Communities at the heart of forest management:
How can the law make a difference?

Sharing lessons from Nepal, the Philippines and Tanzania

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Acknowledgements

Front cover image: African women gather firewood near park boundary
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1 For more information, see http://pubs.iied.org/G04056/.

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Acronyms

CBFM	Community-Based Forest Management (The Philippines)
CFDP	Community Forestry Development Program (Nepal)
CFUG	Community Forest User Group (Nepal)
CoNGOs	NGOs collaborating for equitable and sustainable community livelihoods in Congo Basin forests
CRMF	Community Resource Management Framework (The Philippines)
DENR	Department of Environment and Natural Resources (The Philippines)
DFRS	Department of Forest Research and Survey (Nepal)
DFID	Department for International Development (United Kingdom)
DFO	District Forest Officer (Nepal)
FAO	Food and Agriculture Organization (UN)
FECOFUN	Federation of Community Forestry Users Nepal
FLEGT	Forest Law Enforcement, Governance and Trade
FPIC	Free, prior and informed consent
FSC	Forest Stewardship Council
IIED	International Institute for Environment and Development
ITTO	International Tropical Timber Organization
IPRA	Indigenous Peoples' Rights Act (The Philippines)
LGU	Local Government Unit (The Philippines)
MCDI	Mpingo Conservation and Development Initiative (Tanzania)
MJUMITA	Mtandao wa Jamii wa Usimamizi wa Misitu Tanzania (Community Forest Conservation Network of Tanzania)
NCIP	National Commission on Indigenous Peoples (The Philippines)
NTFP	Non-timber forest product
NGO	Non-government organisation
PO	Peoples' organisation (The Philippines)
RECOFTC	Regional Community Forestry Training Center for Asia and the Pacific
REDD+	Reducing Emissions from Deforestation and forest Degradation and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries
RFUK	Rainforest Foundation UK
RRI	Rights and Resources Initiative
VLFR	Village Land Forest Reserve (Tanzania)
VNRC	Village Natural Resource Committee (Tanzania)

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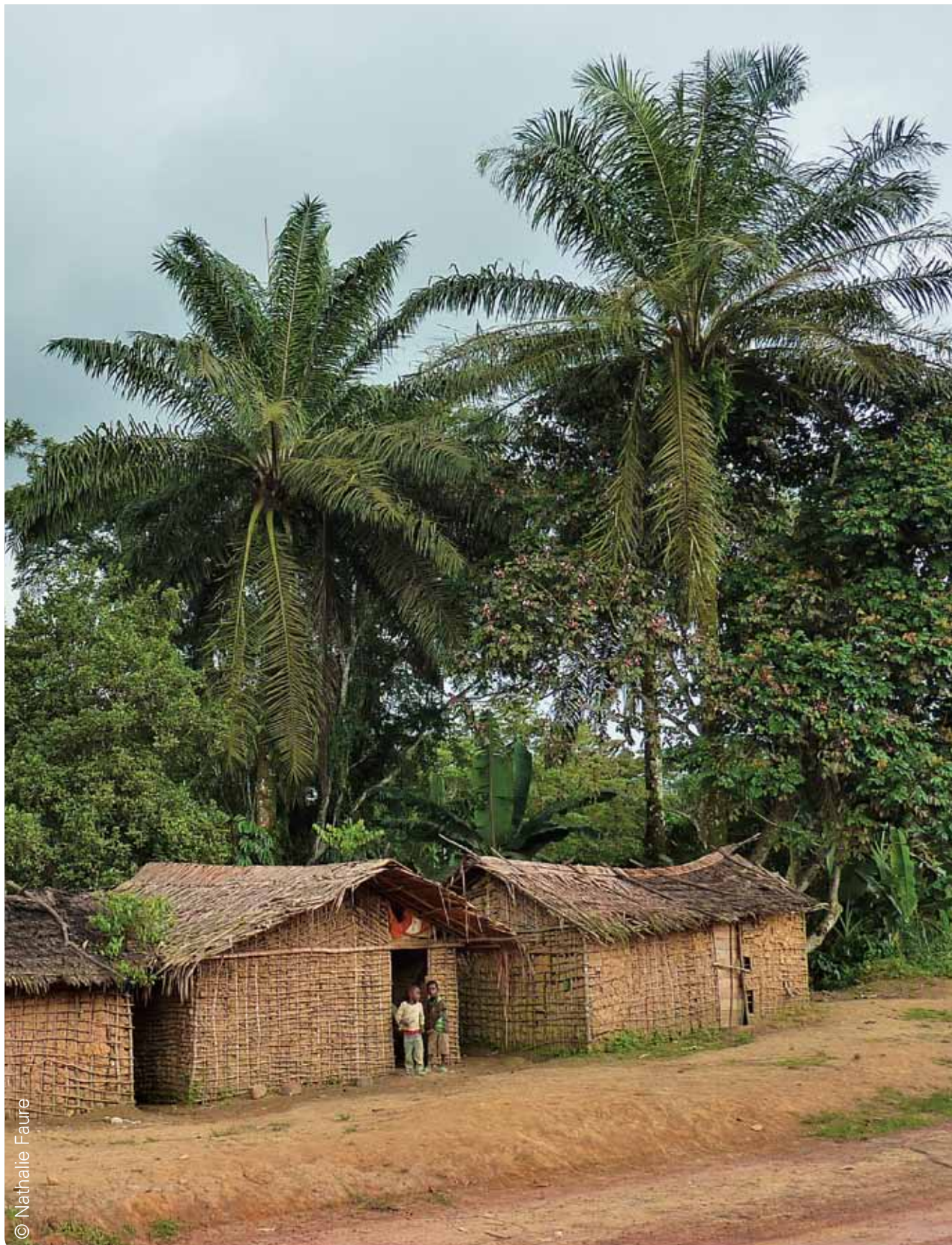
Foreword

