

to allocate land between communal and private uses without the need for much recourse to higher authority. The redistributive power of village-level government was one of the best kA.472 78.667 Td

Various reforms in Tanzania have encouraged the large-scale restoration of small woodlands (*ngitilis*) in Shinyanga region, generating a significant increase in their value. It was estimated in 2003 that benefits from these woodlands added an average of US\$14 per person per month to local incomes (Monela et al., 2005). This is almost double Tanzania's estimated basic needs per capita poverty line of US\$7.6. Communities and individuals have invested some of the increased income in local school buildings, and in paying for school fees and pupils' uniforms. Shinyanga has been much cited as a shining example of village-based forest restoration, not least by IUCN.

However, averages do not always tell the full story. When the Poverty-Forests Toolkit was applied in Busongo village in Shinyanga in 2006, poor women explained to us (in the privacy of their own focus-group) that wealthy men were rapidly acquiring land for private *ngitili* forests (for grazing their cattle) while too little land was being set aside for communal *ngitilis* for the needs of poorer users. Indeed, complete landlessness was now growing among the poor, as poor men also told us.

This is depressing news. Tanzania is one of the few countries in the world with a system of village tenure which allows village leaders

rights. It failed, for instance, to provide for community consent to logging on community lands. Liberia's legislature recognized this concern and committed to developing a Community (Forest) Rights Law. The local NGO sector, with support from international conservation initiatives, has played a prominent role in researching local conditions and drafting the new community rights law. A lead input has been made by the Sustainable Development Institute (winner of the Goldman Environmental Prize in 2006) sponsoring an in-depth analysis of forest tenure by this author (see *So Who Owns the Forest: An investigation into forest ownership and customary land rights in Liberia*, available at www.fern.org.)

The potential for change

Drafting of the new law by a local lawyer working closely with a multi-agency working group began at the end of last year and is nearing completion. A recent workshop in Monrovia elaborated ways in which the final drafting may unambiguously devolve forest governance to the local level, thereby reshaping the role of the central Forest Development Administration as technical adviser and ultimate regulator. The law is designed to empower the many forest-owning communities as lawful managers of their forest assets. The new law would also restructure commercial forest use, discouraging the issuing of overly large concessions and encouraging private sector-community partnerships and community-based forest enterprises. A series of watch-points from international experience were elaborated including the need for simple procedures to maximize uptake and minimize cost, the need to keep user groups and community management entities as constructs and the overriding need to position communities as rights-holders and the sources of conservation and sustainable use regulation, not beneficiaries of state benevolence.

A land rights-based approach within reach

There was general agreement as to the way forward. The final draft of the law was expected to be ready by the end of

A history of neglect

While Liberia's natural forest resource has made a major contribution to the country's economic development (providing 20 percent of GDP in 2003), its exploitation has been far from responsible. By the end of the Charles Taylor regime (1997-2003), more than twice the total forest area had been allocated to some 70 (mainly foreign) companies. In addition, timber sales were found to be contributing to arms purchases including support to rebels in neighbouring Sierra Leone. A post-Taylor review resulted in the cancellation of all concessions by President Ellen Johnson Sirleaf in early 2006, and no concessions have been re-issued, pending comprehensive reforms of the forest sector.

In addition, Liberia's forest exploitation over the last half-century has ridden roughshod over customary property rights as rural communities have been denied their right to harvest or use timber, and widespread human rights abuses by concession staff, including rape, have been reported.

Unfortunately, a new National Forest Reform Law enacted in late 2006 did not adequately address forest property

Colombia's new forest law rejected

Eugenia Ponce de León

A successful protest

In January this year, Colombia's Constitutional Court ruled that the country's General Forestry Law, enacted two years ago, was unconstitutional. This move follows an intensive campaign by a coalition of NGOs, environmental and legal experts and representatives of ethnic groups and forest communities, who opposed the law on the grounds that it violated the rights of Indigenous People and Afro-Colombians. As an environmental lawyer, I was closely involved in the opposition to the law. A national policy paper that I wrote was signed by many of the campaigning groups and sent to Congress and to the relevant government authorities. This was in addition to the many letters and petitions sent by a whole range of groups, formally requesting consultation on the law and modification of its articles.

