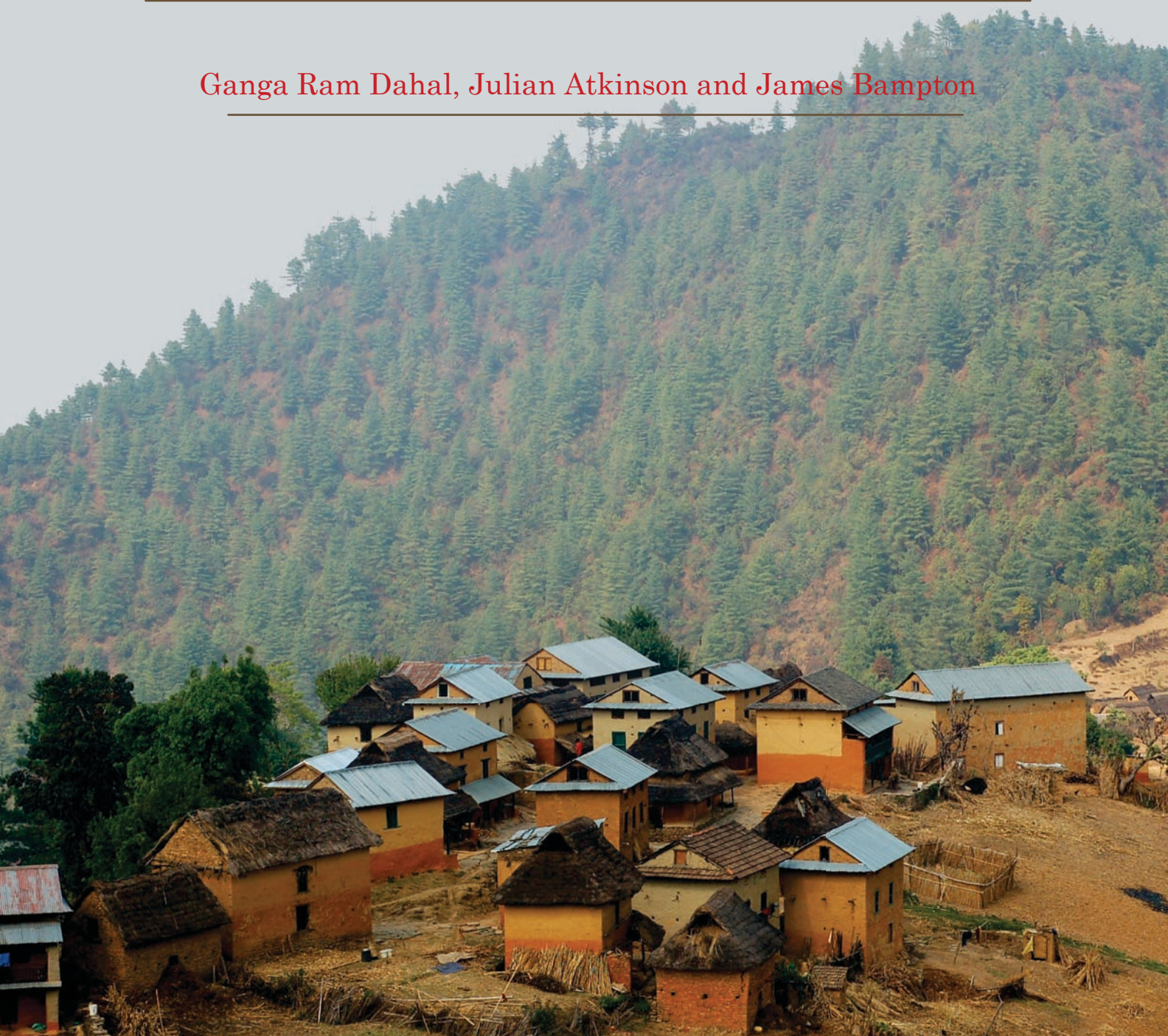




Forest Tenure in Asia: Status and Trends

Ganga Ram Dahal, Julian Atkinson and James Bampton



FLEGT Asia

Background

The European Commission (EC) published a Forest Law Enforcement Governance and Trade (FLEGT) Action Plan in 2003. FLEGT aims not simply to reduce illegal deforestation, but to contribute to poverty eradication and sustainable management of natural resources by promoting good forest governance.

The European Forest Institute (EFI), an international research organization with headquarters in Finland, conducts, advocates and facilitates forest research networking at the pan-European level. Under its Policy and Governance program, the EFI assists in the EU's implementation of the FLEGT Action Plan. In 2007, the EU FLEGT Facility was established, hosted and managed by the EFI. The Facility supports the bilateral process between the EU and tropical timber-producing countries towards signing and implementing Voluntary Partnership Agreements (VPAs) under the FLEGT Action Plan.

In November 2008, the EFI signed a contribution agreement with the EC on a Regional Support Program for the EU FLEGT Action Plan in Asia. The FLEGT Asia program formally established a regional office in October 2009. It seeks to collaborate and build synergies with existing regional initiatives and partners in Asia.

The EU FLEGT Facility is managed and implemented by the EFI in close collaboration with the EU.

Goal of FLEGT Asia

The FLEGT Asia Regional Program aims to promote good forest governance, contributing to poverty eradication and sustainable management of natural resources in Asia, through direct support of the EU's FLEGT Action Plan. The strategy focuses on promoting and facilitating international trade in verified legal timber – both within Asia and exported from Asia to other consumer markets. In particular, it aims to enhance understanding of emerging demands in key timber-consuming markets and promote use of systems that assist buyers and sellers of Asian timber and timber products to meet these demands.



Work Program

The work program has three phases:

1. Information Collection

Baseline information includes trade statistics, product flows, future scenarios, stakeholder identification and engagement strategies applied by countries in the region. Information on producers, processors, consumers, and major importers from this region will be collected and collated. This will be used to develop training and communication materials; to further define the type of capacity building to be undertaken (who are the target beneficiaries and what the training needs are); and form the baseline for monitoring the progress of the program over its three year duration.

2. Capacity Building

The second phase is the strengthening of key institutions (companies, trade associations, NGOs, government agencies, customs, etc.) for improved forest governance in each country and across the region to meet the identified market needs. This will consist of trainings at the individual level, trainings of trainers, workshops and pilot studies such as individual supply chains and Timber Legality Assurance. This will be supported by an outreach program for information dissemination through roadshows, seminars, communication materials, website, and others.

3. Customs & Regional Collaboration

The work to support trade regionally and to invest in customs capacity in accordance with market requirements will be undertaken in collaboration with other programs in the region.

FLEGT Asia financed this report as part of phase one and two activities. The final report presents major findings including an overview of trade, trends and forecasts (using graphics with supporting data in an annex), key findings and proposed next steps.

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This assessment builds on existing data and analysis from two prior publications: *From Exclusion to Ownership*, which was published by the Rights and Resources Initiative (RRI) in 2008 and provided data for nine countries in Asia, and *Tropical Forest Tenure Assessment – Trends, Challenges, and Opportunities*, jointly published by RRI and the International Tropical Timber Organization in 2009 and 2011. Figures are updated for four countries (Cambodia, China, Indonesia and Thailand [2010 only]) and two countries (Nepal and Vietnam) are added following the same methodology used in *From Exclusion to Ownership*. Apart from government sources (other than reported by FAO) the data were triangulated through country and international experts.

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Acronyms and Abbreviations

CADT	Certificate of Ancestral Domain Title (the Philippines)
CBFM	community-based forest management
CBFMA	Community-Based Forest Management Agreement (the Philippines)
CDM	Clean Development Mechanism
DENR	Department of Environment and Natural Resources (the Philippines)
DNPWC	Department of National Parks and Wildlife Conservation (Nepal)
EC	European Commission
EFI	European Forest Institute
EU	European Union
FA	Forestry Administration (Cambodia)
FKKM	Forum Komunikasi Kehutanan Masyarakat (Indonesia)
FLEGT	Forest Law Enforcement Governance and Trade
FMB	Forest Management Bureau (the Philippines)
MoE	Ministry of Environment (Cambodia)
FAO	Food and Agriculture Organization of the United Nations
FECOFUN	Federation of Community Forestry Users, Nepal
FLA	Forest Land Allocation (Vietnam)
GDP	Gross Domestic Product
HD	<i>Hutan Desa</i> or village forestry (Indonesia)
Hkm	<i>Hutan Kemasyarakatan</i> or community forestry (Indonesia)
HTR	<i>Hutan Tanaman Rakyat</i> or community plantation forest (Indonesia)
HR	<i>Hutan Rakyat</i> or private forest (Indonesia)
GoV	Government of Vietnam
ha	hectares
IPRA	Indigenous Peoples Rights Act (the Philippines)
ITTO	International Tropical Timber Organization
Lao PDR	Lao People's Democratic Republic
MAF	Ministry of Agriculture and Forestry (Lao PDR)
MAFF	Ministry of Agriculture, Forestry and Fisheries (Cambodia)
MFSC	Ministry of Forests and Soil Conservation (Nepal)
MOF	Ministry of Forestry (Indonesia)
NCIP	National Commission on Indigenous Peoples (the Philippines)
NTFP	non-timber forest product
RBC	Red Book Certificate (Vietnam)
RECOFTC	The Center for People and Forests (legal name: Regional Community Forestry Training Center for Asia and the Pacific)
REDD(+)	Reducing Emissions from Deforestation and forest Degradation
RFD	Royal Forest Department (Thailand)
RRI	Rights and Resources Initiative
SFA	State Forestry Administration (China)

Key Messages

- Some 67% of forestland in Asia remains publicly owned under government administration, as many countries maintain that the state should be the sole owner of forests and forestland. The total area and relative proportion of forestland designated for use or owned by communities and individuals remains insignificant in comparison.
- However, data on forest (i.e. tree) ownership and the number of forest(land) concessions suggest a trend towards privatization in some countries. While individuals and households in China and Vietnam are being granted expanded ownership rights to forests, in other countries private sector actors are outcompeting communities and indigenous groups in gaining forest tenure rights on land in the public domain.
- Devolving management of forests and forestlands to local communities and indigenous peoples through community forestry and related schemes offers huge potential for the improvement of forest conditions and greater economic benefits to local people. Greater tenure security for forest-dependent people could result in the improvement of their livelihoods and contribute to rural poverty alleviation. However, good governance, appropriate regulatory frameworks, capacity development of rights holders, and strong supporting institutions are prerequisites to achieve such results.
- Indigenous peoples continue to manage forests in their ancestral territories under customary tenure, but face challenges and threats in many countries. Recognition of their customary rights and those of local communities is a critical and essential step to address forest and land conflicts. Taking this step would also help maximize the role of forests in securing livelihoods for millions of forest-dependent people in Asia.
- Lack of political will and a strong preference for protected areas and industrial concessions (both for logging and agro-industrial plantations) are limiting the scope of forest tenure reform in some countries. Increasing demand for bio-fuels and extractive industry commodities (particularly in China, Indonesia, India and Malaysia) has also driven the destruction of many forestlands, posing considerable threats to biodiversity and the livelihoods of local people.
- Organized community networks and federations are strategic in strengthening the rights of forest communities against bureaucratic and corporate encroachment. Organized action provides new terms of engagement between communities and the state, especially where the state limits the rights granted to communities through policies and regulations.

1. Introduction

Forest tenure regimes in Asia have undergone significant changes in recent decades. However, perhaps as a legacy of colonial regimes, governments are still the predominant legal owners and managers of forests and forestland. It is estimated that some 67% of total forestlands in Asia are claimed and controlled by governments, whereas only a total of 27% is designated for use or owned by local communities and indigenous peoples.

Tenure arrangements across Asian countries are highly variable. Some countries recognize community ownership rights to both forests (i.e. trees) and forestland, or have devolved a certain degree of authority and management responsibility for these resources to local communities and indigenous groups. There are also instances where the state has handed over various rights to forests and forestland to private companies and individuals under certain terms and conditions, either for large scale commercial plantations or establishing agro-industrial industries. Despite this, in almost all countries the state maintains ownership over the major portion of national forest estate.

This report is intended to provide an overview of forest tenure in Asia between 2002 and 2010, building on and updating previous regional tenure studies undertaken by the Rights and Resources Initiative (*RRI; 2002, 2009*), and RRI and the International Tropical Timber Organization (*RRI/ITTO; 2009*). It is supplemented by a set of country studies, which provide a more in-depth look at tenure statistics and trends in Cambodia, China, Indonesia, Nepal and Vietnam. However, comprehensive information on the exact nature of forest tenure, supporting policies and regulatory frameworks, and the number of communities and households managing “their” forest estate in the region is scarce, sometimes contradictory, and changing continually. Statutory forest and forestland tenure categories vary between countries and available data remain inconsistent, as many countries do not compile data in a systematic or routine fashion.

1.1 Forest Tenure and Reform

Forest tenure relates to who owns or controls forestland, and who uses and/or manages forest resources (*RRI/ITTO 2009, Sunderlin et al 2008, White and Martin 2002*). According to FAO (2010: 26), “Forest tenure determines who can use what resources, for how long and under what conditions.” Tenure can be defined through formal or statutory legal arrangements (*de jure*) or by customary practices (*de facto*).