Formal community forestry regimes have expanded greatly in all regions during the past few decades and, (including smallholder forestry) now operate in around one-third of all forests globally.

In addition to the large area of forest that is managed under formal community forestry regimes, there is a vast area of forest, particularly in Africa but also in Asia and Latin America, managed under informal, though widely accepted, traditional arrangements based on customary tenure. There are pressures in many countries for communities to have their informal tenure recognised within formal legal frameworks so that they can manage their forests (and other traditional lands) with security and certainty.

As experience with community forestry has been gained, it has become increasingly recognised that, under the right conditions, local communities can indeed manage forests sustainably and receive substantial benefits from doing so. However, prior to the 1990s there was little conceptual or practical understanding of what community forestry "looked like" or how it should operate. Early projects to establish community forestry "muddled through" as best they could, learning along the way. A basic question needed to be answered: what are the conditions (legal, social, institutional, technical, etc.) under which community forestry can operate effectively and achieve the mix of social, environmental and economic benefits that are at the heart of its promise?

Most analyses of community forestry emphasise that there is no one model that can be applied universally. Rather, community forestry needs to be fitted to the historical, economic, political and cultural circumstances of each particular country. However, there are some generalised findings that can be applied widely.

A global review of Community-Based Forestry over the past 40 years[2] suggested that the major conditionalities that need to be met for it to be successful are: (i) secure tenure (property rights); (ii) an enabling regulatory framework; (iii) strong governance; (iv) viable technology; (v) adequate market knowledge and a (vi) supportive bureaucracy.

At some point in the evolution of community forestry in a country, it is necessary to develop a legal framework within which the regime will operate. Many, if not most, of the conditionalities for successful community forestry

mentioned above can find a place in some part of the legal framework. However, there are many challenges to be faced. First and foremost, the process is inherently political, involving as it does the devolution of power to manage valuable resources, and negotiating this is always difficult. Further, there is a need to balance the rigidity of formal rules and regulations with the flexibility needed to ensure that forest management can adapt to changing circumstances. Experience suggests that, in general, legal frameworks need to be enabling rather than constraining so that the rights of communities to manage forests are not overwhelmed by onerous responsibilities.