An established protection

Much of Colombia's natural forest is on lands within, or adjacent to, the territories of the country's indigenous and Afro-Colombian groups. Colombian legislation recognizes these communities' property rights over the forests – rights that apply not only to the trees, but to the land itself. In addition, as a signatory to the ILO Convention 169 de 1989 on Indigenous and Tribal Peoples, Colombia is committed to undertaking consultation with these groups “whenever consideration is being given to legislative or administrative measures which may affect them directly” (Article 6). This legal obligation on the part of the government to consult with the indigenous and Afro-Colombian communities had already been confirmed in previous rulings of the Constitutional Court, as an important requirement to enable these groups to become fully informed of emerging legislation and to participate in its development.

A backward law

The enactment of the General Forestry Law represented a major backward step in Colombia's environmental legislation and a threat to the rights of the country's indigenous and Afro-Colombian populations. First and foremost, the failure to consult with these groups during the preparation of the law meant that their legal rights had been breached. In addition, the law treated forests as simply sources of wood to be exploited, rather than as ecosystems that provide a wide range of goods and services. With its overriding emphasis on forest exploitation, the law relegated the issues of conservation, restoration and resource protection to

small, disjointed articles with no legal force. Furthermore, the law abolished controls on the sale of forest products from commercial plantations and made illegal logging of natural forests all the more easy. All this meant that the law entailed a change of vision for the country's forests and the abandonment of their integrated regulation within an ecosystem approach that had been established in Colombia's environmental policies.

A wise decision

For the Constitutional Court, the violation of the ILO Convention was enough to warrant the axing of the forestry law. The Court concluded that since the subject of the law deeply affected the cosmovision of the indigenous and Afro-Colombian communities and their relation with the Earth, there was no alternative but to declare it unconstitutional and unenforceable. Without a doubt, this decision sets a very important precedent for the rights of these groups in Colombia.

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Recognition of the relationship between human rights and the environment has been developing in recent years and many government and civil society actors have addressed rights abuses that can arise from environmental degradation. Although the right to a healthy environment is absent from most international human rights instruments, human rights law provides substantive and procedural elements and institutional mechanisms that may be utilized to address environmental concerns. The jurisprudence of international human rights bodies, such as the European Court of Human Rights, clearly demonstrates this possibility.

The impact of forest activities on human rights has on several occasions been sanctioned in the jurisprudence of national and international judicial bodies. By way of example, in 1994 the Supreme Court of the Philippines ruled that the right to a balanced and healthy environment and the right to health entitled a group of Filipino children to stand in court on behalf of future generations to seek the cancellation

of forest logging permits. At the international level, the Inter-American Commission has found on several occasions that deforestation and logging activities may impair the human rights of forest-dwelling communities. Along similar lines, the UN Human Rights Committee has established that the expropriation of lands for timber development may threaten the way of life and culture of indigenous peoples (*Lubicon Lake Band v. Canada*, Communication No. 167/1984).

This approach, however, only benefits the victims of violations of established human rights. If the individual applicant's health, private life, property or civil rights are not sufficiently affected by environmental damage, then he or she has no standing to claim recognition of these rights before human rights bodies.

Another way of addressing the linkages between conservation and human rights is to elaborate tools to integrate human rights protection with conservation. IUCN has promoted this approach by sponsoring the

study 'Conservation with Justice: A Rights-Based Approach', edited by Dinah Shelton and due for publication later this year (see more details on page 16).

Regulations on access and allocation of forest resources must comply with the human rights of all affected subjects. Although these rights are often recognized in domestic constitutions and international human rights treaties, they are rarely taken into account in forest decision-making. As indigenous and other communities enjoy tenure rights over a large and increasing percentage of the world's forests, it is necessary to ensure the protection of their rights. At the same time, however, it must be recognized that the trend towards increased legislation of customary land rights and other traditional rights of forest-dwelling people is not the obvious solution it may at first appear – and indeed in some cases it may even cause more problems than it solves. For example, legislation may reinforce inequitable rights, benefitting only the elite and further marginalizing the weaker members of society.

