PUBLICATION INFORMATION

Community rights to forests in the tropics: Progress and retreat on tenure reforms[1]

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Book chapter forthcoming in: M. Graziadei and L. Smith, eds., *Comparative Property Law: Global Perspectives* (Cheltenham: Edward Elgar, 2016).

Introduction

Rights to forests have been contested for hundreds of years, and the vast majority of the world's forests (approximately 73%) are, by statutory law, public property (RRI, 2014). Who should own or manage forests is repeatedly debated, while deforestation and degradation still characterize the vast majority of tropical forest regions (FAO, 2010). These questions may have increasing importance in the 21st century: forests are central to climate change issues, as both source and sink for carbon emissions, they are susceptible to extreme events and to gradual change, and they are essential for ecosystem services and the resilience of human populations, including some of the poorest on the planet. Though urbanization has led to decreasing pressures on forests in some areas, pressure is likely to rise due to investments in forest lands (see Alforte et al., 2014) and a growing global population.

Around the world forests were centralized under state ownership over time through a series of processes that have been discussed extensively elsewhere (Peluso, 1992; Harrison, 1992; Sunderlin, 2011). Particularly since the 1800s, customary forest rights were denied and practices were criminalized particularly by colonial governments in Asia and Africa and independent states in Latin America under both timber and wilderness policies. See, for example, Guha (2001) and Gadjil and Guha (1995) on India, Springate and Blaikie (2007) on India and Nepal, Peluso (1992) on Indonesia, Peluso and Vandergeest (2001) on Indonesia, Malaysia and Thailand and Neumann (1998) on Africa (see Alden Wily and Mbaya, 2001 for an overview in over a dozen countries in east and southern Africa).

But a recent increase in reforms that devolve rights – in multiple ways – to forest dwellers has been notable (Sunderlin et al., 2008; Larson and Dahal, 2012; RRI, 2012, 2014; RRI and ITTO, 2009). The formal redefinition of rights to forests among different right holders at various levels has been defined as forest tenure reforms (Larson et al., 2010a). The recognition of local rights has its roots in a long history of indigenous

[1] Acknowledgments: We thank the editors for useful comments on an earlier draft of this chapter. The chapter has been produced with the financial assistance of the European Union, as part of the Commission´s support to the CGIAR with funds administered by the International Fund for Agricultural Development, Rome, Italy. Any views expressed are those of the authors. They do not necessarily represent the views of CIFOR, the editors or the financial sponsors.

management systems, national and international human rights movements, as well as in trends toward democratization and decentralization since the 1980s and the recognition of the failure of centralized forest management (Ribot and Larson, 2012; Sunderlin, 2011; Larson and Dahal, 2012).

Reasonably reliable, systematic comparative data on statutory forestland ownership is only available since 2002 and is not complete yet[2]. In the period from 2002 until 2013, the area of forests owned and administered by governments has declined globally from 78% to 73% of forests, while the areas designated for indigenous people and communities, or owned by indigenous people, communities or individuals and firms, has increased (see Table 1). In low and middle income countries, the area owned and administered by the state dropped 10%, while the percent owned by indigenous peoples and communities grew from 18% to 24%, and the government areas designated for their use doubled from 3% to 6% (RRI, 2014).

Table 1. Percent of total forest estate under tenure regime type

Tenure Regime Type	Global trends		Low and Middle income countries (LMIC)	
	2002	2013	2002	2013
Government owned and administered	77.9	73.0	71.4	61.3
Government owned and designated for indigenous peoples and communities	1.5	2.9	3.0	6.1
Owned by indigenous peoples and communities	9.8	12.6	18.2	24.0
Owned by individuals and firms	10.9	11.5	7.4	8.7

Source RRI (2014)

Reforms have also been more substantial in Asia and Latin America, where communities now own or have been designated a total of 37% and 39%, respectively, of the forest estate (Table 2).

Table 2. Percent of forest estate by tenure regime type for three world regions

Tenure Regime Type	Africa	Asia	Latin America
Government owned and administered	93.7	60.9	42.9
Government owned and designated for indigenous peoples and communities	5.9	6.0	6.2
Owned by indigenous peoples and communities	0.0	30.6	32.9
Owned by individuals and firms	0.3	2.5	17.9

[2] Data collection as of 2014 included 52 countries and covering almost 90% of the global forest estate (RRI 2014).

Source RRI (2014)

Nevertheless, the largest increase occurred from 2002 to 2008, while in comparison, there appears to have been a slowdown in rights recognition from 2008 to 2013. For example, the increase in area owned by indigenous peoples and communities in low and middle income countries grew 67% in the first period, but only 11% in the second (RRI, 2014). Also, the reform data presented by RRI refer to legal reforms: this does not guarantee that the areas granted do not have overlapping rights, that the rights are secure or that those who have been granted rights are able to exercise them fully (Meinzen-Dick and Mwangi, 2008).

This review places the discussion around forest tenure reform processes in the context of historical and current debates, the interests that underlie them and the main challenges to defining tenure rights in forestlands. The following section briefly discusses the nature of tenure rights in tropical forests. Section 3 explores the role of the state as both a competitor for forests and the entity in charge of the public sector and protecting the rights of citizens. This is followed by a brief look at the history of forest rights in Peru and Indonesia. These two countries illustrate a broad range of forest tenure reforms that have been applied globally. They represent a spectrum of rights from full ownership by indigenous or customary communities, through private/individual rights, to shared rights and management between state and communities. Section 5 summarizes the cases and discusses the obstacles and opportunities for reform. This is followed by a short conclusion.

The nature of tenure[3] rights in tropical forests

This section is aimed at understanding the nature of tenure right regimes in forests and forests lands as they relate to *de jure* and *de facto* rights in practice. A statutory or *de jure* right concerns a set of rules established and protected by the state (e.g. registered land titles, concession contracts, forestry laws and regulations). *De facto* rights are patterns of interactions established outside the formal realm of law. They include customary rights, a set of community rules and regulations inherited from ancestors or developed locally that are accepted, reinterpreted and enforced by the community, and which may or may not be recognized by the state.