There are also potential dangers in moving too fast to formalise a legal framework. In the early stages of implementing community forestry in any setting there is much to be learnt from the key stakeholders, particularly the government and community groups. Importantly, a degree of trust has to be built between these two groups, often in a situation where past interactions were characterised by considerable mistrust, or even violence. Community forestry is predicated on changing institutional roles of these two groups. In most countries, the government needs to move from a predominantly policing/licencing role to one that emphasises community facilitation, while community groups become active forest managers. These shifts in institutional mandates do not come about by fiat, and benefit from external facilitation.

This publication draws on detailed analyses from three countries where formal community forestry regimes have been in operation for several decades, and where there is a solid body of research that has explored the strengths and weaknesses of community forestry and has addressed the question: what is needed to enable community forestry to work for people and forests, as well as to satisfy the policy objectives of the government? However, there has been relatively little attention paid to documenting the legal requirements needed to support community forestry. This publication provides a synthesis of data from these countries as viewed explicitly through the lens of key elements of an enabling regulatory framework. It thus fills an important gap in existing knowledge.

The recommendations in this publication will provide useful guidance for governments wishing to undertake policy reform to establish formal systems of decentralised forest management or to refine existing legal frameworks to make them more effective.

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2   Gilmour, D., Forty years of community-based forestry, FAO forestry paper 176, Food and Agriculture Organization of the United Nations, 2016
    http://www.fao.org/3/a-i5415e.pdf.

Executive summary

A growing number of forested countries formally recognise the significant and positive role of local communities and indigenous peoples in forest management, in their national policies and regulatory frameworks. In numerous countries, this recognition constitutes a paradigm shift away from the large-scale management of forests by the State or private operators. When laws on community forestry are enabling, they have the potential to secure long-lasting environmental, social, economic and cultural benefits. On the other hand, over-regulation and legal uncertainty can limit the accomplishment of community forestry's objectives.

This report was developed in response to a need for guidance on enabling legal frameworks for community forestry. It offers suggestions and a framework for reflection for all actors engaged in creating, implementing or revising laws on community forestry, and for civil society in particular.

This report consists of three main sections. **Section 1** outlines the design and implementation of laws on community forestry models in three case-study countries: Community Forests in Nepal, Community-Based Forest Management Agreements in the Philippines, and Village Land Forest Reserves in Tanzania. On the basis of these case studies, **Section 2** explores the substantive content of legal frameworks, identifying ten building blocks to consider in developing laws on community forestry. **Section 3** offers guidance on how legal frameworks on community forestry can be designed to ensure they are enabling. It includes two practical tools to aid understanding on what provisions to consider in legal reform on community forestry: an overview of relevant sectoral laws, and a guide to locating provisions on community forestry in either primary or secondary legislation.

First, our research found that there is a need for simple, clear and accessible laws to regulate community forests. Laws should be easy to understand, unambiguous and accessible both physically and in terms of language. Communities need sufficient technical support to understand the rights and obligations stemming from laws on community forestry. The amount of regulation is less important than its quality, both in terms of content and design process. In particular, it is important to achieve the right balance between what is provided for in the law and what can be tailored to specific community forests or communities, and therefore developed by local actors.

Second, our analysis identifies ten key areas (or building blocks) for consideration in developing legal frameworks to support community forestry.

1. Recognising links between land and forest tenure regimes

The law should ensure that communities have strong and clear tenure rights in order to benefit from community forestry. It is important, in particular, that it reflects communities' customs and uses of forests and land, including those of indigenous people.

2. Simplifying the process of allocating community forests

A simple process allows self-determined communities (including various interest groups), to follow the process themselves and seek support if they choose to do so. It is important that the procedure remains streamlined and inexpensive.

3. Supporting internal community governance

The law can support community governance by providing for general principles of accountability and transparency, while foreseeing that specific mechanisms of implementation will be developed by local actors.

4. Enabling participation

The law should include specific provisions to encourage participation of all community members, especially from vulnerable groups, such as women and indigenous people. Community members can be empowered to determine for themselves what mechanisms best suit them.

5. Developing rules on forest management

The law can provide for the elaboration of simple forest management plans to be designed by community members, with the help of accessible templates and guidelines. Rules should be tailored to local circumstances, such as the type of activities foreseen in a forest and the size of a community.