To date, there is no comprehensive instrument specifically designed to address the links between conservation and human rights. The recently adopted UNFF Non-legally Binding Instrument on All Types of Forests is silent on the matter and merely encourages states to promote the involvement of local communities, forest owners and other relevant stakeholders in decision-making processes. As the priorities

The urban public generally view forest conservation as an unquestionably 'good thing' akin to apple pie, motherhood and soccer. It is a key 'green' solution to global climate change. Forest conservation delivers its 'good news' through various mechanisms – certified logging, sustainable logging, joint forest management, community-based forestry, payments for ecosystem services, forest reserves and protected areas – almost invariably in forests on lands claimed by local communities.

The urban public does not see the displaced pygmy camps watching certified logs passing on trucks in Cameroon, the uncontacted Amazonian indigenous people impacted by loggers who penetrate their territory to fell illegally-harvested logs to be sold as 'certified', or other similar scenes easily seen by outsiders who travel to remote forested areas around the world. The public living in such rural areas, on the other hand, describe themselves as 'struck by the lightning' by such projects: hardly good news.

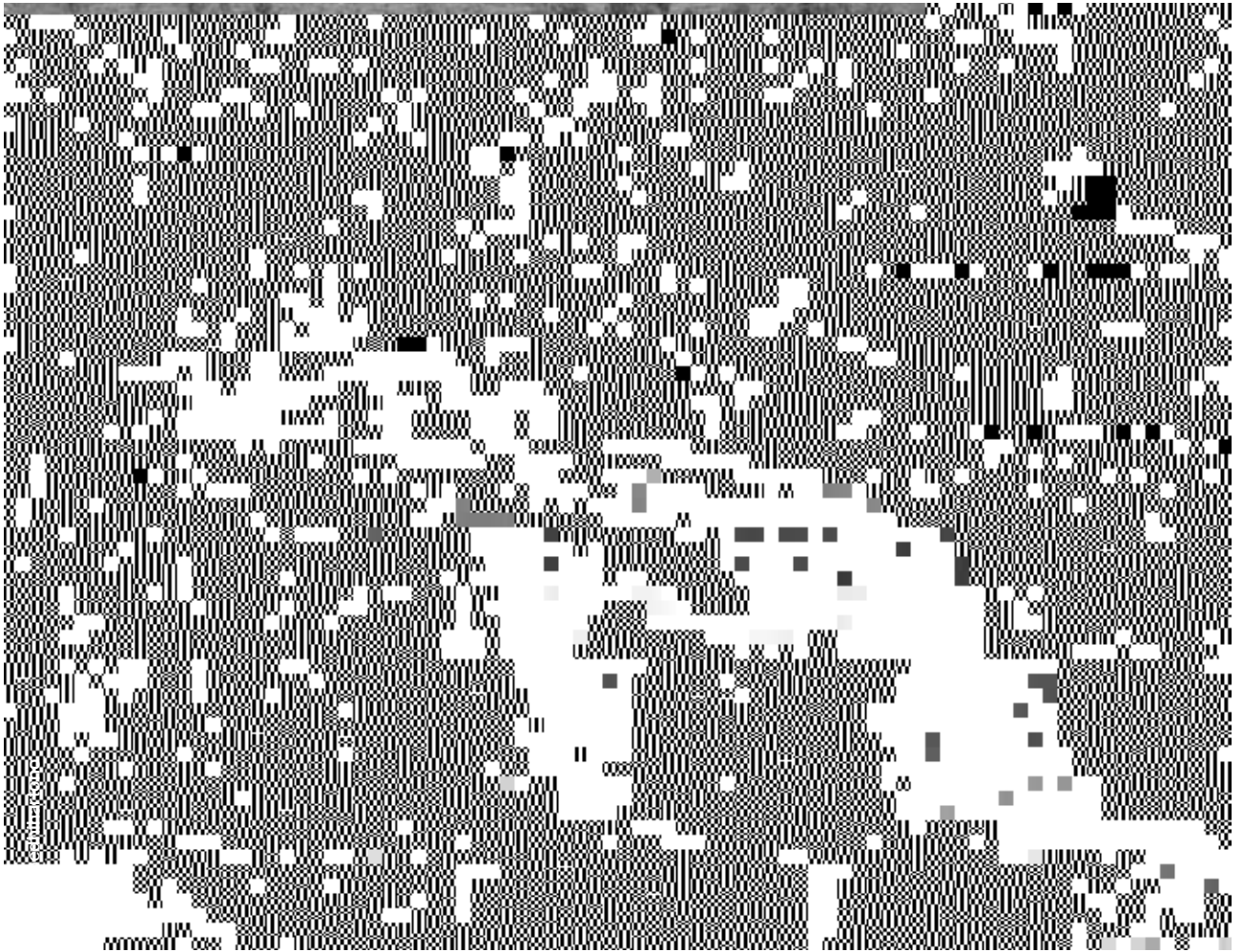
Biodiversity hotspots generally overlap with poverty hotspots. While forest conservation could bring good news for local communities, and indeed is often touted as beneficial for them, these communities bear significant costs and gain few benefits. The costs arise not only from opportunity costs but also from the forest conservation planners' and implementers' failures to support the human rights of communities and their members.