Property is often formally classified as either public or private. Public land – generally understood to mean “state land” (though some argue that public land is owned by “the public” with the state as manager) – may, in turn, be owned by central governments, state or provincial governments in federal systems or municipal/local governments. Private land usually refers to land titled to an individual, a group of individuals or a corporation.

[3] In theoretical literature, the concepts of ‘property’ and ‘tenure’ are largely interchangeable. Nevertheless, following Ellsworth (2002) and Larson (2012), this article uses property rights to refer to the idea of full ownership and tenure to refer to different configurations of the bundle of rights. This is partly to avoid confusion, for example, with the ‘property rights school,’ which refers to a particular economic perspective supporting individual property rights (as defined by David Ricardo, Hernando de Soto and others). The bundle of rights refers to access, use, management, exclusion and alienation rights (Schlager and Ostrom, 1992).

Open access is also sometimes mentioned as a type of land tenure category, but the land is still *formally* either public or private. Open access thus refers to a type of management regime (or, in particular, the absence of management), or a set of rights that is not enforced.

Common or communal property is often mentioned as a separate category of land tenure but in fact, in spite of its distinct characteristics, is usually either public (on state land, with or without formal recognition) or private (the private property of a group, McKean, 2000)[4]. In forest areas, communities may have private land titles, as in indigenous territories in Bolivia or the Philippines, or they may have other kinds of land grants. These grants may be temporary, such as through projects, conditional programs or concession contracts (such as community forest concessions in the Democratic Republic of Congo or Cameroon), or permanent, through national constitutions or laws (as in indigenous lands in Brazil and Panama). Grants made by lower level legal instruments such as presidential or ministerial decrees may be more easily rescinded, even if they are stated to be permanent.

These classifications, however, only refer to the land. In many cases, rights to forests and trees are tied to land rights. In other cases, though, these rights may be separate, such that one actor or entity may hold the land rights while another holds the forest resource rights. For example, a community may be granted land rights, but the state can still grant private logging concessions in their forests. Such concessions may or may not require local consent. In Ghana, for example, a 1962 law vested all rights to trees in the president, but the 1997 Timber Resource Management Act redefined those rights, such that timber rights on land with titles or farms can no longer be granted without the written authorization of the individual, group or owner concerned (Marfo, 2009). In Uganda, a reserved tree species policy stated that certain high value trees were owned by the state, even if they were located on private land (Banana, pers. comm.)

Conversely, people may have *de jure* rights to trees but not to the land. For example, under Ghana's Modified Taungya System, the state owns the land, but those who plant the trees have the right to a portion of future income from their sale. There may also be different rights associated with trees that have been planted or that are naturally occurring and with regard to the type of land (e.g. common or family) on which they occur (Marfo, 2009).

In some cases, rights to trees may be more important for communities than rights to land per se. In Pando, Bolivia, where the main source of livelihoods is Brazil nuts, a system of customary rights to networks of trees has evolved. As legal rights have been established through land titling in recent years, communities had to work with surveyors, who tend to prefer straight lines, to make sure that complex tree harvesting routes were included in the correct community title (Cronkleton et al., 2009).

[4] Nevertheless, commune land in China is not considered to be either public or private (Ruiz Peréz, pers. comm.). In China, commune land is collectively owned land and can be leased to individuals or private companies, but it cannot be sold.

De jure tenure regimes, in general, define the distribution of rights and responsibilities between the state and local communities (and, of course, the private sector). These are likely to vary across the landscape. For example, Ojha et al. (2008) provide an interesting analysis of state versus community rights – referred to as power sharing – under six different *de jure* forest regimes in Nepal (community forestry, collaborative forestry, leasehold forestry, watershed management, buffer zone forestry and integrated conservation and development).

Finally, *de jure* regimes by definition depend on the state, and therefore the characteristics of those regimes are strongly influenced by the nature of the state: e.g. levels of corruption, rule of law, the independence and fairness of courts, etc. It is not particularly surprising that in weak or corrupt states, or in distant regions where there is little state presence, informal or customary arrangements may be more important for local people. It is not possible to address the extensive literature on customary rights in this chapter; we will refer only to those aspects most directly relevant for understanding tropical forest tenure.

Many aspects of forests, such the specifics of rights to trees or even to parts of trees (Fortmann, 1985), or the meaning of tree planting, are likely to have many dimensions beyond the realm of formal law. In addition, the practice of rights in general is far more complex than formal classifications suggest. That is, the bundle of rights is likely to include a combination of rights that are defined by statutory law (*de jure*) and rights that are defined locally, through *de facto* or customary institutions.

Customary land claims may challenge the validity even of the broad public-private categories established by law. In particular, many traditional groups argue that their customary rights have greater legitimacy than the state's legal claim, among other things because they predate the existence of the state. In Nicaragua, for example, indigenous leaders rejected the first land titles they were granted because they were written in such a way that affirmed the state's authority to do the granting (CEJUDHCAN, 2006; Larson et al., 2008). More remote traditional communities in Indonesia and elsewhere have long enjoyed their right to govern by custom without state interference (Colfer and Pfund, 2011; Scott, 2009).

The role of the state

The state plays a central role in relation to forest tenure rights. In any particular setting, however, the specific role played by the state, or by any particular actor within the state bureaucracy, is influenced by a number of factors.

In general, the state is seen as having several mandates that relate to natural resources and forest peoples in developing nations. They include: the generation of wealth, jobs, etc., for development; the protection of the nation's natural wealth for future generations (enforcing natural resource laws and regulations); the protection of property rights; the guarantee of citizen's basic rights; and, with efforts such as the United Nations' Millennium Development Goals, the effort to alleviate poverty and guarantee food security in light of a changing climate.

Though the state has a mandate to play these roles in the interest of the population, in practice, of course, the state is rarely a neutral facilitator and, rather, constitutes another interest group – or many interests and interest groups within a differentiated state and state bureaucracy – in relation to natural resources. This is particularly apparent in relation to forests, given that states are according to statutory law, globally, the primary owner of forests. In addition, the powers of the state may be misappropriated for corrupt ends such as personal enrichment (Kolstad and Søreide, 2009).