‘Tenure’ generally refers to a bundle of rights such as ownership, tenancy, access, acquisition, partition, labor and extraction of products and benefits on land, forests, water or other resources held by individuals, groups and the state (*Bruce, 1989*). Land tenure and resource tenure are not the same. The ownership of resources generated from the land could be held without holding the ownership of land (*Harrison, 2003*), and land tenure might not necessarily mean resource tenure (*Bruce 1998*). Schlager and Ostrom (1992) presents tenure as a bundle of five types of rights: access, use, management, exclusion, and alienation rights.

Definitions of Different Forest Tenure Rights

Access:	the right to enter a defined physical area and enjoy non-subtractive benefits (e.g. to camp or rest in an area).
Withdrawal:	the right to obtain resource units or products of the resource system (e.g. extracting timber and non-timber forest products from the forest).
Management:	the right to regulate internal use patterns and transform the resources by making improvements (e.g. harvesting rules, planting seedlings and thinning trees).
Exclusion:	the right to determine who will have access and withdrawal rights, and how those rights may be transferred.
Alienation:	the right to transfer, sell or lease in addition to the abovementioned rights.

Source: Schlager and Ostrom 1992

Tenure reform is the legal reform of tenure rights. Forest tenure reform is different from land reform: the latter entails redistribution of land holdings and changes in the agrarian structure, whereas the former is a change of one or more rights regarding forestland and forest resource management (Larson *et al* 2010, Sunderlin *et al* 2008, Bruce 1998). In most countries in Asia, forest tenure reform usually involves formal granting of all or some of the above mentioned rights from the state to communities and individuals or to private entities.

1.2 Why is Forest Tenure Important?

In order to promote the sustainable use of natural resources and formulate relevant policies, governments need to understand tenure trends and associated issues, and their impacts on local people and forests. Increasing privatization and community-based management in forestry have brought about rapid changes in forest ownership patterns and relationships amongst stakeholders (RRI/ITTO 2009, Sunderlin 2008, White and Martin 2002). These changes have also (re)determined who benefits or loses in the competition for economic goods and environmental services provided by forest ecosystems.

Tenure security has a strong role in the structure of incentives that motivate the protection or destruction of forests (RRI/ITTO, 2009). Tenure security in forestry is important to indigenous peoples and ethnic minorities as it is considered a foundation for social identity, personal security and cultural survival. The distinction between customary and statutory tenure rights also has important implications for forest tenure security. Customary tenure systems are generally determined by stakeholders at local levels and often based on informal arrangements; however, these arrangements are always in danger of being invalidated if they contradict the statutory tenure system applied by the State.

Tenure rights and their security alone are not sufficient conditions for achieving sustainable forest management and improved livelihoods. Other factors – including the regulatory framework, governance systems, and supportive institutions – are also equally critical for successfully achieving the optimum objectives of forest management. Studies reveal that significant improvements in legal tenure rights do not automatically result in improvement in people's livelihoods, forest conditions or equity (Larson *et al* 2010). While the study showed that results for both local livelihoods and forest conditions were better in cases where rights were transferred to local people, it also demonstrated some tradeoffs in situations where changes are made from unsustainable practices towards sustainable forest management. Several cases illustrated that while forest conditions improved, certain community members or groups of people external to the community experienced times of hardship or decline in livelihoods. In some cases, the transfer of rights to local groups also entailed transfer of substantial responsibilities and burdens.



A crab collector shows off his catch from a community mangrove area in Trat, Thailand.

1.3 Rationale Behind Tenure Assessment

This assessment builds on and updates recent work on statutory forest tenure undertaken by RRI: a 2008 study titled *From Exclusion to Ownership?*; a 2009 paper titled *Who Owns the Forests of Asia? An Introduction to Forest Tenure Transition in Asia, 2002-2008*; and a tropical forest tenure assessment by RRI and ITTO first presented in 2009 and formally published in 2011. It also draws on the work of White and Martin in 2002, titled *Who Owns the World's Forests?*

The key objective of this assessment is to generate up-to-date and reliable information on the existing statutory forest tenure arrangements in selected countries in Asia and extrapolate trends based on the data. In addition, it aims to identify issues associated with forest tenure reform in target countries. Customary and community tenure arrangements, although prevalent in these countries, are not reported here. This is due to difficulties in finding reliable data in many countries for longitudinal analysis, and the fact that statutory systems remain the primary basis for property rights and associated rights and responsibilities, for adjudicating claims, and for establishing contracts (RRI/ITTO 2009).

1.4 Methodology and Scope for Criteria

Following the same framework used in the 2009 RRI publication to categorize forest tenure types and ownership, this assessment presents public and private forestlands as the two main tenure categories. Public domain is considered as government-claimed forestland and sub-divided into two categories: area administered by government, and area designated for use by community and indigenous people. Similarly, private domain is sub-divided into area legally owned by communities and indigenous people, and area owned by individuals and firms. Please refer to the next page for the definitions of each RRI tenure category, and Annex I for a full set of terms and definitions.

RRI Definitions for Statutory Forest Tenure Distribution

Public Domain	Public lands administered by government	Typically includes all lands in the legal forest estate that are owned and administered exclusively by the government and that are not designated for use by communities and indigenous people. Note that this category includes some protected areas and forestlands awarded as concessions for logging, agro-industrial or silvicultural plantations, and mining.
	Public lands designated for use by communities and indigenous peoples	Refers to forestlands set aside on a semi-permanent but conditional basis. In this category, governments retain ownership and entitlement to unilaterally extinguish local group's rights over entire areas. Local groups lack rights to sell or otherwise alienate land through mortgages or other financial instruments.
Private Domain	Private lands owned by communities and indigenous peoples	Refers to forestlands where rights cannot be unilaterally terminated by a government without some form of due process and compensation. Private land owners typically (but not always) have rights to access, sell, or otherwise alienate, manage, withdraw resources and exclude outsiders.
	Private lands owned by individuals and firms	Includes those lands where the rights cannot be unilaterally terminated by a government without due process or compensation.

Sources: RRI/ITTO 2009, Sunderlin et al 2008

This report provides updated data for statutory forest tenure in China, Cambodia, Indonesia and Thailand (for 2010 only). It also adds new data for Nepal and Vietnam, which were not covered earlier. An accompanying country study¹ report provides in-depth, country-specific data and analysis on statutory tenure trends for China, Cambodia, Indonesia, Nepal and Vietnam. Data for Australia, Japan, Myanmar, and Papua New Guinea remain unchanged from the previous RRI survey (2009).

New and improved data on statutory forest tenure from target countries covering the previous decade (2000–2010) were collected by national consultants, primarily from government information sources, and reclassified under the uniform categories for forestland ownership used in RRI's previous survey (2009). Results from recent national forest surveys allowed the authors to update RRI figures for previous years in Cambodia, China, and Indonesia. As statutory tenure systems and classifications vary by country and forest definitions within countries sometimes change over time, data were necessarily checked against trusted secondary sources (including FAO's Global Forest Resources Assessments of 2005 and 2010) and verified by national experts where possible. Sources for each updated figure are provided as endnotes.

The authors then assessed the comparable data for forestland ownership to interpret recent trends both in specific countries and across the region. Issues associated with tenure reform and community ownership over forest resources in target countries, and in particular the relation of these with sustainable forest management and livelihood opportunities, were also identified and incorporated into the analysis. Following RRI (2009), this report marks 2002, 2008 and 2010 as benchmark years for data comparison². The accompanying country studies also provide data for adjacent years where it is available.

¹ Dahal, G., J. Atkinson, and J. Bampton. 2011. *Forest Tenure in Asia: Country Studies for Cambodia, China, Indonesia, Nepal, and Vietnam*. Kuala Lumpur, EU FLEGT Facility.

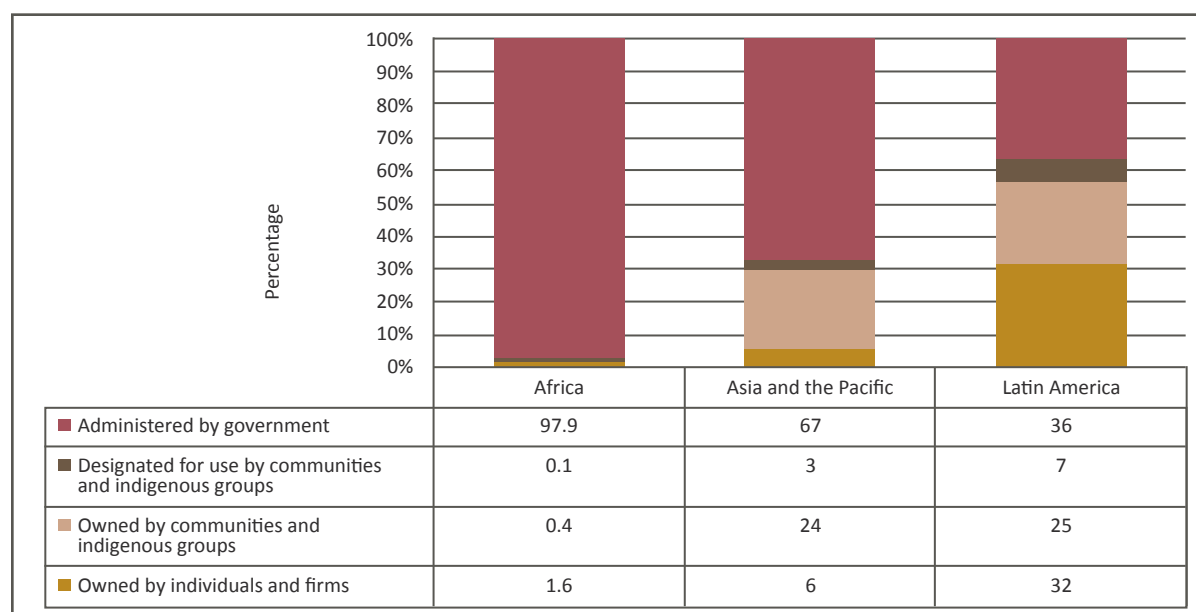
² If country data updated for this report are unavailable for one of those three years, extant data from the closest preceding or following year are substituted and noted in the endnote citing the provenance of each figure.

National government data on statutory forest tenure frequently ignore customary and community tenure arrangements. While the focus of this report is on formal tenure arrangements, the authors do not mean to legitimize the government outlook on forest tenure over other, non-formal and competing claims to forestland. In many cases, data on the extent and scale of existing customary forest tenure are not readily available.

1.5 Who Owns the Forests, and Why is Ownership Changing?

At the global level, a 2008 study of the 39 countries³ with the most tropical forests showed that states predominantly claim ownership of the world's forestlands (around 75%), whereas only 25% is owned and controlled by non-state entities (*RRI/ITTO, 2009; Sunderlin et al 2008; White and Martin, 2002*). As presented in Figure 1 below, updated data from 11 countries in the Asia-Pacific show that approximately 67% of the region's forestlands are currently under state ownership and management, with almost 3% designated for use by communities and indigenous peoples. Around 24% of forestland is owned by communities and indigenous peoples in the private domain, with the remaining 6% owned by individuals or firms.

Figure 1: Distribution of Forestland Tenure across Three Regions, 2008



Sources: for Asia and the Pacific, Table 1; for Africa and Latin America, *RRI/ITTO 2009* and *Sunderlin et al 2008*

Broadly speaking, the primary impetus behind forest tenure reform that transfers rights to local people and indigenous groups in Asian countries is cognizance of the failure of top-down, state-controlled forest management systems. This new awareness has compelled governments in many countries to create space for and obtain support from local communities and/or the private sector in the management of forests. Secondly, governments have increasingly considered forest tenure reform as a vehicle to improve rural livelihoods and reduce disparities between urban and rural populations, as well as a strategic tool to mitigate increasing instances of conflict over forest resources and rural land (*Yasmi et al 2010*). Thirdly, indigenous peoples' movements that demand customary rights over forest resources have put pressure on many governments to rethink tenure arrangements. Finally, there has been an increasing trend of decentralization in the administration and governance systems across countries in the region since the 1980s, which have provided fertile ground for tenure reforms in the forest sector that favor the devolution of rights and responsibilities from the center to sub-national and local levels.

³ The 39 countries are (in descending rank in terms of forest area): Brazil, China, Australia, the Democratic Republic of Congo, Indonesia, Peru, India, Sudan, Mexico, Colombia, Angola, Bolivia, Venezuela, Zambia, Tanzania, Argentina, Myanmar, Papua New Guinea, Central African Republic, Congo, Gabon, Cameroon, Malaysia, Mozambique, Guyana, Suriname, Thailand, Mali, Chad, Nigeria, Ecuador, Cambodia, Cote d'Ivoire, Senegal, Burkina Faso, Honduras, Niger, Gambia, and Togo.

2. The Current State of Tenure in Asia

For the last two decades, central governments in some Asian countries have initiated progressive tenure reform in the forest sector through the transfer of forest management and use rights from the state to local communities, indigenous groups, local government units, private companies and individual households. In many countries, much forestland has also been converted to alternative land uses and may no longer be classified as forest. Some of the devolved tenure models – such as collective forestry in China and Vietnam, and community forestry in Nepal and the Philippines – are yielding promising results in terms of forest protection, but such schemes have not always translated into improved livelihoods for local communities. This could be due to multiple factors – the poor initial condition of the resources handed over to communities, the failure to hand over the full bundle of rights, overly burdensome regulatory frameworks, and improper implementation, among others.