Individuals and communities are 'rights-holders' who hold universal rights to an indivisible bundle of civil, economic, cultural, political, property, and environmental rights. Conservation agents are 'duty-bearers' who have obligations to act to protect human rights directly and to create the conditions for others to fulfil their responsibilities, even in the absence of national legislation or regulations protecting human rights. Human rights abuse allegations associated with forest conservation activities include violation of due process, massive forcible resettlements, extrajudicial killings, destruction of property and farms, torture and other violations of social, cultural, political and economic rights. Globally, over 130 million people are 'conservation refugees', having lost their homes and access to resources as a result of conservation interventions. Indigenous peoples are particularly vulnerable to having their prior territorial

rights violated by forest conservation, and increasingly view conservation as a major threat, some even calling conservation an 'ecofascist' activity.

Failures to support human rights in forest conservation arise from the Lucifer Effect – not because people involved in forest projects are inherently bad, but because institutions do not provide planners and implementers with the proper guidance to apply as decision-making criteria in complex situations. Most forests are found in remote areas where the national government is not protecting human rights and where there are unclear property rights and weak judicial systems. In such situations, the onus of duty-bearer falls square upon those who are planning and implementing forest conservation. However, external organizations have been implicated again and again in choosing to turn a blind eye or play the game with corrupt governments instead of supporting human rights, choosing short-term solutions over the long road of negotiating benefits for local rights holders via recognition of their customary rights over forests.

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A women's nursery in Burundi

Rights-based approaches to forest conservation

Bob Fisher

Gonzalo Oviedo

Rights-based approaches (RBA) to conservation, including forest conservation, are being increasingly advocated – and sometimes contested. This article unpacks some of the issues behind these approaches, many of which are dealt with in greater detail in other articles in this issue of *arbor*.

There are a number of different views of rights as they apply to conservation. A great deal of emphasis has been placed on tenure rights – rights to access and use resources – which we will look at in a moment. But first, let's consider some more 'fundamental' rights.

Environmental rights and human rights

The idea of environmental rights (e.g. the right to clean water, or to a healthy environment) emerged primarily as a result of social conscience about pollution and the effects of industrial development on humans. The environmental