These multiple and contradictory roles have implications for forest tenure rights in a number of ways. They can be simplified into two tendencies that largely explain state ownership and control both historically and today. On the one hand, forests are seen as common, public goods and strategic resources that needed both protection and "rational use" in order to provide goods, services and income for the present and the future; on the other, rights to forests and forest resources consistently tend to favour elite interests over others (Adams, 2004; Larson and Ribot, 2007; Larson and Pulhin, 2012). The public goods argument is a common justification for state control and can be seen as the result of reasonable concerns and debates about the best way to conserve forests, including maintaining timber supplies, in relation to the first two mandates mentioned above. The role of elite interests, however, involves more questionable motives. The challenge is to separate out the theoretical debates and scientific evidence regarding the former from the use of one particular (centralist) perspective as a justification for the latter (Larson et al., 2010b).

These contradictions have a number of implications with regard to forest tenure rights, since states (or state actors) may compete with communities over forest resources. Even when they grant new forest rights to communities, states (or state actors) may try to maintain control. The state's residual rights are not always a problem, but they are particularly problematic if abused by politicians or corrupt forestry officials.

Competition with communities can be seen in the granting of logging rights in indigenous territories in Nicaragua, or in the granting of rights to convert forest to palm oil plantations in the customary areas claimed by communities in Indonesia. In the former case, the government of Nicaragua regularly granted logging concessions in indigenous territories, even after the right of indigenous people to their traditional territories was established in the Constitution. A legal challenge to one such concession led to the landmark decision, in 2001, by the Inter American Court of Human Rights to require the government to demarcate and title indigenous territories (Anaya and Grossman, 2002).[5] Even then, the government dragged its feet for another five years before issuing the first title (Larson and Mendoza-Lewis, 2009).

The problem of ongoing state competition and control is manifested in a number of ways. For example, in the granting of rights to communities, important state actors have backed

[5] Inter-Am. C.H.R., The Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of Aug. 31, 2001.

competitors with communities, or failed to defend the exclusion right granted with title. In Guarayos, Bolivia, the forestry authority renewed several private logging concessions on traditional lands that were claimed by the Guarayos people and were in the process of demarcation; this decision undermined confidence in the titling process, in the indigenous organization representing the Guarayos people and in the government institutions involved (Cronkleton et al., 2009). In the Petén, Guatemala, the state initially backed a park expansion project that would have shut down several community forestry concessions (Monterroso and Barry, 2009).

In other cases state control is seen through regulation, or through co-management arrangements that fail to give communities any substantial decision-making rights (Cronkleton et al., 2010). Researchers have demonstrated that decentralization and devolution policies in India and in the Philippines have resulted in the state obtaining greater control over communities rather than greater local decision making (Edmunds and Wollenberg, 2003). Regulations may be a way to protect forests or to obtain revenues, maintain bureaucratic power or line pockets. In Senegal, forestry personnel fail to implement the law establishing community rights to decisions over forest use permits (Ribot, 2009). In Nepal, foresters establish their own requirements for community compliance, over and above the regulatory requirements (Paudel et al., 2008).

States can also play a very positive role in reform. Forest legislation and government programs in Mexico were central to the development of subsidies, training and markets for what is now a substantial sector of community forestry enterprises (Bray et al., 2006). Important state actors defended the rights of traditional communities under the Forest Rights Act in India and sought to overcome resistance from forestry officials (Reddy et al., 2011). If reforms are to lead to the formal recognition of forest tenure rights, and to tenure security and the ability to exercise those rights, state support is needed for their design and implementation.

Forest tenure reform in Indonesia and Peru

This section examines two countries that are part of a research project on forest tenure security and obstacles to reform that the Center for International Forestry Research (CIFOR) initiated in 2014[6]. These two countries, Indonesia and Peru, are forest-rich, with 94 and 68 million hectares of forest, respectively, representing just over half of the land area in each (FAO, 2010). Population densities are very low in Peru (23 people per km2), and very high in Indonesia (125 per km2). See Table 3.

Each of the cases traces the history of forests, forest land and related rights, pointing out key moments of reform, the drivers for change and current challenges. In Peru, forests are the property of the state, although important areas of the Amazon have been included in indigenous territory titles under usufruct rights (*cesion en uso*). In Indonesia, a 2013 court ruling recognized customary forests for the first time, though these do not yet exist in

[6] The Global Comparative Study on tenure will study forest tenure reform processes in six countries. See http://www.cifor.org/corporate-news/cifor-embarks-on-new-global-comparative-study-on-tenure-security/.

practice. In spite of differences, the forest histories of these two countries demonstrate common challenges for forest-based communities.

Table 3. Area of total forest estate under tenure regime type (in millions of hectares)

Tenure Regime Type	Peru*		Indonesia	
	2002	2013	2002	2013**
Government owned and administered	57.12	52.14	97.7	91.7
Government owned and designated for indigenous peoples and communities*	1.57	3.52	0.22	1.00**
Owned by indigenous peoples and communities	10.52	15.6	0	0
Owned by individuals and firms	5.29	1.95	1.49	2.73**

Source RRI (2014)
*RRI data includes only native and not peasant communities (see Peru case below).
** Official statistics from the Ministry of Forestry (MoF, 2014) reports a total forest area of 127.03, area designated to communities as 1.4 and owned by individual and firms, 3.5 (see Indonesia case below).

The case of Peru[7]

According to the Ministry of the Environment, 95% of Peru's forests are located in the Amazon region (MINAM, 2014). These forests are not only highly biologically diverse, but they are also the source of livelihood for more than 50 ethnic groups that have lived there since before the creation of the Peruvian state.