6. Enabling community access to markets

Regulations can support the sale of community-forest products and services, with clear and facilitative provisions on tax, transport and processing, as well as economic incentives.

7. Equitable benefit sharing among community members

The law can enable benefit sharing by providing a general framework, while empowering communities to design specific mechanisms tailored to their practices. Equitable models require transparency of information and a system of monitoring to safeguard community members against elite capture.

8. Including mechanisms for conflict resolution

All community members need access to a process of dispute resolution. Traditional dispute resolution mechanisms have proved useful to address certain conflicts; judicial means are also important and should be available.

9. Enforcing community forestry frameworks

It is important to identify what constitutes an offence and clearly state sanctions and who can issue them. Effective enforcement of community forest rules requires, among other things, the clear identification of the roles and responsibilities of communities and the Government.

10. Enabling support from external actors to communities

This is essential in realising the full potential of community forestry, including determining the administration's role and allowing support from NGOs, the private sector and international organisations.

Third, in addition to the substantive content of the law, design and implementation are also crucial in creating enabling legal frameworks. It is important that legal frameworks on community forestry are designed to be supportive and facilitate communities' use of forests, rather than being restrictive and enforcing. The first governance principle in developing a grounded legal reform process is identifying and formulating an overarching vision for community forestry. From this follows the explicit recognition of communities' rights to forest management in a legislative instrument to ensure legal security and stability.

Coherence in the law and across relevant sectoral legislation is another key element in creating enabling legal frameworks, ideally from the start of the legal reform process. This implies a good understanding of where to find legal provisions. Laws in the forest sectors but also those dealing with agriculture, land, gender and taxes, to name a few, all have a role to play and require consideration. Involving all concerned sectoral ministries and bodies in legal reforms can help to ensure a coordinated approach on community forestry. This in turn is likely to increase the chances of successful implementation.

Finally, participatory and iterative reform approaches have the potential to ensure the design of strong community forestry models. When legal reform involves a co-creative and bottom-up approach, allowing all stakeholders, including local communities and indigenous peoples, to participate meaningfully, it is more likely to embed equitable and consensual decisions. Experience has also shown that conducting an iterative reform process – allowing periodic reviews of laws to ensure they reflect practices and needs of local people – has contributed to the success of some models of community forestry.
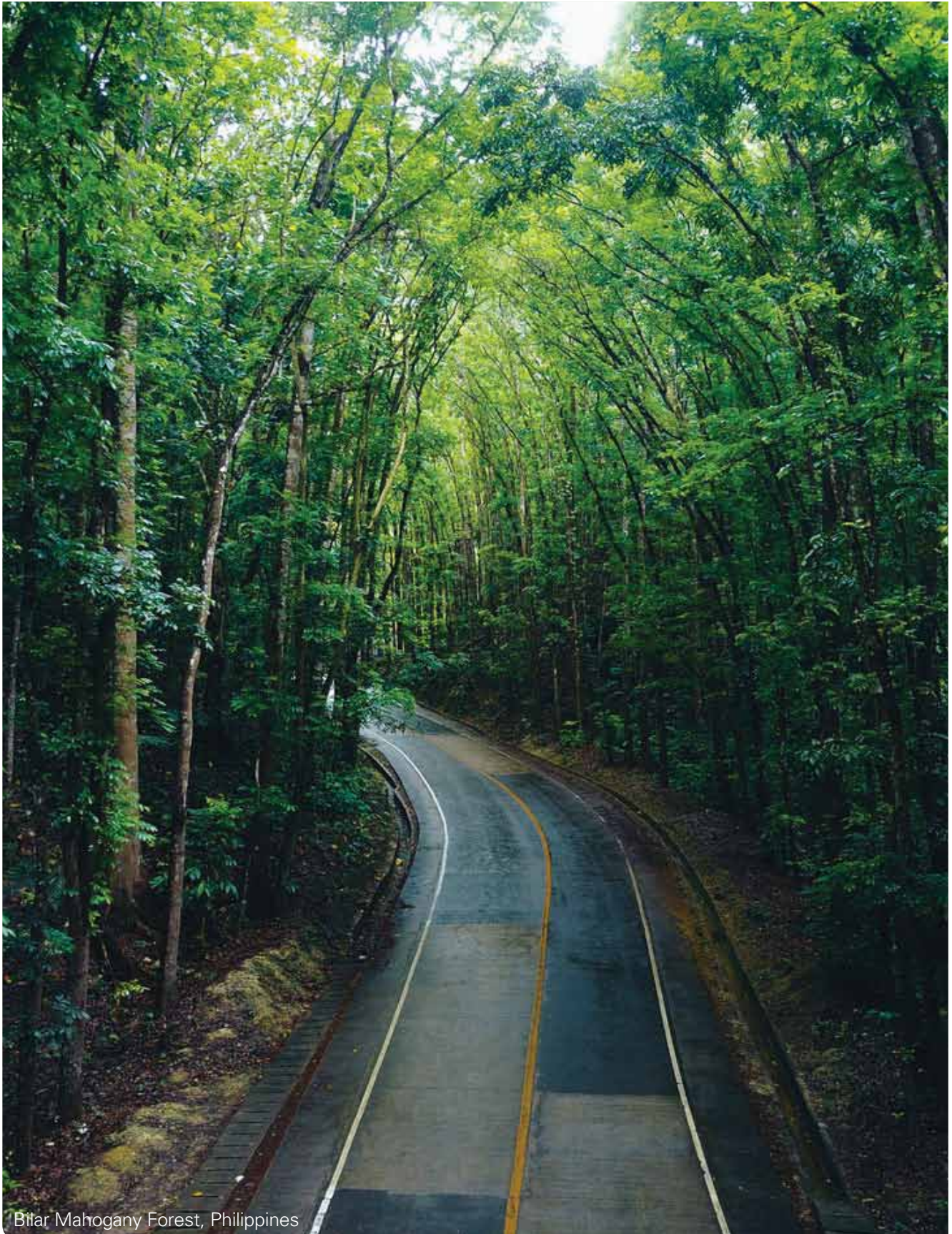
Bilar Mahogany Forest, Philippines