Table 1 provides updated data for statutory forest tenure in China, Cambodia, Indonesia and Thailand (for 2010 only), and new data for Nepal and Vietnam. Data for Australia, Japan, Myanmar, and Papua New Guinea remain unchanged from the previous RRI report (2009).



Forested landscape in Berau,
East Kalimantan, Indonesia

Table 1: Statutory Forestland Tenure Distribution in Selected Countries in Asia

Country	Public				Private							
	Administered by government		Designated for use by communities and indigenous groups		Owned by communities and indigenous groups				Owned by individuals and firms			
	2002	2008	2010	2002	2008	2010	2002	2008	2010	2002	2008	2010
Southeast Asia												
Cambodia ⁱ	11.08 ⁱⁱ	10.08 ⁱⁱⁱ	8.17 ^{iv}	0.00	0.06 ^v	0.13 ^{vi}	0.00	0.00	0.00	0.46 ^{vii}	0.98 ^{viii}	1.19 ^{ix}
Indonesia ^x	108.25 ^{xi}	134.16 ^{xii}	131.18 ^{xiii}	0.22 ^{xiv}	0.26 ^{xv}	0.36 ^{xvi}	0.00	0.00	0.00	1.49 ^{xvii}	2.68 ^{xviii}	2.73 ^{xix}
Myanmar	34.55	32.18	n/a	0.00	0.04	n/a	0.00	0.00	n/a	0.00	0.00	n/a
Thailand	15.04	14.57	n/a	0.00	0.25	1.15 ^{xx}	0.00	0.00	0.00	1.96	1.05	n/a
Vietnam ^{xxi}	8.60	9.74	9.69	0.00	0.00	0.00	2.73	3.29	3.48	0.02	0.08	0.09
Pacific												
Australia	114.57	109.30	n/a	0.00	0.00	n/a	13.63	20.85	n/a	26.68	17.24	n/a
Papua New Guinea	0.80	0.26	n/a	0.00	0.00	0.00	25.90	25.51	n/a	0.00	0.00	n/a
East Asia												
China ^{xxii}	73.34	72.47	n/a	0.00	0.00	0.00	99.44	108.91	n/a	0.00	0.00	0.00
Japan	10.50	10.24	n/a	0.00	0.00	n/a	0.00	0.29	n/a	14.60	14.44	n/a
South Asia												
India	53.60	49.48	n/a	11.60	17.00	n/a	0.00	0.00	n/a	5.20	1.07	n/a
Nepal ^{xxiii}	4.71	4.50	4.43	1.12	1.33	1.40	0.00	0.00	0.00	n/a	n/a	0.002
Total (all cases)	435.04	446.98		12.94	18.89		141.7	158.85		50.41	37.54	
	67.97%	67.49%		2.02%	2.85%		22.14%	23.99%		7.88%	5.67%	
Forest area in 2002: 640.09 million ha												
Forest area in 2008: 662.26 million ha												

Note: All figures expressed in millions of hectares (ha). Data for 2002 and 2008 for all countries/years excluding those with endnotes are from Sunderlin et al 2008 and RRI/ITTO 2009. For references for data from Cambodia, Indonesia, Nepal, Thailand, and Vietnam, please refer to the endnotes. n/a = data not available.

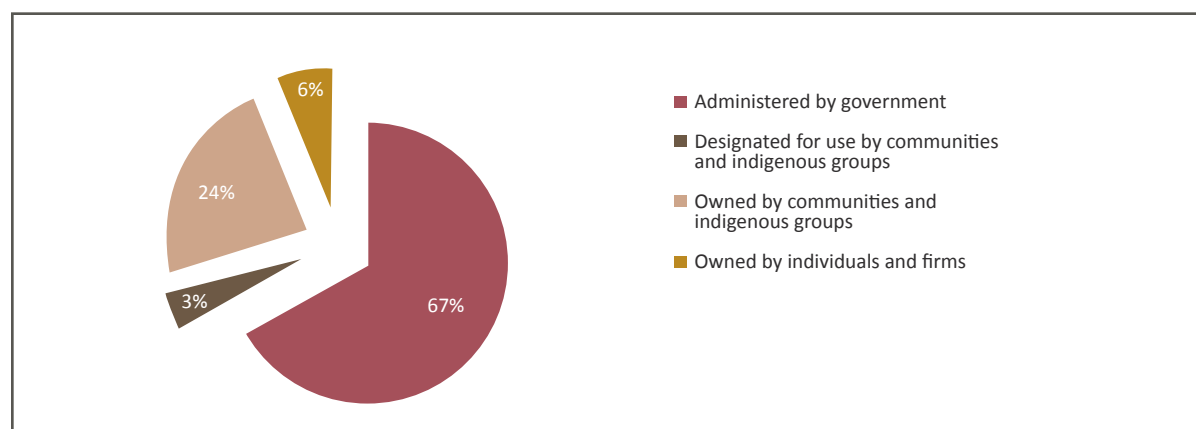
3 Results: Current Status, Trends and Issues of Tenure Reform in Asia

The data obtained from 11 countries in the Asia-Pacific region (Australia, Cambodia, China, India, Indonesia, Japan, Myanmar, Nepal, Papua New Guinea, Thailand, and Vietnam) which account for almost 90% of Asia's forests⁴, show that as of 2008 the state claimed ownership and management over the majority of forests (67% of total forest) in Asia (see Figure 2). The data presented in Table 1 show the following trends in terms of ownership over forestland in Asia between 2002 and 2010.

- The area of public forestland administered by governments in 11 Asian countries increased slightly from 435.04 million hectares in 2002 to 446.98 million hectares (ha) in 2008, despite widely reported deforestation in many countries. In particular, the area claimed under government administration increased significantly in Indonesia, while it decreased slightly in Cambodia, China, Thailand and Nepal.
- The area designated for use by communities and indigenous people increased from 12.94 million ha in 2002 to 18.89 million ha in 2008. The overwhelming bulk of forest area under this category remains in India, which shifted from 11.60 million ha in 2002 to 17 million ha in 2008. In Cambodia, Indonesia, Nepal and Thailand, the area also increased, albeit only incrementally.
- Forestland owned by private communities and indigenous groups increased from 141.7 million ha in 2002 to 158.85 million ha in 2008. The biggest leap was made by China, where forestland owned by collectives increased from 99.44 million ha in 2002 to 108.91 million ha in 2008. Indonesia, Nepal, Thailand and Cambodia have no forestland under this category.
- The area of forestland owned by individuals and firms decreased from 50.41 million ha in 2002 to 37.54 million ha in 2008, with the greatest changes happening in Australia and India. However, area under this category in Cambodia and Indonesia increased markedly, even without counting forest concessions leased to companies, which are legally considered as public domain administered by the government in both countries.

⁴ Total forest area in the Asia-Pacific region is estimated at 740 million hectares, accounting for 18.3 percent of global forest area (FAO 2010).

Figure 2: Distribution of Statutory Forestland Tenure in Asia, 2008

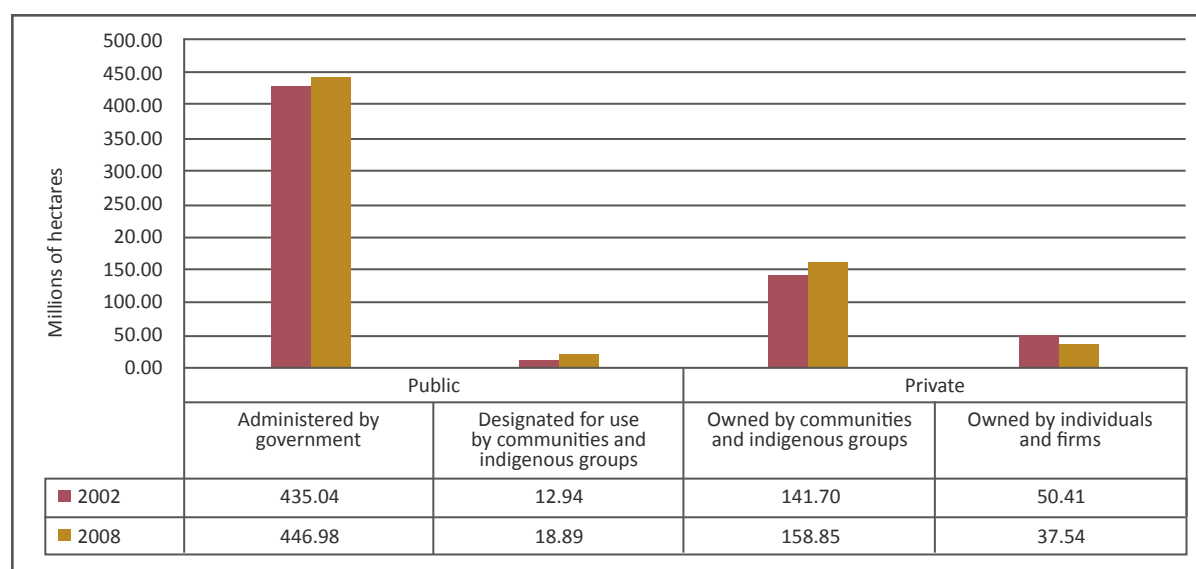


Source: Table 1

3.1 Overall Growth in Community and Household Tenure

There is a huge variation across countries in Asia in terms of making progress on tenure reform, and some countries (China, Nepal and Vietnam in particular) have made great strides in recognizing local people's roles in forest management and transferring rights of management and use of forest resources. While evidence points to a general regional trend of communities and individuals gaining greater forest tenure rights, a major portion of forest area is still claimed as being owned and controlled by the state (see Figure 3). In some countries this remains the legacy of colonial forest regimes, which following the Regalian Doctrine⁵ declared all land (and particularly forestland) as state property unless otherwise privately owned.

Figure 3: Distribution of Statutory Forestland Tenure in Asia⁶, 2002 and 2008



Source: Table 1

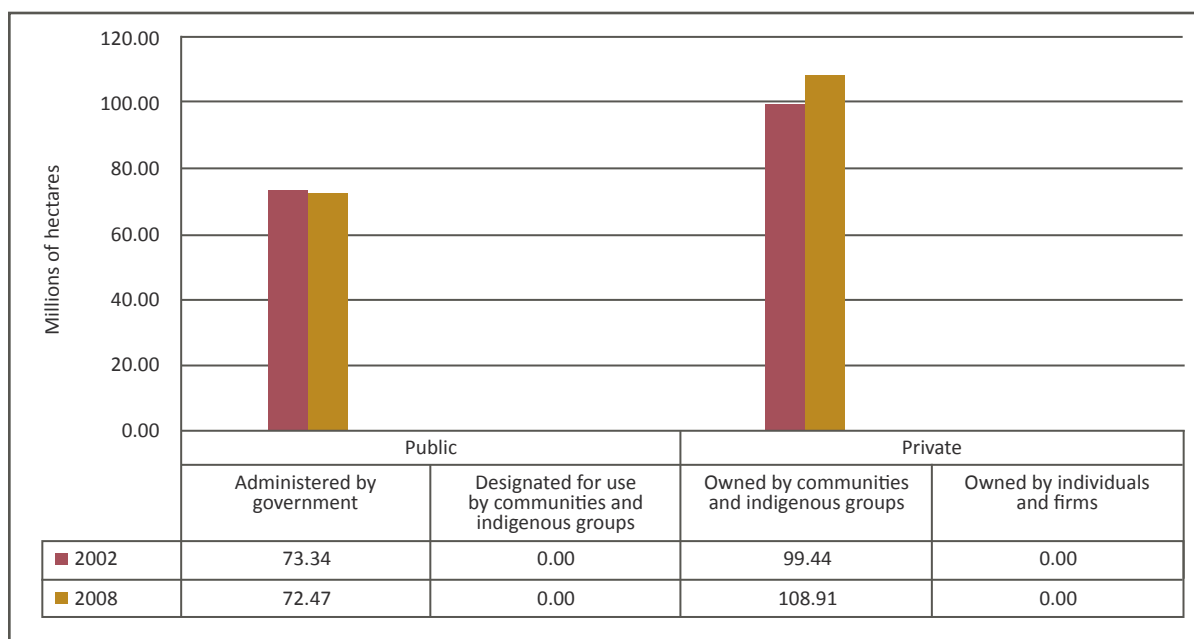
⁵ The Regalian Doctrine was a characteristic of Spanish colonies which held that all lands of the public domain belong to the State (which is the source of any asserted right to ownership of land), and that all lands not otherwise appearing to be clearly within private ownership are presumed to belong to the State.

⁶ Australia, Cambodia, China, India, Indonesia, Japan, Myanmar, Nepal, Papua New Guinea, Thailand, and Vietnam.

As Asian countries emerged from the colonial era, many governments nationalized land and forest ownership, threatening customary tenure systems such as *Adat*⁷ in Indonesia and traditional community-based management practices in Thailand, Malaysia, Philippines and Vietnam. On the other hand, China and Vietnam have moved from a centralist governance approach to more decentralized modes of forest governance.