Beginning in the mid-nineteenth century, the state promoted the colonization of the Amazon by Europeans and, later, primarily by people from other regions of Peru (Chirif, 1975; Hvalkof, 2002). The state offered multiple incentives, including free land and tax exemptions to promote investment and the exploitation of the region's natural resources (Chirif and Garcia Hierro, 2007). For example, during the rubber boom of the early twentieth century, rubber entrepreneurs were granted large extensions of land; ignoring indigenous land rights facilitated rubber traders' access to land and free labor (Pinedo et al., forthcoming). Laws passed at this time declared land not previously acquired as individual property as state property and facilitated outsiders' land purchases, again ignoring areas occupied by indigenous peoples (e.g. first and second Law of Montanas in 1989 and 1909).

A similar process was occurring at the same time in the Andes, whereby communal lands were being divided up and acquired by wealthy elites. Peasant uprisings and a movement of supportive intellectuals led to legal measures to protect indigenous lands with the Constitutional reform of 1920. This constitution not only recognized the legal existence of indigenous communities for the first time in the history of the Peruvian republic, but

[7] This section draws heavily on a working paper prepared for CIFOR by Pinedo et al. (forthcoming)

also incorporated the historic guarantees of inalienability, imprescriptibility, and protection against seizure for community lands (Pinedo et al., forthcoming)[8].

These reforms did not apply to the indigenous lands in the Amazon, however, and over the ensuing 50 years, there was massive colonization from the Andean regions to the Amazon. Indigenous peoples saw their lands disappearing. By the 1960s they began to organize, with important federations emerging in the 1970s (Smith, 1996).

Perhaps the most important reforms protecting collective rights to land and forests in Peru were those enacted between the late 1960s and the mid-1970s. Promoted by the military government of President Velasco, the Law of Agrarian Reform (Law Decree 17716, 1969) ordered the expropriation of large landholdings, primarily in the Andes and the coast regions, and allocated them to agrarian cooperatives. For the Amazon region, President Velasco issued the Law of Native Communities and Promotion of Agriculture in the Lower and Upper Rainforests (Law Decree 20653) in 1974. Though it was primarily intended to encourage agricultural development, it was also the first law to grant legal recognition and property rights to Amazonian indigenous settlements. The law allowed for the registration of indigenous settlements as "native communities," the first legal entity recognizing Amazonian indigenous communities.[9]

Property rights granted under the 1974 Law incorporated both agricultural and forested lands into communal property. Although the law differentiated among lands suitable for cultivation, cattle ranching and forestry, the land titles made no distinction. Nevertheless, the law stipulated that a specific law, that at the time did not yet exit, would regulate the use of forest and wildlife resources.

The Forest and Wildlife Law (Law Decree 21147), enacted in 1975, significantly changed these rights by defining all forests as public property. It established that no natural or legal person would be able to use forest resources for their own benefit without taking into account a regulatory framework that benefits the national interest by prioritizing conservation and rational use. This regulation applied to all forestlands, including those within native communities. This state property regime was reinforced by the Constitution of 1979, which stated that all natural resources belonged to the state.

In this same vein, in 1978, the government of President Morales Bermudez passed the Law of Native Communities and Agrarian Development in the Lower and Upper Rainforests (Law Decree 22175), which rescinded the radical provisions of the first law of native communities permitting ownership of forested lands. For all subsequent native communities, titles were replaced with usufruct contracts (Art. 11). From this year on, the

[8] This same author argues that these constitutional guarantees for indigenous lands at the national level survived the constitutional reform of 1933 and remained there until 1979. The following constitutions first weakened the inalienable character of collective lands (Constitution 1979), finally eliminating this as well as the guarantees against seizure (Constitution 1993).

[9] With the concept of "native community," this law replicated an existing subject, the community, but it distinguished it from the Andean peasant community by replacing the term "peasant" for the term "native," alluding to the autochthonous character of the Amazonian people (Chirif and García Hierro, 2007).

process for the implementation of reforms formalizing collective tenure rights in the Amazon has been different for agricultural vs. forest lands.[10]

In 2000, President Fujimori enacted the Forest and Wildlife Law No. 27308. The new law was developed in an effort to promote sustainable timber extraction through a modern regulatory system based on "scientific forestry," reduce and control deforestation, promote a competitive timber market, and control illegal logging (Sears and Pinedo-Vasquez, 2011). Forests on state-owned lands were divided primarily into six categories: production forests, forests for future exploitation, forests in protection lands, natural protected areas, community forests, and local forests (Art. 8). The law was based on a system of concessions, permits and authorizations, which are mechanisms that allow individuals or groups to extract quantities of timber from delimited areas (Arts. 10 and 11).

Forest resource regulations require that specific provisions be followed for those individuals or collectives interested in the recognition of usufruct, or management, rights to forests. For both native and peasant communities, in the case of forests claimed as part of collective territories, the process of signing usufruct contracts has been cumbersome (Pinedo, 2014). In addition, while the law's regulations recognize native communities' preferential rights to natural resources, it restricted them to "properly recognized communal territories," and dictated that those rights could be exercised only if the communities formally requested use rights. While the state has been reluctant to grant usufruct contracts for many years, no contract has been signed since 2008 (Muñoz, personal communication). In addition, native communities have faced other difficulties to gain access to forest resources, including the lack of funds to comply with the highly bureaucratic and expensive paperwork needed to obtain a logging permit and to carry out logging activities.

Data showing recognized areas and existing claims by native and peasant communities[11] is presented in Table 4. Over 34 million Ha of land have already been recognized, while another 4 million Ha have been designated for use in communal and territorial reserves.[12] Complete information is not available on the extent to which these lands have completed the titling and registration process, but in the region said to be the most advanced, Madre de Dios, only a handful have overlaps resolved and maps with GPS coordinates.

Another 33 million Ha is either claimed or pending formal recognition in titling processes (see Pinedo et al., forthcoming, for the specific case of native communities; IBC, 2014 provides data of existing claims around collective titling at the national level).