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Introduction
Objectives and scope of the report

About 2.4 billion people worldwide rely on forests for their livelihoods, in particular for fuelwood used for food preparation and water sanitation.[3] Forests provide both income and non-monetary benefits, including social, cultural, spiritual and environmental.

With the advent of community forestry, local communities and indigenous peoples' significant role in decision-making on sustainable use of forest resources has begun to be formally recognised.

Community forestry began in the 1970s, and institutional responses recognising that communities can be actors of positive change at the heart of forest management, developed during the 1980s and 1990s (**Annexe 1**).[4] Today, although reliable global data on the impact of community forestry is generally lacking, academia, NGOs and beneficiaries tend to agree that recognising tenure and management rights of communities has positive impacts on livelihoods and the environment.[5] There is growing evidence that stronger community rights have resulted in better-managed forests, reduced levels of deforestation and improved livelihoods.[6]

This report explores the legal frameworks of three countries with long-standing experience of community forestry: Nepal, Tanzania and the Philippines. Our recommendations respond to the existing need for clearer guidance on what enabling legal frameworks on community forestry can look like.[7] The primary purpose of this report is to explore how experience in the three case-study countries may guide the review and design of legislation in the Congo basin, where forest legal frameworks are currently under review.[8] Second, we aim in this report to provide broader guidance and a framework for reflection for actors engaged in creating, implementing or revising laws on community forestry.

We do not focus on models of smallholder forestry, which is forest management practised by individual or family-scale smallholders on land they own, which may fall under different legal provisions. This type of local forest management can bring many benefits to communities and individuals, but our choice was based on identifying the models of community forestry most similar to those in the Congo-basin countries.[11]

In this report, we use the term '**community forestry**' to refer to the formal or statutory management of forests by and for local communities and indigenous people.[9] We recognise the importance of informal, including customary, regimes of community forestry, although these are not covered here. We also use the concept of community forestry as an umbrella term encompassing more than one model of community participation in forest management. Where we discuss a specific model of community forestry, we use the name of that model (e.g. Community-based forest management (or CBFM), in the Philippines). We recognise that community forestry generally grants certain rights (such as to forest resources)[10] and delegates duties (such as forest conservation) to communities.