China in particular is already well advanced in devolving forest tenure to local levels, having the majority of its forestland under collective ownership and even devolving ownership over these forests (i.e. trees) to individuals and households. Between 2002 and 2008, the area of forestland⁸ under state ownership decreased slightly, while that under communities and indigenous groups increased (see Figure 4).

Figure 4: Distribution of Statutory Forestland Tenure in China, 2002 and 2008



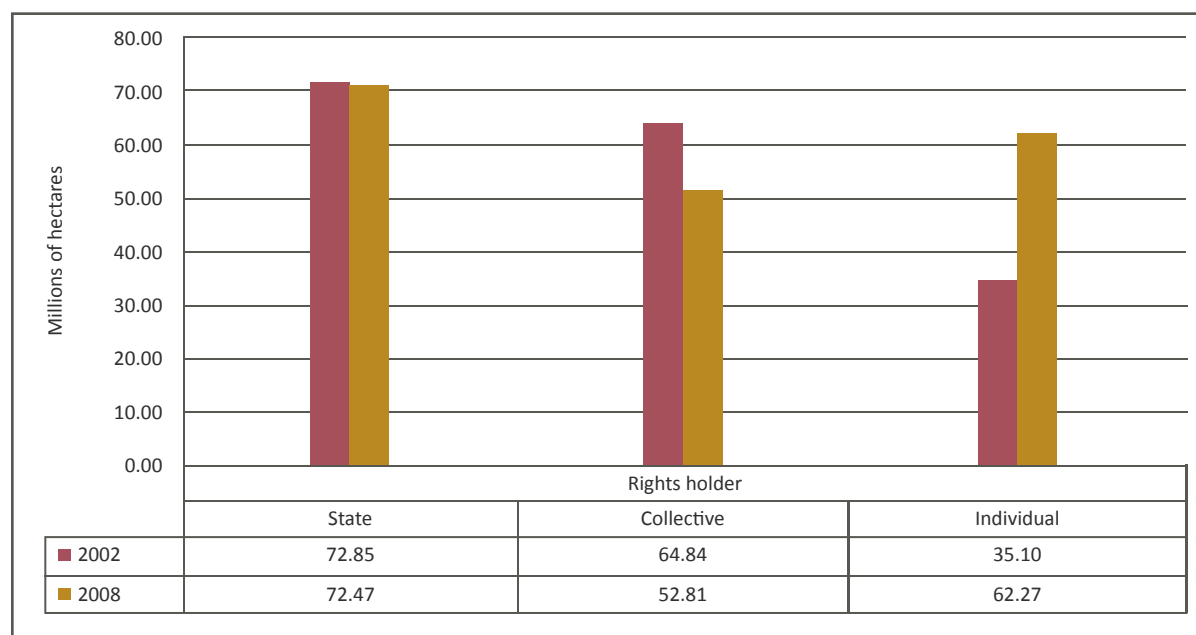
Source: Table 1

At local levels, a spectrum of rights regimes over forest (i.e. trees) exists, extending down to community and individual rights. Within forestland under collective ownership, local people have increasingly been given the opportunity to manage and use forests; statutory ownership over forests (i.e. trees) by individual households has increased dramatically, from 35.1 million ha in 2002 to 62.27 million ha in 2008 (*SFA 2005 and 2009*), signaling a move towards privatization (see Figure 5). But there are emerging issues and challenges within collective ownership and rights given to individual households, as described in Box 1 below.

⁷ *Adat* are customary rights in Indonesia by which local communities lay claim over land and forest resources. However, these lands and resources are typically unmapped, not protected under statutory laws, and, in many cases, have been allocated by the state to corporate concessions holders and trans-migrants (*Barr et al 2006*). Many *Adat* communities would like to have rights over their ancestral territories and forest resources formally recognized by statutory laws, but so far this has not happened.

⁸ It is important to note that the total area under *forest* ownership under collectives and individuals does not exactly match the area for *forestland* under collective ownership for both 2002 and 2008, even though current legislation only allows for individual and household ownership of forests on collective-owned forestland. This disparity may point to a significant diversity of informal tenure arrangements for communities and households within forestlands under state ownership (*Bennett et al 2010*).

Figure 5: Distribution of Statutory Forest (Tree) Ownership in China, 2002 and 2008



Source: SFA (2005 and 2009)

Box 1: Collective Ownership in China: Challenges and Dilemmas

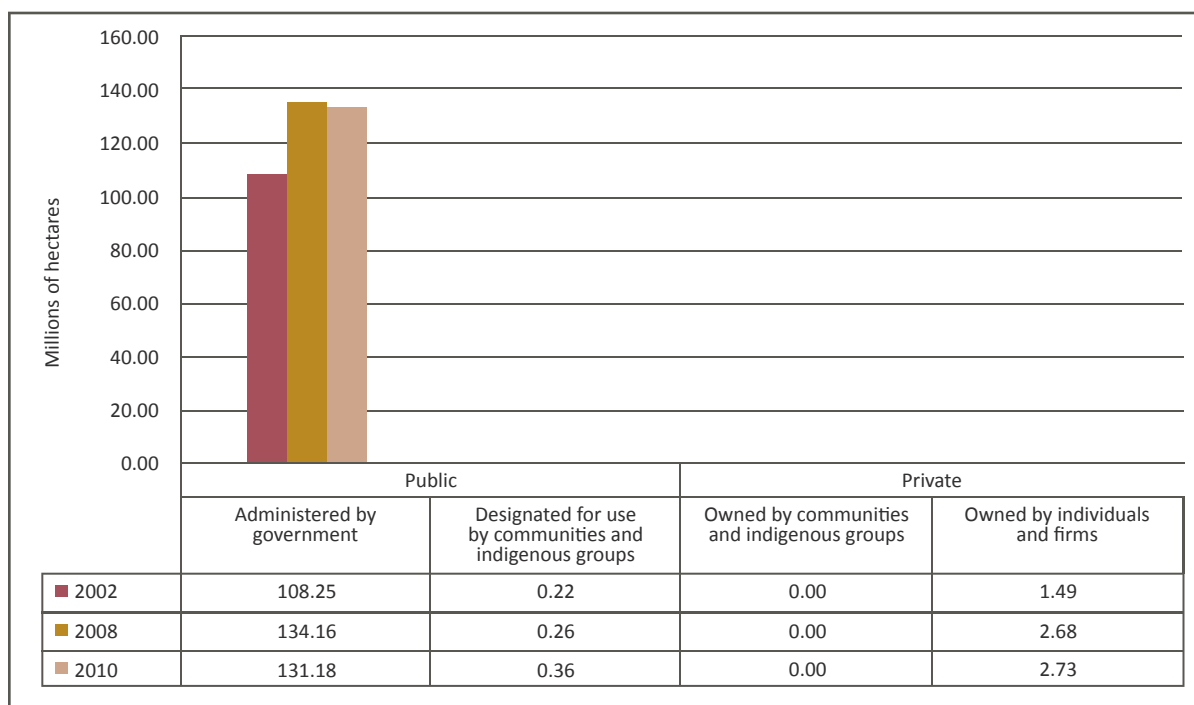
All of China's forestlands are publicly owned either by the central government (38%) or by collectives (62%). There is no private ownership over forestland, but many forests under collectives are formally allocated to individual households for management and use. Within state forestlands, variations of informal land contracting arrangements to households, communities and even private investors may also exist (*Bennett et al 2010*). Beginning with the 'Three Fixes' Policy of 1981, the government has enacted a series of legislation that increasingly enables village committees to decide whether use, management and other rights to forestland of various types within collectives are to be handed over to individual households with long-term rights, or to be retained within the village collective mandate. In general, the government appears committed to eventually devolving forestland rights down to communities, at least in the collective forestry sector.

It is estimated that 30% of collective forests are affected by a government zoning program whereby commercial harvesting of timber is restricted (*Lei, 2010*). The harvesting quota allocated by the government also continues to impede the ability of forest communities to maximize benefits. Recently, climate change-related schemes such as REDD, REDD+, CDM, and the Green Carbon Fund in China are heightening tensions between local villagers and the state, as these schemes pose potential challenges to collective forest ownership and rights.

In recent years, gender issues have emerged as a critical item on the tenure reform agenda. Household certificates for forest are usually only issued to the male head, raising concerns over the equitable distribution of rights and benefits at the collective level. However, gender remains a largely ignored dimension of tenure reform in China.

In Indonesia, the overwhelming majority of forestland is claimed by the state, with very little under private ownership or allocated for community management (see Figure 6). Over the last two decades, the Government has tried to involve local communities in forest management through multiple schemes such as *Hutan Kemasyarakatan* (HKm or community forestry), *Hutan Desa* (village forestry), *Hutan Tanaman Rakyat* (HTR or community plantation forest), and *Kemitraan* (partnership forests), among others. However, the scale of these schemes is insignificant (they total less than one percent of the total forest in 2010), being limited only to pilot sites in a few provinces. Increasing climate change-related interventions and the granting of large-scale concessions to extractive industries and agro-industrial plantations continue to impinge on the rights of indigenous people and local communities in Indonesia (see Box 2 below).

Figure 6: Distribution of Statutory Forestland Tenure in Indonesia, 2002–2010



Source: Table 1

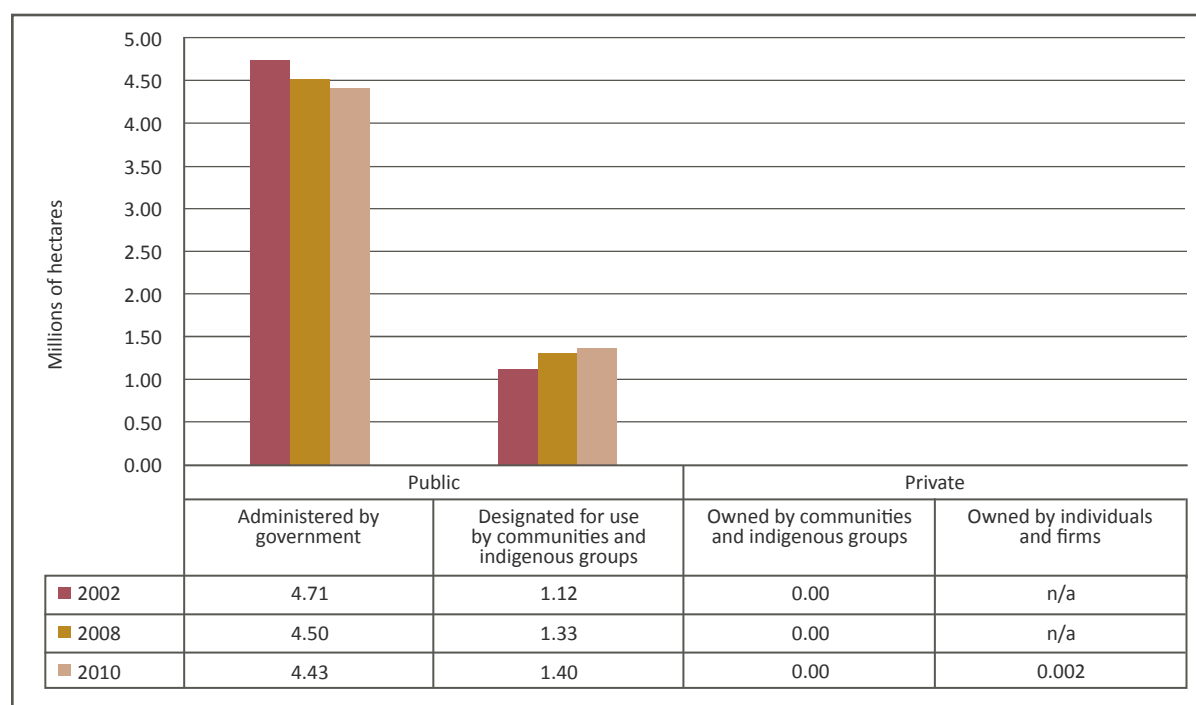
Box 2: Interventions and Concessions in Indonesia: Little Room for Local Rights?

Indonesia is one of the biggest recipients of climate change-related funding from the international community, through schemes such as the Letter of Intent signed with the Government of Norway for US\$1 billion to address climate change through financing REDD. Many social development and environmental organizations believe it is important to demonstrate that such funds can increase the resilience of traditional practices for the benefit of poor people, while being properly used to mitigate carbon emissions. The exclusion of local communities and indigenous people in gaining benefits from climate change-related interventions is likely to increase forestland conflict and deforestation.

In the context of Indonesia–Norway Letter of Intent, in May 2011 the President of Indonesia approved a two-year moratorium for new concessions to clear natural forests and peat land. Many have taken this as a positive move, but questions have been raised about concessionaires which were previously granted permits and will continue clearing forestland. For example, palm oil firms such as Wilmar and Indofood Agri Resources still have large expansion plans.

In contrast to Indonesia, other Asian countries are achieving promising progress in shifting tenure from public to community management and ownership. For example in Nepal, around 23% of total forest has been allocated as community forest and handed over to local forest user groups along with almost all rights except alienation. Other models of community-based forest management are also practiced, but their scale is insignificant; these include leasehold forests, collaborative forest management, and religious forests (all totaling less than one percent of total forestland area). Buffer-zone community forestry is also practiced around protected forest areas, particularly in the *Terai* region (foothills of the Himalayas); as of early 2011, 509 buffer zone community forests covered 179,712 ha of forestland (DNPWC, *personal communication*). Under these models, the Government of Nepal has transferred some rights for forest management and use to local user groups, but not to the same extent as under community forests. While the transfer of tenure rights from the state to local people has increased over the last decade (see Figure 7), the threat of possible retrenchment still looms (see Box 3).

