

# **Law, pluralism and the promotion of sustainable community-based forest management**

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How enacting innovative and equitable laws and policies concerning community-based forest management can help local forest-dependent communities ensure that their interests are fairly considered in forest planning and management decisions.

Interest in and experience with sustainable community-based forest management (CBFM) has increased markedly during the past decade. This has been paralleled by recognition that authentic and widespread official support for CBFM depends, to a large degree, on strong civil society organizations and on the existence of pluralistic societies. Support for pluralism is an explicit acknowledgement of the many interests and perspectives regarding natural resource management, and rightly implies that the aspirations and rights of rural people directly dependent on forest resources have been overlooked for too long and merit immediate attention. This article first presents a brief theoretical reflection on pluralism, based on the author's experience in promoting public-interest human rights and environmental law and institutions in Asia, the Pacific, and Africa. It then explores how the enactment of innovative and equitable laws and policies concerning community-based forest management, especially the legal recognition of community-based property rights, can help provide necessary leverage to local forest-dependent communities so that their interests are fairly represented in forest planning and management decisions. It concludes with a summary of recommendations made by representatives of Asian non-governmental organizations (NGOs) that advocate sustainable CBFM.

## **PLURALISM AND SUSTAINABLE FOREST MANAGEMENT**

The legal, political and economic marginalization of many rural resource users in developing countries, including forest-dependent peoples, is often longstanding and well entrenched in terms of law and the overall relationships between rural people and their governments. This undemocratic power imbalance needs to be openly recognized, rationally analysed and addressed. There is a need to foster and promote a more appropriate and equitable balance between those who have control over and thus derive wealth from

forest resources, and those who possess little, even though their lives and cultures are forest-based. Consequently, this article focuses on responses to the predicaments of local people directly dependent on forest resources. They are the largest but weakest forest constituency and they are the most in need of the minimal legal leverage<sup>53</sup> necessary for pluralism and sustainable forestry to flourish. Some might interpret this approach as not being pluralistic, as it is largely aimed at a single constituency. But "common concerns cannot be faced resolutely and jointly by humankind if one of the parties lives in abject poverty and at the mercy of the other" (Desai, 1997).

## **STRENGTHENING CIVIL SOCIETY**

Government and the private sector are essential components of a pluralistic society, but civil society is also necessary, especially if the voices and aspirations of marginalized rural constituencies are going to be amplified, heard and accommodated. For civil society to emerge and prosper in a given country, national (and state) laws and legal processes must allow individuals and groups outside government and the commercial spheres to obtain information, to express opinions publicly, to disseminate information, to participate meaningfully in planning and decision-making activities that directly impact on their lives and livelihoods, to associate freely, peacefully and openly with others and to pursue effective remedies and redress. These and other rights are included in a 1994 Draft Declaration on Human Rights and the Environment (for an excellent overview and analysis, see Popovic, 1996). Corollary rights to register legally as organizations, to open and secure bank accounts and to hold property rights are also important. In many nations, governmental regulations of and prohibitions on civil society circumscribe or even preclude the exercise of these key conditions for fostering pluralism. This, in turn, can have negative effects on the promotion of sustainable community-based forestry. In the United Republic of Tanzania, for example, the government deems freedom of association to be a privilege, not a right. During September 1996, the national government decided to deregister a leading NGO that was organized to promote gender equity in various spheres of public life, including natural resource management. This decision is being challenged in court by a coalition of Tanzanian NGOs and a decision is pending. A comparatively independent judiciary in Tanzania provides hope that the outcome may be favourable to the fostering of pluralism (Nshala, 1997). In some developing countries, including the Philippines, Indonesia, India, Sri Lanka, Bangladesh, Nepal, Papua New Guinea, Kenya, the United Republic of Tanzania, South Africa, Mexico, Colombia and Peru, a small number of lawyers have been at the forefront of efforts to challenge the status quo and promote a democratic and just distribution of power, wealth and other values (see Moniaga, 1993; Smith, 1996; Nshala, 1997; Leonen, 1998; Frondorf, 1998). The institutions they work for are typically public interest, environmental law NGOs. It can be a dangerous job. Many governments fear and repress public

interest lawyers and institutions (see Lawyers Committee for Human Rights, 1994).