[10] The difference is actually based on land classification rather than actual use or forest cover. That is, lands are classified based on a soil classification system that establishes their "vocation".
[11] The use of the terms peasant and native communities in Peruvian law refer both to indigenous peoples. The term native community was used to distinguish Amazonian indigenous groups from those in the highlands, which are referred to as peasant communities (Pinedo, et al., forthcoming).
[12] Communal reserves refer to a category of protected area, while territorial reserves are lands designated to protect uncontacted indigenous tribes.

Mobilization by indigenous federations[13], peasant organizations and NGOs has been key to moving claims through different government administrations. The Garcia administration is responsible for important laws in 1987 supporting community titling and for a large demarcation effort that resulted in numerous claims being resolved under the Fujimori administration; Fujimori, however, pushed through numerous laws aimed at supporting the division of collective lands into private parcels and removing the protection of inalienability of indigenous lands (Pinedo et al., forthcoming).

Table 4. Collective tenure claims and advances in formal recognition in Peru

	Tenure Regime/Type of reform							
	Public				**Private**			
	State lands designated to communities				**Collective tenure**			
	Formally established (Reserves)		***Claims over recognition***		***Statutory (formally recognized communities)***		***Customary (Communities Pending titling)***	
	Communal*	***Territorial+***	***Communal***	***Territorial***	***Peasant***	***Natives***	***Peasant***	***Native***
Number	10	5	5	5	5,110	1,933	3,300	988
Million of Ha)	2.2	2.8	> 4.0	> 5.0	23.5	10.9	16.3	> 8.2

Source: Data from the Ministry of Environment, Office of Uncontacted Peoples and indigenous groups in initial contact, Defensoria del Pueblo, 2014; IBC, 2014; AIDESEP, 2013.
*Communal Reserves are a type of protected area category that recognizes management rights to communities (Special Regime for the Management of Communal Reserves, Resolution 019-2005-INRENA-IANP)
+ Territorial reserves include lands designated for the protection of uncontacted tribes or peoples in initial contact.

In addition, recent years have seen multiple legislative reforms aimed at supporting private investment and "development" that ignore indigenous people's forests and communal lands rights, resulting in an escalation of conflict and protests. On June 5, 2009, the government ordered the forced removal of protestors in the Amazonas province of Bagua. Protestors were demanding the revocation of measures enacted in 99 different "legislative decrees[14]" aimed at adapting national regulations to the 2006 Free Trade Agreement with the United States. Among the most controversial decrees, numbers 1090 and 1064 made it possible to convert forest lands into private agricultural lands, providing access to mining, logging and oil drilling interests in indigenous territories (Pinedo et al., forthcoming; Malleux, 2013). Indigenous organizations argued that they had a right to prior consultation regarding the decrees affecting their land rights. The protests turned violent, and the confrontation with police left 33 dead and 200 injured (Renique, 2009).

[13] Most of Peru's Amazonian indigenous organizations are members of the Interethnic Association for the Development of the Peruvian Amazon (AIDESEP), founded in 1979, or the Confederation of Amazonian Nationalities of Peru (CONAP), founded in 1987
[14] This included Legislative Decree 1090, a new Forest and Wildlife Law that had been issued by the government in 2008.

Following these tragic events, a three-year consultation process led to the approval of a new Forest and Wildlife Law in 2011 (Law 29763). This new law includes policies that improve the protection of indigenous peoples' rights and opportunities. First, it acknowledges indigenous people's rights to prior and informed consultation, in accordance with ILO Convention 169.[15] Second, for the first time in the country's history, the law promotes gender equality in access to forest resources. And third, the law reinstates peasant and native communities' exclusive rights to use forest resources within their territories.

The Peruvian government also began to decentralize certain powers to regional governments in the late 1990s. As a result, though authority over land tenure policy remains under the Ministry of Agriculture (Supreme Decree 001-2013), implementation has been transferred to regional governments (Organic Law of Regional Governments, Law 27867 issued in 2002). Though decentralizing could offer the opportunity to advance toward simpler and more transparent implementation processes, disaggregated data at the regional level suggests otherwise. Titling of peasant and native communities has virtually stalled since 2008. Some regions like Ucayali have not issued a single collective title during the last seven years (Defensoria del Pueblo, 2014).

Indigenous peoples continue to demand that their lands be demarcated and titled, but these are not easy tasks. Even when there is political will, the process is long, complicated and expensive. Communities cannot usually afford these costs, and the state has been reluctant to provide funds to support community titling.

In summary, over the past century many laws have had a significant impact on indigenous rights to land and forests, though few have had the recognition of collective rights as their main goal. Most of this legislation was aimed at promoting colonization, development, conservation or private investment in forest lands, while the indigenous people who occupy large portions of the country's forests have been seen as an obstacle to development. In this context, indigenous rights have been ignored or denied, and progressive reforms have been quickly countered by attempts to dismantle them.

The majority of laws supporting indigenous and community rights have been drafted by a few, specific political administrations that were, at least to some degree, sympathetic to peasant and/or native rights. Demarcation and titling in the Amazon has largely occurred thanks to the pressure exerted by indigenous organizations such as the Interethnic Association for the Development of the Peruvian Amazon (AIDESEP) and its regional federations, which have allied with local and international agencies in order to get the necessary funds (Pinedo et al. forthcoming). Today AIDESEP is demanding that the government recognize full rights over agricultural and forest land, as well territorial, rather than just community, rights, though this may require a constitutional reform (AIDESEP, 2014). Current opportunities for titling include REDD+ related initiatives

[15] In 2011, Ollanta Humala's government issued the Law of Right to Prior Consultation of Indigenous People (Law 29785), which recognizes indigenous people's right to be consulted on any administrative and legislative action, as well as on any development plan or program, that could affect their rights, before they are approved. This law was one of the indigenous demands after the Bagua events.

through the World Bank and a titling project through the Inter-American Development Bank (IDB).