Figure 7: Distribution of Statutory Forestland Tenure in Nepal, 2002–2010



Source: Table 1

Box 3: New Challenges for Community Forestry in Nepal

Community forestry in Nepal is considered by the international development community to be one of the 'good' models of forest management in Asia. As of 2010, around 1.3 million ha of forestland (over 23% of national forestlands) are under the management of 15,225 forest user groups. However, community forestry rights are threatened due to government attempts at retrenchment. In 2010, the Ministry of Forestry and Soil Conservation proposed a new amendment bill aiming to curtail many rights given to communities under the Forest Act (1993) and Regulations (1995), particularly those covering the harvesting and selling of timber. This amendment bill is currently suspended as the Federation of Community Forestry User Groups, Nepal (FECOFUN) and other civil society organizations have demonstrated strong opposition. Similarly, the government has been trying to expand conservation and protected areas (administered by the State) in the middle and western regions of Nepal. In many instances, local communities that currently enjoy community forestry rights in those areas have neither been informed nor consulted about such plans.

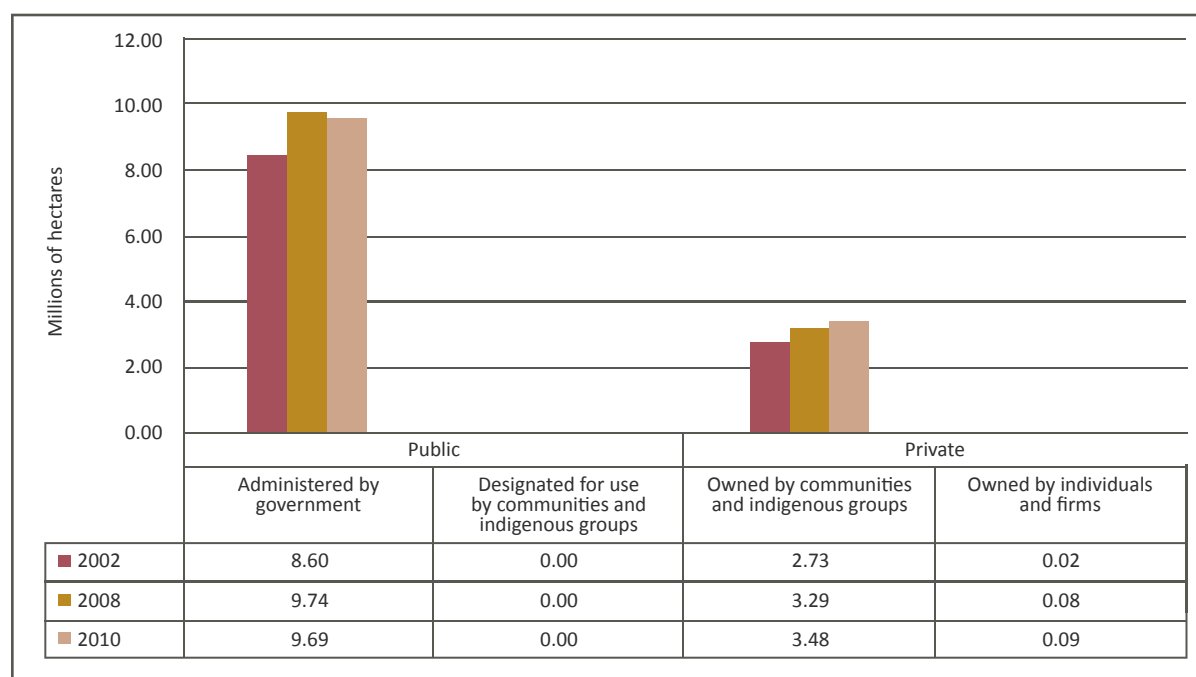
These initiatives are happening at a time when the country is facing a huge political transition and a state-restructuring process through the promulgation of a new Constitution. Uncertainties still prevail in terms of community rights over natural resources under the newly proposed federal structure of the State.

Since the early 1990s, the Government of Vietnam has moved towards allocating forestland to communities and households with strong rights for management and use of forest products. Vietnam's 1993 Land Law provides formal tenure rights to various stakeholders through Red Book Certificates (RBCs); by 2007, over 1.1 million RBCs had been issued to individuals, households and community groups (*GoV 2007*). RBCs provide substantial forestland tenure rights for 50 years to individuals and households, including the right to alienate (i.e. to exchange, transfer, inherit, mortgage, and lease forestland) and to contribute their land in joint production and commercialization activities. RBCs given to communities provide the same rights except for alienation.

Forest Land Allocation (FLA) is the key scheme for allocating statutory rights over forestland to communities and individuals in Vietnam, and forestland ownership by communities and indigenous groups⁹ in Vietnam has increased steadily between 2002 and 2010 (see Figure 8). While most FLA during the 1990s focused on allocating communities with natural forests, between 2002 and 2010 most FLA has occurred in plantation forests; while the area of natural forest owned by communities and indigenous groups has only increased by some 125,000 ha, the area of plantation forest under this tenure category has increased by almost 615,000 ha (*Directorate of Forestry 2011*).

⁹ Under Vietnam's Constitution (1992), all land in Vietnam is owned by the Vietnamese people, with the State reserving the right to manage and allocate tenure rights to different land users on their behalf. In this paper the authors have classified forestland allocated to individuals, households and communities through RBCs as 'owned' by communities and indigenous groups (as opposed to public land designated for use by communities and indigenous groups) due to the range of tenure rights accorded to RBC-holders, which resemble those under individual and collective forest regimes in China.

Figure 8: Distribution of Statutory Forestland Tenure in Vietnam, 2002–2010



Source: Table 1

However the state still claims ownership over the vast majority of forestlands (some 73%) in Vietnam, and FLA has so far yielded mixed results (see Box 4). Local community rights under FLA also remain insecure as the State retains a strong role in making decisions on the use of forest resources. Similarly, communities need to have formal approval from government authorities in advance if they are to harvest any timber from FLA areas and to use forestland for agricultural purposes.

Box 4: Mixed Success for Forest Land Allocation in Vietnam

While the Forest Land Allocation (FLA) program has successfully allocated almost 25% of Vietnam's forestland to households and communities in under two decades, district- and provincial-level research indicates the program has so far yielded mixed results in equitably distributing land to local people and improving their livelihoods (*Bao Huy 2006, Nguyen 2005, Sikor and Nguyen 2007*). There has been no comprehensive assessment of FLA at the national level to date.

The extent to which households can realize economic benefits under FLA is highly dependent on whether local forest rights are clearly understood and distributed equitably within communities, local forest-management capacity, and extant social and environmental conditions such as market access, forest quality, and external support from state and development agencies. FLA has demonstrably contributed to improving income generation opportunities for the rural poor in communities where benefit sharing arrangements are clear and pro-poor development mechanisms are in place; however where these characteristics are absent poorer households have tended to be marginalized in the FLA process. Some communities have also criticized FLA for imposing a rigid model of individual forest management in situations where traditional forms of communal forest management have existed for generations, leading to uneven allocation of forestland among community members. (*Nguyen et al 2008*)

In 2006, the Royal Government of Cambodia initiated a community forestry program by laying out regulations and a process for granting statutory rights and responsibilities of forest management to local communities for 15 years, and has recently finalized the legislation for community protected areas. The community forestry model is only valid for state-owned public lands that sit outside of Protected Areas and are under jurisdiction of the Forestry Administration under the Ministry of Agriculture, Forestry and Fisheries (MAFF) and are classified as production forests that do not fall under suspended forest concession areas. At the end of 2010, some 440 community forests covering 389,000 ha were in different stages of development under the program, but only 114 of these (covering almost 135,000 ha) had completed enough steps in the process to have signed community forestry agreements (*FA, personal communication*). Community protected areas are similar to community forests, but fall under jurisdiction of the Ministry of Environment (MoE), occur within designated protected areas and do not allow communities to harvest timber. While 98 community protected areas have been formally recognized by MoE and cover over 125,000 ha of forestland, almost none have yet signed formal agreements with the MoE (*MoE, personal communication*).

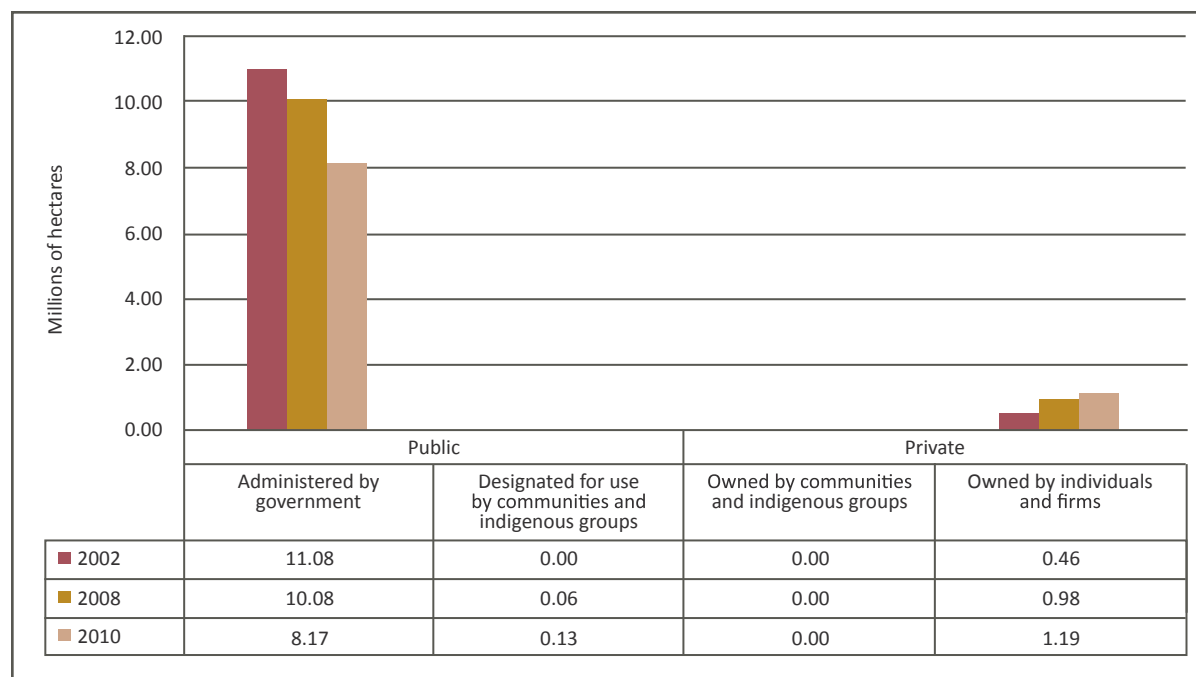
There is no private land under the ownership of local communities, although the Land Law of 2001 has a chapter (3) on indigenous peoples' collective land titling. However, the formal identification of indigenous groups is difficult (*Ewers Anderson 2011*). Mangroves and flooded forests are under jurisdiction of the Department of Fisheries under MAFF, but there are no data on formal tenure arrangements. While the state overwhelmingly remains the predominant statutory owner of forestlands in Cambodia (see Figure 10), economic land concessions are still a priority government scheme and pose a number of challenges and threats to community rights (see Box 5). They (along with social land concessions) are classified as private forestlands in this assessment.

Nevertheless, data for some forest tenure categories in Cambodia are unreliable, as some areas have overlapping categorization. For example, there are old forest (logging) concessions that have been suspended and are considered as public domain administered by government, but are in some cases in the process of conversion to economic land concessions, while local communities also claim some areas for community forestry. Likewise, some large economic land concessions cover land that is not forest but may still be considered state-owned public land as well as areas of private farmland. Finally, economic land concessions may or may not be converted into forestry plantations – many are converted into agro-industrial plantations with cassava, maize, sugar cane, etc., or rubber and palm oil (rather than forest species such as teak, eucalyptus or acacia), which wouldn't normally be classified as forest – and the conversion process takes time.

Box 5: Economic Land Concessions in Cambodia: Doing Good for Local Communities?

Since 1999, the Royal Government of Cambodia has pursued a policy of granting forest area to private companies as economic land concessions. These concessions are meant to convert what are identified as non-productive and degraded forestlands into agro-industrial plantations and create employment opportunities for rural people. At the end of 2010, some 80 concessions covered 1,127,841 ha of land across 16 provinces in Cambodia (*FA, personal communication*). However, many economic land concessions overlap areas which local people lay claim to as community forests, posing key threats to traditional land and use rights. This has stalled the community forest legalization process for many communities and even led to serious conflict in some cases.