## **NATIONAL LAW AND COMMUNITY-BASED FOREST MANAGEMENT**

The types of legal and institutional changes that are needed to promote substantive and sustainable community-based forest management are closely associated with more general processes of promoting pluralism and democratization. Without political space it is exceedingly difficult for local people directly dependent on forests to organize or have an impact on policy-making processes.

From a legal perspective, the challenge is to surmount legislative and judicial obstacles to CBFM and to replace them with incentives that create and foster appropriate legal, regulatory and economic relationships between local communities, formal governmental institutions and, in some instances, commercial enterprises.

The sustainable management and use of forest resources requires an appreciation of and support for the participation by people directly dependent on forest resources. This includes: i) recognizing and calling on local knowledge, skills and experience in natural resource management; ii) understanding the interests and motives of people directly dependent on natural resources; iii) relating general environmental concerns to specific local contexts; iv) helping to identify and strengthen local institutional capacities; and v) challenging and revising inaccurate assumptions about the nature and causes of local environmental problems.

Effectively promoting sustainable forest management often requires the enactment of new laws and/or the revision and reinterpretation of existing national laws, regulations and policies. In the Philippines, well-organized advocacy and the presence of strong, nationwide, politically conscious civil groups and NGOs committed to promoting social justice and sustainable development are prompting the government to become more responsive to mass-based constituencies, including rural fishers, farmers and indigenous peoples directly dependent on natural resources. They have been a major force behind the enactment in October 1997 of a potentially significant new law, the Indigenous Peoples Rights Act (Republic Act No. 8371).

Creative efforts and solutions that give greater emphasis to problems and contributions of rural peoples and environmental issues, particularly those pertaining to local incentives for sustainable CBFM, are urgently needed. Few developing countries broadly recognize either community-based tenurial rights or rural peoples' contributions to forest conservation and sustainable management (Thrupp, Hecht and Browder, 1997). The important and distinct role of women has been especially overlooked (Sarin, 1994; 1996). Likewise,

few developing countries seriously involve rural communities in decisions over conservation and local natural resource management. To change and lead to substantive democracy, adequate, appropriate and enduring political pressures must be applied by civil society institutions (Hudduck, 1997). To establish mutually enforceable, appropriate, secure and enduring relationships that promote sustainable CBFM, local communities need to understand what their options, rights and concomitant duties are in regard to national laws. National laws must also provide support for the rights and claims of local people and communities (Bruce and Migot-Adholla, 1994; Seymour and Rutherford, 1993). Pilot projects in some countries have established legal precedents that provide an important impetus for establishing new community-oriented policies and programmes. An adequate legal regime that recognizes the role of and allows local community-based institutions to define, preside over and redefine the rules of resource use can help provide a fertile environment in which pilot projects flourish. The challenge is to go beyond pilot projects to large-scale enactment of supportive policy and activities.

Especially innovative and increasingly widespread CBFM-research activities are focused on efforts to map the perimeters of areas occupied and utilized by resource-dependent communities, especially those within classified forest zones and protected areas (For a description of some mapping activities in Indonesia, see Peluso [1995], Topatimasang [1997].) Through mapping the lands and subsequent efforts to plan resource use, forest-dependent people can help monitor forest use, both by themselves and by outsiders. Maps can be used to support community-level education and political unity and allow for local participation in government conservation programmes. They are also essential for plans that provide for control of access, essential to avoid a "tragedy of the commons". By bringing communities together to map their lands and discuss regional development, local people can acquire a broader perspective about the use of the resources in the region, and get a sense of how it will affect them. Working together can help foster solidarity among the various communities and enhance their bargaining leverage with government and other institutions.