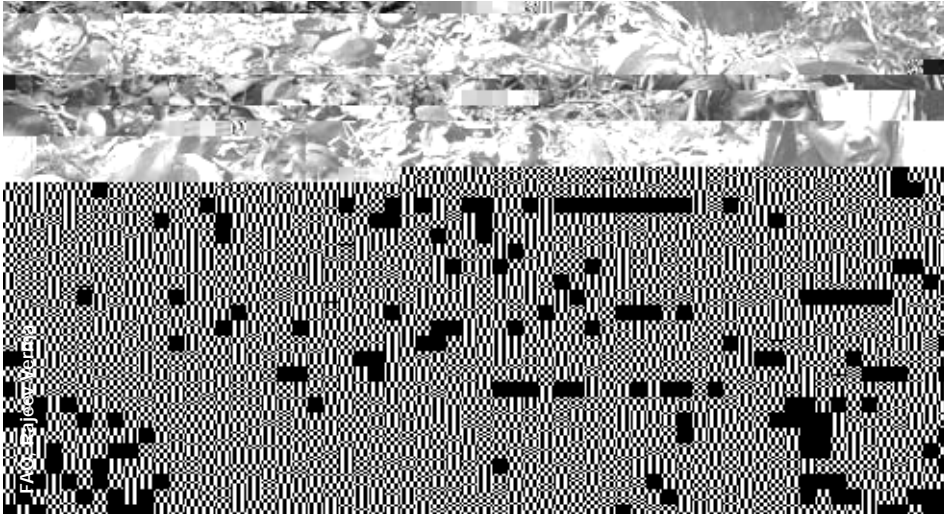
rights movement was successful in making the point that, without a healthy environment, the whole spectrum of human rights would be impossible to attain. Indeed, there is a growing recognition that environmental rights are a constitutive element of human rights.

While the notion of environmental rights is important, it has its limitations from the perspective of human rights, human wellbeing and the needs of the poor. The problem is that environmental rights can sometimes be interpreted in ways that undermine human rights. Some of the limitations of the environmental rights agenda are linked with two problematic concepts – intergenerational rights and the rights of nature. Intergenerational rights may mean, in practice, that I have to sacrifice my own rights (e.g. to be free from hunger) for the benefit of my children's rights but this clearly raises difficult questions. Intergenerational rights, while ethically laudable,

are a problem in terms of human rights and are not justiceable (i.e. cannot be enforced). The rights of nature are even more problematic for similar reasons. For example, IUCN still has a policy which states that '[e]very life form warrants respect independently of its worth to people' (IUCN/UNEP/WWF (1991) *Caring For the Earth: A strategy for sustainable living*). Yet, are the 'rights of nature' always consistent with human rights? What about organisms such as viruses which can kill people? This notion of the rights to nature can be especially damaging for the poor. We would argue that the value of life forms cannot be detached from their worth to people, if we are thinking of a comprehensive framework of rights that support human wellbeing.

With these problems in mind, we feel that a new understanding is needed to address the current mismatch between environmental rights and human rights. The values

Righting the wrongs done to India's forest dwellers



Collecting non-timber forest products can yield an important income for India's forest-dependent communities

Madhu Sarin

In India, large areas of ecologically diverse lands, performing a wide range of livelihood and cultural functions, have been legally classified as state 'forests' through unsound processes and have been brought under centralized, top-down management. Even in those areas where customary law and resource management systems are protected, dominant formal law has been overriding customary systems in subtle ways. The official conceptualization of 'forests' as uni-functional land-use systems primarily for sustained timber production, together with the growing attention to environmental services and exclusionary conservation, have compounded the livelihood and survival crisis of forest-dwelling communities. Urban middleclass environmentalism permeating to the Indian judiciary has brought the crisis to a head through an ongoing public interest litigation case. In the name of safeguarding forests and wildlife, several court orders have de-legitimized diverse traditional resource use and management systems by vesting the forest bureaucracy with exclusive forest management authority. Collection of non-timber forest products (NTFPs) from

all protected areas has been banned since 2000 and in 2002, large-scale brutal evictions of forest dwellers from their ancestral lands was ordered due to their being labelled as illegal "encroachers" on state forests.

The government's flagship Joint Forest Management (JFM) programme has skirted around critical issues of tenure, the livelihood functions of lands classified as 'forest', and the customary resource rights and management institutions of indigenous forest-dwelling communities. The JFM agreements effectively lock communities into unequal partnerships which the forest department can enforce with its legal might while remaining unaccountable to the communities. The JFM programme has been used to convert settled and rotational cultivation, and grazing/pasture lands into tree plantations by claiming such lands to be state 'forests' and indeed, the evictions of forest dwellers from forest lands has often been done with the assistance of JFM committees.