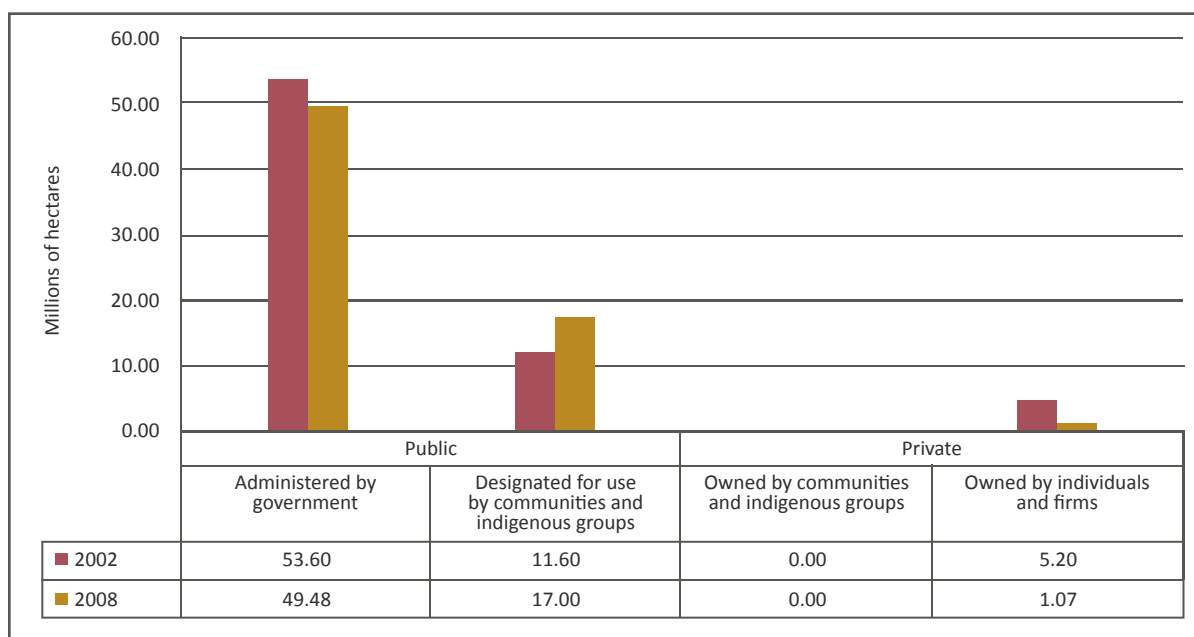
Figure 9: Distribution of Statutory Forestland Tenure in Cambodia, 2002–2010



Source: Table 1

In India, the government has been trying to expand joint forest management as a scheme to transfer rights and benefits from the state to communities. With the launching of the National Forest Policy in 1988, the approach to forest management was changed from a regulatory to a more participatory model. The policy advocates sustainable management with maintenance of environmental sustainability, restoration of ecological balance, and soil and water conservation as the prime objectives of forest management. However, 73% of forests in India are still considered under government control (see Figure 10). In order to address growing energy demands, India is undertaking bio-fuel plantations on a large scale, which increases demand for land. Additional land is also needed for increasing extractive industries, as well as wildlife sanctuaries. Most of the demand for such land is fulfilled through encroaching on tribal areas, heavily affecting the livelihoods of the tribal population in many cases and sometimes displacing communities altogether. While the 2006 Forest Rights Act aims to protect the rights of tribal and ethnic minorities to forest and forestland, questions are being raised as the Act is implemented on the ground (see Box 6 below).

Figure 10: Distribution of Statutory Forest Tenure in India, 2002 and 2008



Source: Table 1

Box 6: The Forest Rights Act: Questions on Implementation

The Forest Rights Act of 2006 is considered one of the most progressive laws in India in terms of ensuring the rights of tribal populations and rural community people. However, the historic opportunity the Act offers is being compromised by poor implementation, a repositioning of vested interests, and an internal land grab race amongst local people. Increasing expansion of areas for bio-fuels, forestry plantations under the government's 'Green India Mission', and the growing demand of land for infrastructure are continually posing threats to tribal and ancestral lands and local people's traditional rights. Furthermore, unfolding climate change schemes such as REDD, REDD+ and carbon credits and the increasing interest of extractive industries in India further impinges on the rights of local communities.

In the Philippines, the Indigenous Peoples Rights Act (IPRA) of 1997 provides land titling certificates for ancestral domains of indigenous peoples. Similarly, Executive Order 263 of 1995 is a presidential decree that serves as a legal instrument for Community-Based Forest Management Agreements (CBFMAs). These legal instruments are a radical departure from the traditional corporate approach of forest management earlier espoused by the State, which in the 1970s placed up to 10.6 million ha under the control of holders of timber license agreements. CBFMAs also allow certificates of stewardship contracts to be given to individual households to manage forest and use land for agro-forestry purposes for up to 25 years. As of 2008, CBFMAs cover 5.97 million ha (38% of the country's classified forestland) and involve more than 690,000 households (*FMB 2008*). Individuals can use stewardship contracts as collateral, and are able to transfer them to others. In principle, this model is similar to collective ownership and individual rights in China. However, despite being 'good' in principle, there have been a number of implementation problems in both IPRA Law and CBFMA (see Box 7).

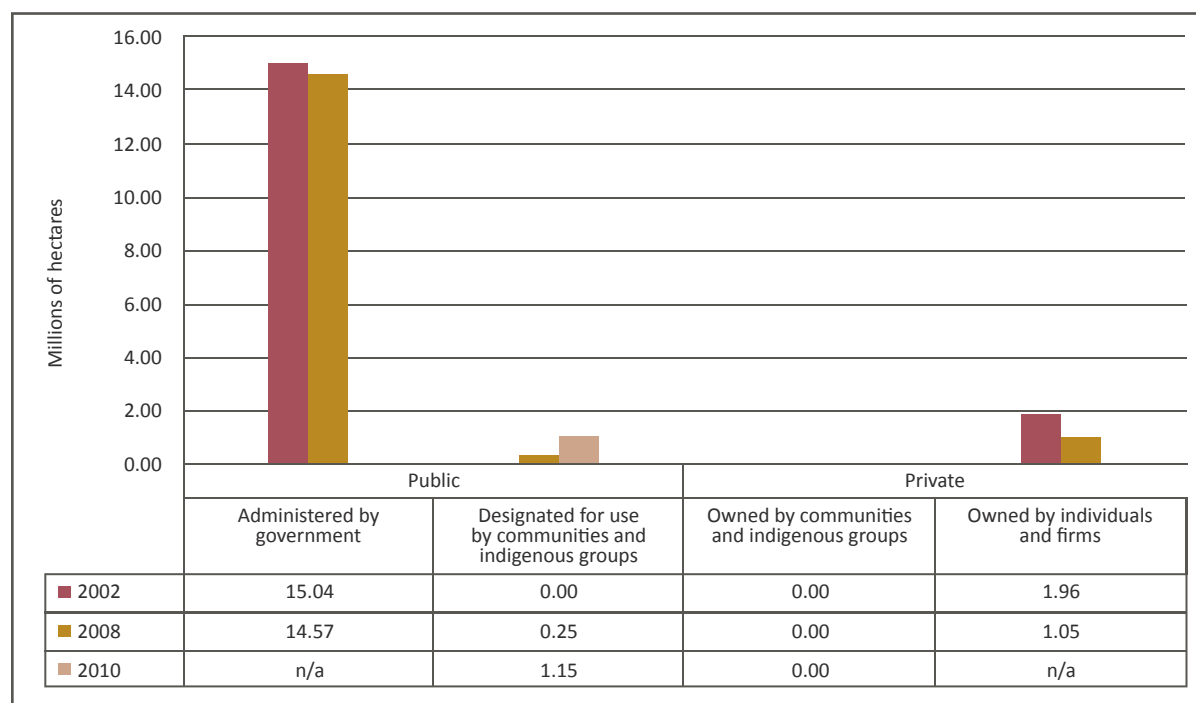
Box 7: The IPRA in the Philippines: Poor Implementation of a Progressive Law

The Indigenous Peoples Rights Act (IPRA) of 1997 in the Philippines recognizes the rights of indigenous peoples over their ancestral domain, providing a certificate of ancestral domain title to indigenous peoples in their territories. However, the pace of this Law's implementation has been disappointingly slow, as there is no clear and consistent institutional base or governance mechanism to handle it. Initially, the IPRA Law was under the jurisdiction of the Office of the President, but later on such jurisdiction was shifted to the Department of Environment and Natural Resources (DENR), where IPRA implementation remains largely haphazard. As of September 2010, 156 Certificates of Ancestral Domain Title (CADTs) have been approved covering almost 4.26 million ha and 912,395 rightsholders (NCIP 2010).

On the other hand, community-based forest management operating under the Executive Order 263 of 1995 is still considered a national strategy to address people's livelihoods, equity and sustainable forest management in the Philippines. However, due to the unclear role of local government units and the provincial DENRs, and with overlapping claims by indigenous peoples and communities over the areas, progress of CBFM in the Philippines remains sluggish. Regulatory barriers inhibit timber utilization and continued government attempts to backtrack on the rights of community and suspend resource utilization permits have also diminished local people's interest and trust in the CBFM scheme (Pulhin *et al* 2008).

In Thailand, the Royal Thai Government is moving slowly towards issuing legal recognition to existing *de facto* community forests. While a community forestry bill remains in parliamentary limbo, communities and civil society groups have begun exploring other avenues toward securing forest tenure rights (see Box 8). Over the years, forestland under community management has been increasing, albeit at a slow pace (see Figure 11), but large areas overlap different protected area schemes with prohibitive community-use regulations.

Figure 11: Statutory Forest Tenure Distribution in Thailand, 2002–2010



Source: Table 1

Box 8: *De Facto* Community Forestry in Thailand

Local communities in Thailand have managed local forestlands for decades. As of December 2010, the Royal Forest Department had formally recognized and registered around 8,000 community forests covering 1.15 million hectares (almost 7% of the country's total forestland; *RFD personal communication*). However, while the process of drafting a community forestry bill was initiated in 1991, over the last 20 years the original draft has been rewritten, rejected, approved, and then rescinded. The major point of contention has been over local people's forest use rights in protected areas.

Thailand's Constitution and legislation such as the Decentralization Act (1988) clearly empower communities to actively engage in natural resource management, use, and protection. The government has recently approved new legislation on community land titling with the aim of solving land tenure problems and supporting local communities. The piloting of approved legislation began in some communities in September 2010. This has encouraged the initiative of communities and civil society groups to explore alternative avenues of gaining statutory rights to local resources, through drafting and promoting a new bill on 'People Participation in Natural Resource Management' and a new Law on Community Rights.

3.2 Large-Scale Logging Still Threatens the Rights of Local People

Large-scale industrial logging in natural forests is in overall decline, but still operates heavily in some countries in Asia, such as Indonesia, Malaysia, and Papua New Guinea, where logging predominately occurs within natural production forests. In some countries, logging has been banned (such as in China and Thailand), while others are gradually reducing the number of logging concessions by limiting the issuance of permits, or by suspending or cancelling contracts.

Some countries have introduced annual timber harvesting and felling quotas to be managed by forest authorities. In China, government-issued harvesting quotas for certain forests are even managed under collectives. However, the intervention of commercial concessionaires is considered a threat for local communities and indigenous populations as it may result in forced migration or displacement of local residents, or imposed restrictions on accessing and using forest resources. In Indonesia, there have been reported instances where large-scale palm oil plantations or logging companies have displaced local communities from their traditional territories (*Barr et al 2006*).

3.3 Increasing Instances of Large-Scale Land Acquisition in Asia

Many governments continue to allow national and transnational companies to establish large-scale plantations on forest and agricultural land. With rises in global food and commodity prices heightening demand for productive arable land, foreign direct investment plays a key role in driving policy and decision making on forestland use in the region. In many cases concessions are granted on land legally considered as public domain administered by the government, although concession-holders may have expanded rights for operation and commercialization.

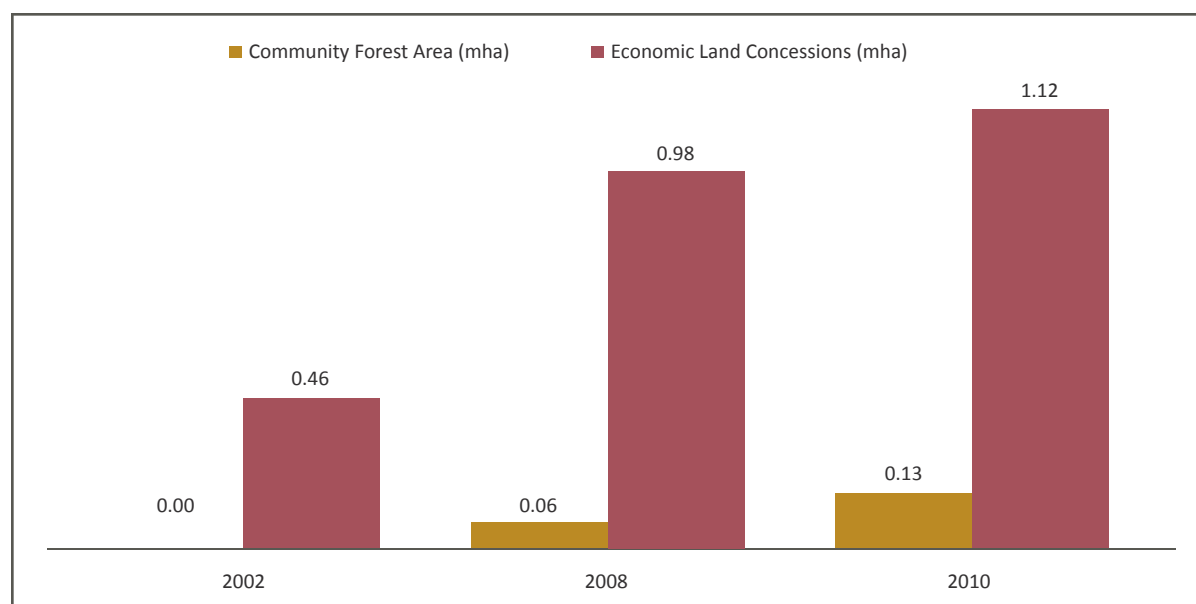
Primary examples include palm oil and rubber plantations in Cambodia, Indonesia, the Lao People's Democratic Republic (Lao PDR), Malaysia, Thailand, and Vietnam, and the interventions of Stora Enso in China, Dabur Limited in Nepal, and Wilmar in Indonesia and Malaysia. In many cases, large-scale land acquisition competes for forestland tenure with, and threatens the rights and livelihoods of, local people, ethnic minorities and indigenous communities (see Box 9). For example, the Cambodian government has prioritized the development of economic land concessions, which has outpaced the formalization of community forest area over the same period (see Figure 12).

