, and achieving several of the Sustainable Development Goals. New research is starting to show how secure forest tenure is helping communities provide critical food and livelihood security to their members in the COVID-19 pandemic context (CSD, CFRLA and AIFFM, 2020). But most such tenure regimes are performing significantly below their potential. This is despite the increasing government recognition for community rights to use NTFPs as well as timber for commercial purposes. An analysis based on the VGGT suggests that most legal frameworks fail to provide sufficiently robust tenure to communities. Forestry laws do not always specify the nature of the rights recognized, continue to emphasize conservation over livelihood needs, and fail to recognize prevailing customary rights. A majority of the forestry laws also do not provide the necessary legal protections, remove barriers and facilitate enjoyment of these rights, provide formal and informal means of access to justice, and support tenure administration with regards to recording and registration of rights. Furthermore, in many cases the existing legal provisions are not implemented.

The relatively successful cases such as China (Fujian), Uganda, and Vietnam suggest that with well-developed tenure arrangements, communities and smallholders can dramatically improve forests and promote rural development. But for this, governments will need to strengthen collective and local rights within their legal frameworks and mainstream their implementation in government policies and practices. Non-governmental organizations, civil society organizations, donors, research institutions and academia can also help strengthen collective forest tenure by providing relevant research to guide collective forest policies, ensuring good implementation, and ensuring forest owners and users are included in policy formulation processes.

Declaration of Competing Interest

None.

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