A national 'Campaign for Survival & Dignity' was spearheaded by a loose federation of

grassroots organizations against forest evictions, drawing in other grassroots and political bodies. Their campaign work culminated in the enactment of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. Brought into force from January 1 this year, the new law has several radical provisions. It admits the historical injustice done to India's tribal and other traditional forest-dwelling communities due to their land and forest rights not being recognized during the consolidation of state forests. The diversity of both individual and community rights to be recognized include rights over cultivated land, ownership of NTFPs collected from forests, seasonal use of forest lands for grazing by transhumant communities, rights of pre-agricultural communities over their habitat and the right to protect, manage and conserve customary community forest resources for sustainable use. Open village assemblies, instead of government officials, are to initiate the process of receiving and verifying the claims. Village assemblies are also empowered to protect local wildlife, forests and biodiversity and to ensure that the habitat of forest-dwelling indigenous communities is "preserved from any form of destructive practices affecting their cultural and natural habitat". The nodal agency responsible for implementation is the Ministry of Tribal Affairs instead of the Ministry of Environment & Forests. This is in recognition of the fact that it is predominantly ancestral tribal lands which have been classified as state 'forests', often without following the due legal process.

Although vehemently opposed by hardcore wildlife conservationists, the law has created space for finally democratizing forest governance in the country and restoring management control over customary community forests to communities. For the most marginalized tribal communities, recognition of their resource rights will be akin to recognition of their citizenship rights 60 years after independence.

Although the law is still in the very early stages of implementation in some states, and it remains unclear what distortions will creep in during the process, there is already an evident change in the unequal distribution of power between forest departments and communities.

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Girls in Lachuá, Guatemala

Arturo Santos and **Julian Orozco**

The Lachuá Ecoregion consists of 55,000 ha of high biodiversity sub-tropical rainforest in the Northwest region of Guatemala. The area, which encompasses the 15,000 ha Laguna Lachuá National Park, has a population of 11,000 indigenous Q'eqchi' subsistence farmers residing in 55 communities.

Providing a better future through conservation

Traditionally, protected areas in Guatemala were established by central government and managed by understaffed state agencies, often resulting in the neglect of the rights, needs and knowledge of indigenous people. The management of these protected areas focused predominately on conservation and excluded the subsistence needs of the local poor.

The key question was: how can local indigenous communities with high rates of poverty and political and social exclusion, and with the deep wounds of a civil war, have an opportunity to manage their natural resources and conserve the National Park in a sustainable, interactive way?

To answer this question, the National Institute of Forestry (responsible for the management and protection of the national park), the Regional Office for Mesoamerica

of IUCN (ORMA) and the Dutch government joined forces in 1997. They developed a project to conserve the National Park and involve local communities in the management of its natural resources.

The Laguna Lachuá project unites eight government institutions with a team of conservation professionals and – most importantly – the Mayan Q'eqchi' community members, via six local associations. Together these partners have developed a model of integrated participatory land-use to achieve sustainable livelihoods and to address the socio-cultural, environmental, economic and political needs on a regional level. The primary focus of the project activities is local empowerment and community training.

Legalizing land rights

The final goal of the project is that the local communities co-manage the National Park as part of their own property.

When the project started, one of the major problems was that of land tenure. There was considerable conflict, and even violence, between community members regarding land ownership. The project staff worked with the local people and the government agencies to enable communities to legalize

their land tenure and to encourage them to respect the land demarcation of the National Park. As a result of these efforts, land rights for 90 percent of the land area have now been legalized and 50 of the 55 communities now have their land titles. In addition, there is now a good level of respect among the communities for each other's land rights and for the boundaries of the National Park. As one community leader said "Now that the land is ours we have to take care of it for the wellbeing of our children, and most importantly take care of the Park, because now we are neighbours". This realization by community members that they are the owners of the land and responsible for land management was a key factor in the success of the National Park and the project as a whole.

Results

So far the project has yielded very positive results:

- More than 500 families have been integrated into the poverty reduction programs;
- Five types of sustainable production (honey, forestry, fruits, handcraft and rural tourism) have led to a 50 percent increase in the incomes of 500 families;
- Business alliances and marketing chains have been developed for national and international markets;
- The deforestation rate has been reduced by 45 percent and there has been a significant reduction in illegal logging and forest fires; and
- Some 35 percent of the total area has a management plan.