Box 9: Increasing Competition for Land in Lao PDR

Sixty-eight percent of land in Lao PDR is still covered with forests (FAO, 2010). According to the Lao PDR Forest Sector Strategy, some 8.2 million ha of forestland has been allocated to local people either for collective or individual use under the Land and Forest Allocation Program (MAF, 2005). However, the program is still not fully implemented on the ground and most of the decision-making rights over such land are retained by the State, with very few communities and villagers so far having received legal certificates over their land.

An increasing number of transnational companies and governments are seeking land in Lao PDR for rubber, coconut and palm oil, eucalyptus, and acacia plantations, causing massive forest clearance. For example, Oji Paper Company of Japan, Grasim Birla of India, and Stora Enso/Burapha of Sweden/Finland occupy millions of hectares for plantation and other agri-business purposes (Sipaseuth and Glenn, 2009). Due to insecure tenure and limited rights over forestland, local villagers are obliged to accept the interventions of government and outsiders – although some companies (such as Stora Enso [UNDP 2011]) are undertaking more participatory approaches to developing concessions with the involvement of local communities. Ethnic minorities (33% of the total population) are particularly vulnerable because of increasing rates of forest clearance and land grabbing by large companies.

Figure 12: Comparison of Area under Community Forestry and Economic Land Concessions in Cambodia, 2002–2010



Source: FA, personal communication

3.4 Governments Still Aim to Expand Conservation and Protected Areas

In some Asian countries, governments are prioritizing the expansion of protected areas and national parks in the name of environmental and biodiversity conservation (Nepal and Thailand), while in other countries (Cambodia) protected areas are under threat as land is excised for agro-industrial plantations, mining exploration and tourism development. Many Asian countries have started to classify and designate forests in terms of production, plantation, and protection zones; this is the case in Cambodia, China, Indonesia, the Philippines and Thailand. The expansion of protected forests and areas is mostly undertaken where indigenous and tribal peoples are living, who in several cases have been evicted without prior information, consent, and adequate compensation (Barr et al 2006).

3.5 Community Forestry has Improved Forest Conditions, but not (yet) Rural Livelihoods

Various studies have shown that tenure security is a prerequisite to improve forest conditions and the livelihoods of the rural poor. This is remarkably evident in the countries where forest management rights have been fully transferred to communities, such as in Nepal (*Larson et al. 2010, Dahal et al 2010*), and in countries where forest management rights have been granted to individual households, such as in Vietnam and China (*Nguyen et al 2008, Xu 2010*). Where tenure is not clear or secure and the state still claims control over forest management, forest conditions are shown to have deteriorated. For example, in parts of Indonesia forest degradation is still a major problem because of conflicts over forestland use between central and provincial governments, and between government and local communities. (*Larson et al 2010, Yasmi et al 2010*)

Many local forest users in Asia remain severely constrained in exercising their rights, experiencing *bundles of rights* more as *bundles of responsibilities*, with a result being that poverty reduction impacts are often negligible (*Sunderlin et al 2005, Oberndorf et al 2006*). Many countries give only low value or degraded forest to local people, and often only in small plots. This has been a matter of policy in Nepal, where leasehold forests are specifically designated to hand over degraded land to poor households for reclamation, and in Indonesia, where HTR and *Hutan Desa* schemes are specially designed to reforest or rehabilitate through community plantations. In the Philippines, community-based forest management was initiated to reclaim degraded upland areas through the involvement of local communities. Similarly, in Cambodia and Vietnam local communities are often handed over degraded forests on small landplots. Therefore, despite having secure tenure, local people are unable to realize significant economic benefits from reformed forest tenure arrangements until their forests grow.

Communities with rights over commercially viable forest resources are also invariably restricted by regulatory barriers on timber harvesting; importing, possessing or operating forest machinery; prohibitive transport regulations; and complicated and rigid management planning requirements with high implementation and transaction costs (*Molnar et al 2006*). They may also have to compete with illegal operations and trade, corruption and a globalizing market that prefers a consistent supply of cheap, uniform (i.e. plantation-sourced) material.



A villager monitors tree growth at a community forest in Kampong Thom, Cambodia.



3.6 Public Land Ownership Predominates Despite Increasing Privatization of Forest Resources

Public forestland ownership remains the predominant ownership category in Asia. While new national policies and slowly rising figures point to a very gradual trend of forest tenure devolution, the total area and relative proportion of forestland designated for use or owned by communities and indigenous groups still pales in comparison with forestland under state administration for all of the five target countries¹⁰ surveyed in this report, except for China.

However, when examining tree ownership and forest concessions, a different picture emerges, pointing to a trend towards privatization of forest resources in some countries. As stated earlier, individual and household ownership of trees in China has almost doubled since 2002, and laws in the Philippines and Vietnam give a similarly expanded bundle of rights to local people in those countries. However, a tenure reform outlook that favors privatization does not necessarily strengthen the tenure rights of communities and indigenous groups. In Cambodia, while the area designated for use by communities has increased, the area under economic land concessions has increased at a significantly greater rate (see Figure 12 on page 21). In Indonesia, forest concessions still cover some 25 million ha (*MoF 2010*) and in practice have characteristics of private freehold (*Elson 2011*), even though they are on land that remains administered by the government as public domain. Future research on forest tenure might do well to focus on distinguishing household/individual ownership over small plots from business ownership over large areas.

While tenure reforms have been enacted in many countries, institutional challenges have so far limited changes on the ground and contributed little to improve the livelihoods of forest-dependent populations. Some of the key barriers include limited political will and bureaucratic resistance, ineffective legal frameworks and compliance, and poor implementation. Tables 2 and 3 explain changes in tenure category in some Asian countries and corresponding rights and benefits for communities and indigenous peoples.

¹⁰ Cambodia, China, Indonesia, Nepal and Vietnam.

Table 2: Community-based Forest Management Models and the State of Rights Across Selected Countries in Asia

Country	Type of forest management	Type of rights transferred	Type of benefits for local communities	Types of responsibilities transferred	Security of tenure: legal basis
Nepal	Community forest	Access, withdrawal, management and exclusion on specified forest area for the members of forest user groups	Based on approved forest management plan, user groups can harvest and sell forest products	Protection, management and rehabilitation of degraded forest area	The Forest Act (1993) provides a strong legal basis for communities to manage forests indefinitely. Forest management plans are renewed every five years
	Leasehold forest	Access, withdrawal, management and exclusion on specified forest area for the members of leasehold groups	Degraded forest areas are given to leaseholders so initial economic benefits are low. Agroforestry support also provided	Rehabilitation of degraded forestland, and management	Lease for 40 years, but with possibility of renewal
	Collaborative forest	Protection and management	Benefit sharing between government and local communities	Community contributes to protect and manage forest	Not time-bound but no clear legal basis; hence tenure security is weak
	Religious forest	Access, withdrawal (for subsistence), limited management and exclusion	Access and subsistence use of NTFPs by members of a religious institution or group	Protection and limited management	Legal basis under the 1993 Forest Act, but relatively insecure as there is no tenure certificate given
	Buffer zone community forest	Access, withdrawal (for subsistence), limited management and exclusion	Revenue sharing with protected area; access and subsistence use of NTFPs by members	Protection and limited management	Legal basis under the Nepal Biodiversity Strategy of 2002, but more limited rights than community forestry
	Community forest (HKm)	Access and withdrawal (limited)	Working as paid labor in forest management, limited access to non-timber forest products (NTFPs)	Plantation and protection of designated forest area	No tenure security as it is operated under Ministerial Regulation and decree
Indonesia	Village forest (<i>Hutan Desa</i>)	Access, withdrawal (only for NTFPs) and management	Access by villagers for collecting firewood and fodder	Protection and management of forest	Ministerial Regulation of 2008, insecure and weak legal instrument
	Community plantation forest (HTR)	Access, withdrawal (only for NTFPs) and management	Available NTFPs from planted forest areas	Plantation and protection of forestland	Under Central P2H Head Decree, licenses can be issued for 60 years, with the possibility of renewal
	Indonesia is currently piloting a variety of other community-based forest management models; however, many of these are currently limited to pilot sites in a few provinces, and some do not yet have policy backing from the government. For more details, please refer to the accompanying country studies.				
China	Collective forest	Access, withdrawal, management, exclusion and alienation (allocate to member households only)	Timber and NTFPs	Management and protection	Certificate for 70 years of tenure, with possible renewal
	Household forest	Access, withdrawal, management, exclusion and alienation (mortgage/transfer) of forest/trees but ownership of forestland remains with collective	Timber and NTFPs	Management and protection	Certificate for 40 years of tenure, with possible renewal

Country	Type of forest management	Type of rights transferred	Type of benefits for local communities	Types of responsibilities transferred	Security of tenure: legal basis
Cambodia	Community forest	Access, withdrawal, management and exclusion in designated area	NTFPs in particular; timber based on approval of management plan from government	Land development, plantation, protection	The Forestry Law of 2002 provides a relatively strong legal basis for tenure security for 15 yrs, with possible renewal
	Community protected areas	Access, withdrawal (only for NTFPs), management and exclusion in designated area	NTFPs	Management and protection	Strong legal basis under the Royal Decree on the Designation and Creation of Protected Forests (1993)
	Other models of community-based forest management in Cambodia include partnership forests, community-based production forests, and community protection forests. Please refer to the accompanying country studies for more details.				
Vietnam	Community forestry	Access, withdrawal, management, exclusion	Timber and NTFPs (some restrictions in protection forests)	Joint production and commercial activities	Land Law (2003) and FPD (2004) tenure title for 50 years, also possible to renew
Malaysia	Household forest	Access, withdrawal, management, exclusion and alienation (mortgage/transfer)	Timber and NTFPs (some restrictions in protection forests)	Production, protection and management	Tenure title for 50 years, with the possibility to renew
	Rural village forestry	Access and withdrawal	Non-timber forest products	Rehabilitation of degraded forests	National Forest Act (1984), with village forestry as pilot
	Community-based forest management	Access, withdrawal, management, exclusion and alienation	Agro-forestry crops but limited timber harvesting as approved by DENR	Rehabilitation of degraded forest, plantation and protection	Certificate of Stewardship Contract for 25 years
Philippines	Indigenous peoples' ancestral domain	All rights over land as given by IPRA Law	Timber and NTFPs	Management and development of forest and land	Strong rights over land for indigenous groups under the IPRA Law (1997)
Papua New Guinea	Customary community forestry	Access, withdrawal, management, exclusion and alienation	Timber and NTFPs	Overall protection and management	Rights given to community by Customary Land Law
Lao PDR	Village forest	Access and withdrawal	Grazing and non-timber forest products	Tree plantation, protection and management	Community-based forest management models in pilot phase; almost no certificates issued as yet
India	Joint forest management	Access and limited withdrawal	Benefit sharing with government	Protection and management	No clear rights; it is a sharing scheme
	Community forest	De facto access, withdrawal and management	Timber and NTFPs	De facto protection and management	No statutory security; de facto customary rights
Thailand	Village community forest	Access and limited withdrawal/management	Collection of wood products, rearing of animals	Protection and reforestation	Decentralization Act (1998) recognized by the Royal Forest Department, creates space for de facto customary rights

Source: authors' compilation (2011)

Many Asian countries claim to have begun the reform process by shifting various forest tenure rights from the state to local people. But existing government policies and legislation in many cases still favor state control over forest resources. Table 3 presents a comparison of where control lies – between state and community – when considering the bundle of rights (elaborated by Schlager and Ostrom [1992]) under different forest management regimes in Asia.