The case of Indonesia

Forest sector governance in Indonesia must be divided between that of Java Island, which is currently one of the most densely populated region of Indonesia and probably the world, and the rest of the country. Java Island's forest history has long been under centralized control, as well as the resistance movement of the masses. Forests outside Java were largely beyond the purview of central authority until the twentieth century. In Java, the state's direct interest in forestry has been connected with the rule of land during the Dutch occupation, though Portuguese and Spanish conquerors arrived before them and monopolized spice trade, including nutmeg, cubeg and clove, mostly outside Java. The Dutch East India Company (VOC), chartered by the Dutch government, arrived in the early seventeenth century, with a major interest in teak (*Tectona grandis*) exploitation on Java. Teak was a highly-valued commercial species used for ship construction and furniture, which was central to Dutch dominance of world trade.

Since Javanese kings ruled the island, the VOC initially obtained their permission to exploit teak forests as well as to mobilize the required labor, while the preeminent rights of local people presumably remained intact (Peluso, 1991). The main interest was in controlling the access to forest resources and not on land ownership per se; however, people's traditional rights were also eventually subjected to the VOC control. The VOC influenced forestry-related decisions purely from an economic perspective, but often used 'gifts', muscle power, and manipulation to maintain their control over forest resources. The company signed a formal treaty with the kings in the mid eighteenth century to have access to the forests, villagers and trade of timber outside Indonesia. The company extended its territorial control and trading scope until the Dutch government dissolved it later that century.

The Dutch colonial expansion to other islands of Indonesia was observed from the nineteenth century to 1943. Soon after the Dutch government formally declared Indonesia as its colony in 1807, forests were largely put under centralized control. In addition to the interest of the Dutch colony to exploit the resources for its benefit, centralization was rationalized as satisfying industrial timber needs, such as for building sugar factories, coffee warehouses, ships and houses in urban centers. By controlling commercially valuable species and forestlands, the government could also control the people depending on them, by restricting their access to these resources and forcing them to work where the rulers wanted. The main implicit goal was to consolidate territorial control and exploit the resource.

The first Forestry Law of 1865 in Indonesia provided the legal basis for bringing land and forest resources under government control (Peluso, 1992; Simon, 2001). The law conceived a separate bureaucratic structure to look after forests; and subsequent revisions of the law and regulations strengthened the power of the forest bureaucracy and implemented a forest police surveillance system. The people were restricted from

withdrawing forest products without government permission and were forced to pay to acquire wood from the forest, which had previously been free. After annexing Sumatra, Kalimantan and other islands, the Dutch government extended logging through private companies, implemented transmigration programs and promoted other commercially valuable products such as coffee in those areas. They imposed the same labor requirements and forest resource restrictions as on Java, which contradicted sharply with customary systems.

The ideas of 'scientific forestry', reforestation, and the tuangya system were influenced by German foresters and European forestry debates and were copied from other colonial countries. For example, the taungya system was introduced based on the British colonial experiment in Burma, to reduce the cost of planting. In this system, people were required to prepare the land and plant teak seedlings then allowed to cultivate agricultural crops for the first 1 to 2 years.

The Forest Law of 1865 remained active until the independence of Indonesia in 1945, but the basic premises of the law such as centralized forestry, restricted local rights over forestland and resources, and granting coercive power to the forest bureaucracy to punish the offenders remained the key driving forces of forestry in the post colonial era as well (Peluso, 1991).

The Basic Agrarian Law (BAL) was signed in 1960. The BAL recognized the existence of plural customary laws (hukum adat), and maintained that 'the law on land and agrarian affairs in Indonesia is customary law' (article 5). Other sections of the law, however, subsumed legal pluralism and legitimized state control[16] (Siscawati et al., forthcoming). Since forests were the main source of income for the central government, it was interested in retaining the control of forest resources and, hence, centralized authority over customary lands and resources in the name of national interests (Rachman and Siscawati, 2013).

The Suharto dictatorship (1966-1998) overturned the BAL, strengthened the power of the forestry bureaucracy, expropriated community ancestral land and turned it over to state and private corporations, and stifled local protest and opposition. Natural resources, including forest resources, continued to be central to economic growth (Siscawati et al., forthcoming). The Basic Forestry Law No. 5 of 1967 revitalized the Dutch colonial principle of state controlled forests; Article 5 states, 'All forests within the territory of Indonesia, including the natural resources contained therein, are controlled by the state'. The law was instrumental in consolidating the authority of the state forest bureaucracy. It divided the forests into state (unclaimed) and privately-owned forests and did not recognize customary forests or other customary land use (Rachman and Siscawati, 2013).

[16] For example, Article 2 of the BAL grants the authority to control land and resources to the state; Article 8 grants rights to the state to regulate land acquisition; Article 14 states that the government should develop a plan that includes supply, allocation and use of natural resources; Article 18 states that land rights (given to persons and corporations) can be revoked; Article 26 sets conditions for inheriting or transferring the rights over customary land.

While teak logging had been a central commercial activity in Java for a couple centuries, formal concessions began in the other islands in the 1970s.

Government regulation No. 33 in 1970 and subsequent forest land use policy categorized the state forests into: 1) production forest, 2) protection forests, 3) natural conservation areas, and 4) convertible production forests. The policy was used as a basis to grant licenses on forestlands to both private and state-owned logging companies as well as to industrial timber plantation companies. Since there was little or no verification on the ground, many of the forestlands allocated to companies were in fact the customary territories of various groups of indigenous peoples. Logging activities, land clearing for the purpose of establishing industrial plantations and conservation activities displaced indigenous peoples from their homelands. Women, vulnerable and marginal groups within these communities faced even more problems than others due to poverty as well as social injustices faced by their communities (Siscawati and Mahaningtyas, 2012). Overlapping claims also led to conflicts between customary communities and companies as well as with government agencies. Government agencies and companies used various forms of coercion to "manage" agrarian conflicts, including military and para-military force (Siscawati et al., forthcoming). While tenets such as 'scientific forestry', institutional structures, ideologies and laws were largely inherited from the colonial state, Suharto era control over forest was more 'repressive' and 'intense' (Peluso, 1992).