During the last 10 years, the area has been declared a RAMSAR site, has been recognized as a model forest, and has won several national-level recognitions and prizes. But more importantly, the whole area is now cooperatively managed by a third-level organization, integrating government and local leaders, that discusses and develops the work plan of the area and promotes the conservation of natural resources and the well-being of the local people.

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 F n a n i e s t e r s /



Years of committed planning towards the Millennium Development Goals are now being overwhelmed by the more pressing political issues of 'security': food security, national security, energy security, and ecological security, including climate change and water crises. Yet these security crises are tightly linked to the same set of underlying problems that gave rise to three decades of global poverty and environment concerns: inadequate recognition of human and civil rights, marginalization of rural and forest communities, widespread rural poverty, and weak, unrepresentative governance institutions. Unfortunately, rather than dealing with these underlying problems, governments and the development community tend to leap from crisis to crisis.

Less well recognized is the fact that many of these challenges converge in the 30 percent of the Earth's surface that is considered forest. Forest areas remain chronically poor and poorly governed, and suffer from conflicts, crises and corruption, often surfacing to national and regional levels. Human, civil and political rights of indigenous peoples, women and other marginalized groups are frequently unrecognized. Over 30 forested countries have experienced widespread violent conflicts in the past two decades, many of which are fueled by inequitable resource distribution and ethnic tensions (see Kaimowitz, David. 2005. "Forests and Conflicts." European Tropical Forest Research Network Newsletter (43/44)).

Limited rights and poor governance exacerbate other global challenges. UNFCCC estimates that at least 20 percent of global carbon emissions stem from deforestation, degradation and land-use change. Worse, a significant portion of the world's most threatening infectious diseases, including Ebola, Yellow Fever, Dengue, Malaria, SARS and SIV, are exacerbated by tropical deforestation, fragmentation, and associated land-use change (see Wilcox, Brett R. and Bruce A. Ellis. 2006. "Forests and emerging infectious diseases of humans," *Unasylva* (FAO) 224, Vol. 57). The fates of forest dwellers and non-forest dwellers are

increasingly intertwined. As productivity of land and local ecology change with climate shifts, forest peoples find their livelihoods and capacity to conserve their forests at risk, while pressures on forest lands for agriculture and industrial use spiral out of control.

Forests have historically been regarded as a hinterland, subject largely to the business and development plans of urban-based political, economic and environmental elites. Social and economic development in forest-rich areas has only recently become a goal of country and forest sector programs and policies. Yet, ironically, it is precisely in the forest areas where the coming drama is being played out and where many challenges have the best chance of effective attention. The rapidly expanding global economy and the booming demand for food, fuel and wood fibre all put mounting pressure on forestlands and peoples. These commodities also compete for the same, diminishing, available land (IIASA estimates that there are not more than 390 million hectares of land into which agriculture or biofuels could currently expand, but quadruple the demand – see Nilsson, Sten. 2007. *The Boomerang – When will the global forest sector relocate from the South to the North?* International Institute of Applied Systems Analysis and Rights and Resources Initiative).

The environment and development communities by and large have not yet adjusted or rethought their approaches to reflect this oncoming collision between the rights and interests of forest owners and the growing pressure from climate shifts and global commodity demand. As pressures on forests intensify, effective mitigation and adaptation to climate change are ever more dependent on clear and strong property rights to protect forest dwellers, encourage adaptive land management and provide a foundation for fair negotiation of changing interests.

Community and social movements are more vigorously advancing their property rights and enterprises. Longstanding conservation and commercial models are increasingly being challenged. Forests, people and rights are entering centre stage. Now that they have arrived we need to rethink and reorganize to support them.

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Emissions from deforestation and forest degradation are major drivers of anthropogenic climate change. As a consequence, the world community has become increasingly aware of the need to create positive incentives to reduce such emissions, particularly in developing countries where they mostly occur. Two distinct 'markets' may develop such incentives: the

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The next issue of **arbor** will be produced in September 2008 (copy deadline end July) and will look at agricultural productivity in forest landscapes. If you have any material to send or comments please contact:
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Just conservation

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If You Saw It with My Eyes