Table 3: Statutory Tenure Rights under Different Forest Management Regimes across Selected Countries in Asia

Who holds forest rights in 2010?						
		◀ TOWARD STATE		TOWARD COMMUNITY ▶▶		
Country	Forest management regimes	1	2	3	4	5
Nepal	Community forestry					
	Collaborative forestry					
	Leasehold forestry					
	Religious forests					
	Buffer zone community forestry					
Indonesia	Community forestry (HKm)					
	Village forestry (Hutan Desa)					
China	Collective forestry					
	Household forestry					
Cambodia	Community forestry					
	Community protected areas					
Vietnam	Community forestry					
	Household forestry					
Malaysia	Community forestry					
The Philippines	Community-based forest management					
Papua New Guinea	Community forestry					
Lao PDR	Production forestry					
	Village forestry					
India	Joint forest management					
	Community forestry					
Thailand	Community forestry					

Source: authors' compilation (2011)

4. Underlying Drivers of Tenure Change

Three key drivers currently affect forest tenure change in the region. The first is an increasing demand for timber and wood fiber, particularly within emerging Asian economies. The second is a rise in oil and food prices and the global initiative to mitigate climate change, which has produced a major spike in land investments for bio-fuel and agricultural plantations in forest areas. The third is the emergence of the REDD+ agenda, which has the potential to shift national forest policies toward stricter conservation purposes that may limit community rights to use and benefit from local forest resources (*RRI/ITTO 2009, Larson et al. 2010, and Sunderlin et al 2008*).

There are also a number of crosscutting factors. The increasing growth of civil society organizations and grassroots networks has played a significant role in advancing the forest tenure reform agenda by creating greater awareness and demand for the rights of individuals and communities over natural resources in particular, and human rights in general. Greater freedom of press and access to information, along with increasing recognition by governments of the benefits of collective action and common property regimes, are also contributing to the process of tenure change in Asia.



A village elder at the Nepal Forest Caravan in April 2010. He holds a sign which reads, "Hand Over Terai Forests To Local Communities."

5 Challenges and Opportunities for Forest Tenure Reform

Although opportunities to acquire statutory forest tenure rights have gradually opened up for local people in many Asian countries, tenure reform that devolves forest management to these stakeholders continues to encounter major challenges due to inconsistent government policies, poor commitment and a lack of sufficient institutional capacity, and weak implementation and enforcement. Some of the key challenges include:

- Indigenous and traditional rights are still not the basis for allocating tenure over forest area. Instead, forest tenure change is interest-driven by the state and frequently defies bio-physical classifications.
- Changes in statutory law and policies frequently don't promote sweeping change in rights. The more ambitious reforms often emerge from grassroots demands – particularly for indigenous rights to traditional lands. In nearly all cases, implementation of reforms encounters delays and obstacles.
- Some governments continue to attempt to roll back and curtail the rights of communities and indigenous people through policy reversals and amendments. A recurring problem remains the superimposition of state regulations over local rules, and failure of the state to defend new community rights from competing interest and intrusions.
- Competing interests and claims for the same forestlands and forest resources and services (whether from loggers, private industries or conservation organizations) threaten the rights of local communities. In some cases, the state acts as one of the competitors for these resources.
- Rampant corruption in the forest sector, and vested interests of those that benefit from existing arrangements, continue to block the process of tenure reform in many countries.
- Gender dimensions in tenure have so far been largely ignored. It remains a great challenge to give adequate consideration to gender and equity agendas in many countries, and to ensure that rights are distributed equally without discrimination or proactively favor women, the poor, and the marginalized.
- Increasing trends of large-scale land acquisition and investment by national and transnational companies across Asian countries are posing greater threats to the rights of local people over forest resources.

Despite these challenges, there are potential opportunities to advance and scale up tenure reform that devolves forests to communities and indigenous groups. These include:

- The enactment of national policies, acts and regulations that favor community people must be followed up by strong implementation and enforcement from responsible government agencies if communities are to gain real benefits from newly acquired rights.
- Growing networks of community forestry groups at national and regional levels are a key vehicle to promote forest tenure reform in Asia. For example, the strong national Federation of Community Forest Users, Nepal (FECOFUN) is playing a strategic role to counter any regressive policy changes proposed by the Government of Nepal that would curtail community rights. Similarly, in Thailand a national community forestry network is coordinating regional networks to exchange knowledge and strengthen their collective voice in advocacy. In Cambodia,

a national multi-stakeholder community forestry working group serves as a forum to share information and lobby for the promotion of community forestry. In Indonesia, a national forum for communication on community forestry, Forum Komunikasi Kehutanan Masyarakat (FKKM), is bridging the link between community and policy arenas and sharing information, experiences and learning among all stakeholders.

- Some countries in Asia (e.g. China, Nepal, the Philippines and Vietnam) have already made significant progress in devolving forest tenure rights to local people. National capacities, knowledge, skills and experience in community-based forest management have also grown across the region due to the efforts of governments (both regional and Western donors) and development organizations. Further learning from these countries' experiences and mistakes could catalyze positive reform in other countries.
- While in many countries the forest sector's direct contributions to GDP are diminishing in relation to other sectors, policymakers increasingly recognize the role of forests in maintaining environmental services and the sustainable development of other sectors, particularly in rural areas. The Chinese government, for example, now subsidizes the development of forestry at local levels, rather than expecting national revenue growth.



Community forest networks in Thailand provide a strong platform for learning and advocacy.

6. Ways Forward

There is huge potential to advance forest tenure reform that benefits local communities and indigenous peoples in Asia. However, this scope has generally been limited by conservative policies, laws and regulations. State-centric development thinking persists across a number of countries in Asia, ignoring the critical role of other actors, particularly civil society groups and communities. Creating space for other stakeholders in forest management and providing enabling environments for them to participate is particularly important in advancing tenure reform. Recognition of customary rights and issuing strong legal bases to ensure tenure security for community and indigenous people are fundamental to engage forest-dependent peoples in sustainably managing forests around the region.

States should be honest and liberal in sharing statutory rights and responsibilities of forest management with community and indigenous people, in order to ensure that forests are well protected and the benefits of forest management are used to improve local people's livelihoods and address poverty. Decisions to allow large-scale commercial intervention in forests and forestlands – such as the establishment of industrial plantations, large-scale commercial industries, mining and logging – should not be guided by interests seeking to raise government revenue and profit for investors. Rather, decision makers need to consider longer term, sustainable economic and environmental benefits, and whether such interventions will provide any benefits to local residents while securing the rights and traditional practices of local people.



Villagers in Vietnam set off to formally demarcate their forests.



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Annex I: Terms and Definitions

Tenure	A broad concept which refers to arrangements that regulate access to and use of resources. Tenure consists of bundles of rights – access, use, management, exclusion and alienation. Tenure can be formal (legally recognized by the state) and informal (locally recognized under customary practices but without formal legal recognition).
Forest and Forestland	<i>Forest</i> consists of land spanning more than 0.5 ha with trees higher than 5 meters and a canopy cover of more than 10 percent, or trees able to reach these thresholds in situ. Whereas <i>forestland</i> is land which may be legally classified as <i>forestland</i> , but does not necessarily meet the aforementioned criteria of forest.
Forest Tenure	In general, forest tenure includes ownership, tenancy and other arrangements for the use of forests. It is a combination of legally or customarily defined arrangements for the management and use of forest resources. Forest tenure determines who can use what resources, for how long and under what conditions.
Forest ownership	Generally refers to the legal right to freely and exclusively use, control, transfer, or otherwise benefit from a forest. Ownership can be acquired through transfer such as sales, donations, and inheritance.
Public ownership	Ownership by the state; or administrative units of the Public Administration, or by institutions or corporations owned by the Public Administration.
Private ownership	Ownership by individuals, families, communities, private cooperatives, corporations and other business or private entities.
Public land administered by government	Typically includes all lands in the legal forest estate that are owned and administered exclusively by the government and that are not designated for use by communities and indigenous people. Note that this category includes some protected areas and forestlands awarded as concessions for logging, agro-industrial or silvicultural plantations, and mining.
Public land designated for use by communities and indigenous peoples	Refers to forestlands set aside on a semi-permanent but conditional basis. In this category, governments retain ownership and entitlement to unilaterally extinguish local group's rights over entire areas. Local groups lack rights to sell or otherwise alienate land through mortgages or other financial instruments.
Private land owned by communities and indigenous peoples	Refers to forestlands where rights cannot be unilaterally terminated by a government without some form of due process and compensation. Private land owners typically (but not always) have rights to access, sell, or otherwise alienate, manage, withdraw resources and exclude outsiders.
Private lands owned by individuals and firms	Includes those lands where the rights cannot be unilaterally terminated by a government without due process or compensation.
Property	A set of rights and responsibilities concerning a thing and recognized by an official title. It could be private property held by private people, natural or legal, public property held by any level of government, or common property as a commons from which a community can exclude nonmembers and over which it controls use.

Endnotes

- ⁱ Base data for calculating forestland administration under different stakeholders in Cambodia were sourced from FAO's Global Forest Resources Assessment 2005 (*FAO 2006a*) and the Forestry Administration statistics database (*personal communication*). There is no private forestland under the ownership of communities in Cambodia.
- ⁱⁱ Area includes all forestlands owned and administered by the state, excluding economic land concessions. Calculated by subtracting the area under economic land concessions for 2002 (*FA statistics database, personal communication*) from the total forest area for 2000 (*FAO 2006a*).
- ⁱⁱⁱ Area includes all forestlands owned and administered by the state, excluding economic land concessions, social land concessions and community forests / community protected areas with signed agreements. Calculated by subtracting the area under economic land concessions, social land concessions and community forests for 2008 (*FA statistics database, personal communication*) from the total forest area for 2005 (*FAO 2006b*).
- ^{iv} Area includes all forestlands owned and administered by the state, excluding economic land concessions, social land concessions and community forests / community protected areas with signed agreements. *FA statistics database, personal communication*.
- ^v Area includes community forests / community protected areas with signed agreements up to December 2008. *FA statistics database, personal communication*.
- ^{vi} Area includes community forests / community protected areas with signed agreements up to December 2010. *FA statistics database, personal communication*.
- ^{vii} Area includes economic land concessions.
- ^{viii} Area includes economic land concessions and social land concessions.
- ^{ix} Area includes economic land concessions and social land concessions.
- ^x Data for Indonesia were sourced primarily from yearly statistics reports published by various departments under the Ministry of Forestry (available at www.dephut.go.id) and cross-referenced with a MoF report prepared for the FAO Global Forest Resources Assessment 2005 (*FAO 2006d*) as well as data provided by MoF personnel in March 2011.
- ^{xi} Calculated by subtracting the 2002 total area for Hkm and HR (successive footnotes) from the 2002 total forest and water area (*MoF 2003*). Figure includes natural forest concessions leased to companies.
- ^{xii} Calculated by subtracting the 2008 total area for Hkm, HR and HTR (successive footnotes) from the 2008 total forest and water/coastal conservation area (*MoF 2009a*). Figure includes natural forest concessions leased to companies.



- xiii Calculated by subtracting the 2009 total area for HR and Hkm, and 2010 total area for HD and HTR (successive footnotes) from the July 2011 total forest and water area (*MoF 2011*). Figure includes natural forest concessions leased to companies.
- xiv 2002 total area for Hkm. Calculated by subtracting Hkm area allocation for 2003 (*MoF 2008*) from 2003 total area for Hkm (*FAO 2006d*).
- xv 2008 total area for Hkm and HTR. Sum of (i) 2003 total area for Hkm (*FAO 2006d*); (ii) cumulative total of Hkm area allocations for 2004, 2005, 2006, 2007 and 2008 (*MoF 2009a*); and (iii) total area for HTR as of 2008 (*MoF 2009b*).
- xvi 2010 total area for HTR and HD and 2009 total area for Hkm. Sum of (i) 2003 total area for Hkm (*FAO 2006d*); (ii) cumulative total of Hkm area allocations for 2004, 2005, 2006, 2007, 2008, and 2009 (*MoF 2009a and 2010a*); (iii) total area for Bupati-approved HTR as of December 2010 (*MoF 2010b*); and (iv) total area for Bupati-approved HD (*Directorate General of Land Rehabilitation and Social Forestry database, personal communication*).
- xvii 2002 total area for HR. Calculated by subtracting HR area allocation for 2003 (*MoF 2008*) from the 2003 total area for HR (*FAO 2006d*).
- xviii 2008 total area for HR. Sum of (i) 2003 total area for HR (*FAO 2006d*) and (ii) cumulative total of HR area allocations for 2004, 2005, 2006, 2007 and 2008 (*MoF 2009a*).
- xix 2010 total area for HR. Sum of (i) 2003 total area for HR (*FAO 2006d*) and (ii) cumulative total of HR area allocations for 2004, 2005, 2006, 2007, 2008 and 2009 (*MoF 2008 and 2009a*).
- xx Sourced from the Royal Forest Department statistics database (*personal communication*) in May 2011.
- xxi All statistics from Vietnam sourced from the website of the Directorate of Forestry, under the Ministry of Agriculture and Rural Development. NB statistics for 2010 in all four fields are taken (do you mean “extrapolated?”) from 2009 statistics (latest available data at press time).
- xxii All statistics from China sourced from the 6th and 7th National Forest Inventories. *SFA 2005 and SFA 2009*.
- xxiii All statistics for Nepal sourced from various databases and reports of the Ministry of Forestry and Soil Conservation in particular *Leasehold Forestry and Livestock Program 2010* and *Department of Forests 2011*, and the Community Forestry Database (*personal communication*). Note that figures for public land designated for communities and indigenous groups do not include buffer zone community forests, as data disaggregated by year are unavailable.

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