Local resistance movements against centralized control and in favor of recognizing customary rights over forestland, combined with international discourses in favor of devolved forest governance, gradually started pressuring the government to grant rights to local people over forest resources. Certain actors within government agencies initiated changes that can be seen as preliminary actions toward forest tenure reform. The reforms started with tokenistic participation of local people in forest development activities through social forestry schemes during the 1980s and 1990s. Initially, they took the idea of taungya from the Dutch colony and developed it further ostensibly to extend rights and benefits to local communities.

In 1982, for example, Perhutani (State Forestry Company working mostly in Java Island) began to engage local communities in the management of state forests through the establishment of forest farmers groups. Since Perhutani was considered successful in contributing to village development in Java, the Ministry of Forestry extended the concept to the outer islands of Indonesia. Similarly, the Ministry of Forestry Decree No. 622 of 1995 granted rights to local communities to secure licenses for collecting non-timber forest products. Although these programs were important in recognizing the role of, and benefits to, local communities, tenure rights of customary communities were only partially recognized.

In 1998, towards the end of the Suharto regime, the Minister of Forestry issued a decree to establish a community forestry system in a specific area of Lampung Province, Sumatra Island. The Ministerial decree called KDTI (Area for Special Purpose) is considered the first formal regulation recognizing customary rights over forests (Fay et al., 1998). The process for formulating the decree began with due recognition of the

complex agroforestry systems that customary communities were practicing for generations in the Krui area of Lampung. Nevertheless, the Minister wanted to retain state ownership of the land, granting rights to the communities only for management and use. The decree as such was not implemented because of limited interest: the communities wanted full title to the land; the government had neither the resources nor an interest in facilitating the decree's implementation.

Not long after the New Order Regime lost power in May 1998, a number of legal instruments were developed in the interest of decentralizing some central authority to the regions and districts. Most relevant were Government Regulation No. 62/1998 on the Delegation of Authority of Forest Administration to the Regions, Law No. 22/1999 on Regional Governance and Government Regulation 6/1999 on Forestry Enterprises and the Extraction of Forest Products in Areas Designated as Production Forest. These laws together devolved authority to district level, for regulating and planning forest management and use, as well as implementation. The district governments were also authorized to distribute logging licenses for small areas within production forest zones. This radical move toward decentralization was partially reversed within the year, but social forestry schemes continued.

The Forestry Law No. 41 of 1999 set the stage for various kinds of social forestry schemes based on state ownership of the land and usufruct licences to local communities. The social forestry schemes include Hutan Kemesyarakat (HKm: community forest), Hutan Tanaman Rakyat (HTR: community plantations) and Hutan Desa (village forest). Based on where these schemes are located, defined primarily based on ecological vulnerability (e.g. production or protection forest zones), villages received rights to extract certain forest products from the forest (see Table 5). For example, people with a HKm permit in production forest zones can harvest both timber and non-timber forest products from the area but cannot harvest timber if the HKm lies in the protection forest zone. In addition, there are some kinds of partnership arrangements between the state owned companies (perhutani and inhutani) and local communities where most of the decision-making rights rest with the company but communities are involved in forest development activities and in return they receive part of the benefits.

Despite the opening of space for promoting social forestry schemes, the rules retained many of the traits of previous laws. For example, the central government can define the function of "forest zone" (*kawasan hutan*), and the government has full authority to control 'any particular area determined or designated by the government to be permanent forest' (Article 1).

The forestry law of 1999 recognized the existence of customary forest (hutan adat) but it defined customary forest as state forest. This has been the main point of contestation until a recent constitutional court ruling in 2012. The constitutional court ruling recognized customary communities as legal subjects and dictated that the government make necessary arrangements for granting full ownership rights to customary communities over their traditional territory. The court decision defines customary forests as private forests. If implemented fully, customary forests could total between 30-40 million hectares (Kelly

and Peluso, 2015:488, Nababan, pers. comm.), which is about one third of Indonesia's forest area.

Table 5: Different forestry schemes that grant forest rights to communities

State forest	**Area** (millions of has)	**Private forest**	**Area** (millions of has)
HKm (Community forests)	1.4*	Hutan Rakyat** (Smallholder forests)	3.5
HTR (Community plantations)		Hutan Adat (Customary forests)	0
Hutan Desa (Village forests)			
Partnership between state owned companies and local communities (Inhutani, Perhutani)	n.d.		

*MoF (2014)
**MoF (2011)

Another issue of contestation in Indonesian forestry has been the overlapping claims made by two different state institutions over who should hold the rights over land. For example, the Ministry of Forestry claims to have control over 70% of total land area of Indonesia where more than one third of the villages are also located. But the National Land Agency is entitled to title land to local people. Constitutional court ruling No. 35 of 2012 and the Village Law No. 6 of 2014 have added new dimensions to land and forest tenure regarding the definition of right holders. Recognition of customary claims to ancestral territories, and greater authority at the village level over resource governance, have supported demands for the reform of existing institutional structures and processes to implement the new legal mandates.

Land and forest tenure is a highly contested issue. Indonesia's recent history has been characterized by civil society activities and social movements such as the Indigenous Peoples' Alliance of the Archipelago (AMAN), which have been instrumental in exerting pressure on the government for granting greater rights to forest communities and, in particular, for granting full titles to adat (customary) communities. This includes lobbying political parties and parliamentarians, petitions to change existing regulations and proactive engagement in policy deliberations. Collective action was an essential factor in the recent constitutional court decision. In the social forestry programs where land ownership remains with the government while partial rights are granted to communities (HKm, HTR and hutan desa), local people have to go through a lengthy and onerous process to obtain licenses. Hence social forestry schemes have advanced very slowly; for example the Ministry of Forestry reached less than 25% of its target for HKm (600,000 of 2.5 million hectares) in the last five years. Ministry of Forestry data from 2013 reports that only 1.4 million has were under community management (HKm, HTR and hutan desa) out of 127.03 million ha of forest (MoF, 2014).

The constitutional court ruling of 2012 has paved the way for full ownership to customary communities over their traditional territories. After the court ruling more ambitious targets were set for the social forestry schemes granting only partial rights. For example, the government's medium term plan (2015-2019) sets the target of 12.7 million

ha to be allocated to local communities during this period, against the poor performance of attaining targets in the previous period.