## **PRIVATE COMMUNITY-BASED RIGHTS**

The best way to guarantee enduring community-based incentives for sustainable management would be to establish a legally binding commitment recognizing existing community-based rights wherever local people have a history of and ongoing commitment to protecting and sustainably managing natural resources.

Besides providing assurance that local people will profit from investing their time and labour, the recognition of community-based rights would contribute to goodwill between local communities and governments. Moreover, it could provide communities with state-sanctioned authority to control access to their

territories, areas which are sometimes environmentally fragile and not able to sustain additional large numbers of people. Property rights, of course, by themselves, do not provide adequate incentives and conditions for sustainable management. They are a necessary, but insufficient, condition. Technical assistance to develop and strengthen local organizational capacities and support sustainable management and conservation, together with appropriate credit programmes, are examples of other essential elements.

In regard to property rights, the optimum seems to be recognition of private community-based rights. As private rights holders, communities would generally have much more bargaining leverage with outside interests than if they only held public rights (Lynch and Talbott, 1995). In Papua New Guinea, for example, local communities and the government have established a fairly secure - albeit threatened - balance. Local communities can legally oblige the government to consult them and win their approval before starting conservation or development initiatives. As private rights holders, they are also much better positioned to ensure that the government provides notice and due process as well as just compensation in cases where community-based rights are expropriated for public purposes.

Whether public or private, natural resource rights typically encompass a "bundle" of rights. Terms such as "ownership", "title" and "leasehold" - often used by outsiders to describe property rights - imply a concept of ownership that is often at odds with the principles and practices of community-based tenure. Tenure systems are invariably complex and specify under what circumstances and to what extent certain resources are available to individuals and communities. Usufruct agreements such as certificates, leases or other restrictive tenurial instruments may be appropriate in some circumstances, but in other cases may not be conducive to the promotion of long-term sustainable objectives. They are vulnerable to arbitrary cancellation and, as such, fail to provide leaseholders or recipients of privileges with adequate incentives to make the costly investments of time and labour required to realize long-term benefits. Policy-makers need to ensure that local people have sufficient incentives and possess ample and secure tenure over the natural resource base they depend on for their survival (Banerjee et al., 1997; Dove, 1993).

## **CONCLUSION**

Efforts to promote sustainable CBFM are hampered in many countries by legal restrictions on civil society institutions and pluralism, as well as national laws and legal concepts, especially property rights, which disadvantage rural peoples directly dependent on forest resources. In many countries, therefore, law remains an obstacle to pluralism and sustainable CBFM.

Law can also be an important tool for recognizing various independent and autonomous groups and their rights as potential key actors in sustainable CBFM.

At a recent workshop, NGO representatives from 14 Asian and Pacific countries shared their experiences and insights with other advocates and practitioners of community-based forest management and reached three major conclusions (Berdan and Pasimio, 1996):

- The prevailing paradigm of nation-state ownership and management of forest resources (in developing countries) is not sustainable.
- An alternative policy and legal framework that supports civil society and recognizes community-based tenurial rights provides the best prospects for improving forest management.
- Local authority and management structures need further development and refinement if the respective rights and duties of nation-states and local communities are to be securely balanced.

The workshop ended with the participants adopting the Baguio Declaration, committing its subscribers - and calling on others - to abide by and take action according to ten principles. The first two principles state that "community-based natural resource rights of indigenous and other long-settled communities should be recognized and protected as are rights of other sectors" and "government recognition of existing community-based rights is preferable to rights based on government grants". In essence, the declaration calls for promoting and recognizing local groups, with their own concerns and objectives - a pluralistic setting - as essential for sustainable CBFM.

These principles can be used to build shared perceptions and political will to provoke changes in national and international laws and standards of conduct. It behooves us all to work together to develop better legal strategies and tools for effectively promoting civil society, pluralism and sustainable CBFM. It is, of course, preferable that governments - whether at the international, national, or more local levels - support these efforts. But efforts to reinforce pluralism and promote sustainable forest management need not wait. u

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