There are multiple challenges ahead: ongoing opposition to recognizing full customary rights, onerous and time consuming processes for permits in social forestry schemes, limited support for developing institutional capacity of the communities, pressure from large scale private sector investment (for example, oil palm, mining, logging) and limited government budget and capacity to provide support to local communities (Siscawati et al., forthcoming). Emerging opportunities include multistakeholder processes, government initiatives such as REDD+ processes, the court ruling and draft bills on indigenous rights, active presence of anti-corruption agency in enforcing reforms and civil society movements and networks.

Discussion

The country cases are illustrative of the different types of tenure reforms that have been applied globally across forestlands (see RRI, 2012 and Almeida, 2015 for an interesting review on different legislations affecting forest tenure rights). While emerging from very different contexts and histories, the trajectories of reforms in these two countries share similar characteristics. Based on the historical overview of these country reform processes, this section highlights key elements that allow an understanding the nature of reform processes and the obstacles to and opportunities for reform.

The nature of forest tenure reforms

Across time, in both Indonesia and Peru, changes in regulations have modified the nature of tenure rights in forests. There is no single reform but rather multiple reforms that shape forest tenure rights in the two countries, with both progress and setbacks for indigenous people and communities. Reforms in favor of communities often emerge in response to social struggle and opposition, sometimes as a part of broader national reforms. Interestingly, those reforms may be tied to democratic openings in some cases, or to authoritarian regimes in others.

Even reforms in favor of communities are highly varied. Some recognize the full bundle of rights, such as adat forests in Indonesia or peasant communities in Peru. Others limit recognition to management rights, thus constraining the type of activities that local communities can undertake in forests, such as the social forestry schemes recognized in the new Forestry Laws of both Indonesia and Peru.

Different legal arenas support a range of entry points that grant forest tenure rights in statutory law from different perspectives (Almeida, 2015); these include conservation (eg. communal reserves in Peru), customary rights (eg. adat forests in Indonesia) and exploitation of natural resources (eg. those social forestry schemes contemplated in the Indonesian 1999 Forest Act). Neither country promoted early reforms aimed at recognizing collective or customary rights in forest lands. Though both countries, after

independence, identified customary rights (1960 BAL in Indonesia) or the need for some protection of community lands (Constitution of 1920 in Peru), at that time these did not lead to meaningful protections in either case.

In both countries, earlier reforms mostly aimed at asserting colonial or central government power directly or through private companies to control and exploit resources as a means to accumulate capital and assert territorial control. The case of Indonesia and the history of how the Dutch East India Company negotiated rights to exploit forests is a clear example of how changes in land tenure systems were a precondition to ensure control of resources for economic exploitation. In the same line, the colonization process in Peru was viewed as the means to promote economic activities that would turn "unproductive and uninhabited" forests into productive lands.

Most reforms after independence continued to serve similar objectives, incorporating notions for promoting development and continuing to open vast areas to foreign and national capital investments. Both countries experienced processes of centralization, maintaining the rights to manage to forest lands and control over extraction of resources in the hands of the states, often with the justification of serving the public interest.

Obstacles to and opportunities for reform

Both countries also demonstrate important progress toward respecting forest rights. Sympathetic governments or actors within government have been important at different moments. The 1974 reform in Peru established the rights of native communities and procedures for collective titling for the first time. The recognition of partial rights for communities emerged in the 1980s in Indonesia.

Progress in Peru has clearly been more substantial, with large areas now granted to indigenous people and local communities. The forest areas within those titled regions are still subject to limited usufruct rights, however, except in a few cases. Substantial progress in one law was met with the withdrawing of forest rights only one year later. And subsequent legislation in 1979 sought to encourage collective communities to support breaking up those entities into individual titled areas that can be sold.

In Indonesia progress until very recently was very partial. That is, social forestry schemes were, to some extent, more broadly acceptable than granting full rights recognition. The increase in targets for social forestry after the Constitutional court ruling suggests as much. Whereas some actors see such schemes as a step toward more complete rights, others see this as a strategy to force communities to accept less, and hence as a strategy to impede rights recognition (Myers et al., forthcoming).

Social movements have been essential to supporting reforms as achieved on paper as well as in practice. In both countries, implementation of reforms – obtaining rights in practice, including meeting bureaucratic requirements, whether for titling or permits of other kinds – has usually required strong support from grassroots organizations, NGOs and donors. AIDESEP and CONAP have been active in Peru for more than 3 decades, and AMAN

since 1999. Both countries are at important conjunctures due to the Constitutional ruling in Indonesia and a long hiatus in titling in Peru that has the potential to be reversed due to multiple external programs currently supporting titling.

Conclusions

Forest tenure reforms are in fact comprised of many reforms, and the goal of any particular reform is not usually recognizing rights alone. In fact many reforms that affect community rights to forests emerge from outside the forest sector. Progress in legal reforms depends substantially on the role of the state and social movements, as does what happens on the ground. And "success" at any particular point in time should not be seen as permanent but rather as likely to be met with opposition and attempts to rollback community rights.

Though there are often actors within the state that are sympathetic to communities, they are usually not very powerful. The state as a whole supported community rights in Indonesia and Peru when it was ideologically disposed to do so or when it was strongly encouraged to by social action or political calculation, sometimes in response to conflict; it also appears that donor funding can help the cause of communities.

Those who see national development and "progress" as driven by large-scale private investments see community forest rights as an obstacle. Those who fear communities will act as drivers of deforestation by converting forests to other uses, including by permitting those large-scale private investments, also see community rights to forests as problematic. Hence communities will continue to face resistance and opposition to recognition of forest rights from these often more powerful actors; and the state, as in recent initiatives in Peru (see Gonzales et al., 2014), will continue to justify denying or backtracking on rights in the name of the national interest. Overcoming these obstacles to securing community rights requires coalitions for change and a clear understanding of the roots of opposition.

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