Legal frameworks on community forestry encompass the laws, implementing legislation (such as decrees and orders) and other regulatory texts outlining or influencing the model of community forestry. In this analysis, we have also considered non-binding documents, such as guidelines on community forestry, as an integral part of legal frameworks. In considering laws and policies shaping community forestry, it is also useful to look beyond elements that fall strictly within the legal framework. These wider elements include governance arrangements supporting legal design and law implementation, such as the need for cross-sectoral coordination to ensure the implementation and enforcement of the law and for dissemination and awareness-raising of legal rights and responsibilities at local level. Taken together, these elements provide a body of evidence on what an enabling legal and governance framework on community forestry can look like. An enabling framework is one that supports and facilitates the use of forests by communities to improve their livelihoods and the condition of forests.[12]

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3   FAO (2018).
4   Gilmour (2016).
5   The impacts of community forestry can vary significantly and have also been poorly researched. On the existing knowledge gap, see Hajjar et al. (2016).
6   Gilmour (2016); Beukeboom et al. (2010).
7   In interviews, international experts on community forestry broadly concurred that, despite many studies on community forestry overall, legal aspects have been much less explored. Some interviewees noted a gap in knowledge and research on how to develop enabling legal frameworks for community forestry.
8   In addition to legal frameworks, other forest governance processes must be considered for an enabling and coordinated approach to community forestry, such as the FLEGT Voluntary Partnership Agreement and the REDD+ process, both also being developed and implemented in the Congo basin.
9   We recognise that this concept has numerous definitions. Here, we use 'community forestry' rather than 'community forest management' or similar, for consistency with terminology in international reports.
10 The spectrum of communities' rights to their forests (the bundle of rights) is detailed by Almeida (2012).
11 As provided in Annexe 1, African models of community forestry, including those in the Congo basin, remain largely geared towards providing subsistence for communities, with fewer models allowing for market-based activities. For more on community forestry in the Congo basin, see Eisen (2014).
12 Gilmour (2007).

There are wider enabling conditions necessary to ensure the success of community forestry, which we do not attempt to cover in this analysis.[13] The FAO, for example, identifies five keys to effective community-based forestry alongside an enabling regulatory framework: secure tenure, strong governance, viable technology, adequate market knowledge and supportive bureaucracy.[14] Others have identified additional enabling conditions in relation to specific models of community forestry or geographies, including the need for technical forest knowledge and strong organisational management skills.[15]

This report is intended for NGOs and government, as well as local communities and indigenous peoples and others engaged in community forestry, such as academia and donors. Our research is based on a small sample of community forestry programmes in just three countries and therefore aims to provide guidance and examples rather than conclusive evidence. In addition, we recognise that each country's unique socio-economic, cultural and geographical context will shape its community forestry model. While recognising the uniqueness of each model, we believe that the experiences of these countries in implementing community forestry over several decades do offer useful insights and learning. These can inform countries already implementing or seeking to develop or revise community forestry frameworks.

Why do legal frameworks matter?

The importance of legal frameworks for the effectiveness of community forestry lies in the fact that community forestry laws can:

1. ensure that community rights to forests are recognised,

2. offer legal certainty,

3. offer an avenue for accountability and

4. help achieve community forestry objectives.

Local communities and indigenous peoples managed forest areas long before the creation of formal community forestry models in legislation. Community forestry schemes can therefore be implemented without legal frameworks. However, when community rights over land and forests are not recognised in law, forestlands and associated resources that communities rely on may be more vulnerable. This is particularly so in the context of growing external pressures on land.

Legal frameworks are also crucial to explore because they offer legal certainty, in particular by providing clarity on the rights and duties, as well as the roles and responsibilities, of stakeholders. They determine, for example, where community forests can be created, how and by whom. They can therefore offer a reliable and stable framework of action for stakeholders, such as local communities and indigenous peoples, as they provide for the rules that will apply over a certain time – often for decades (although law and policy changes may occur more regularly). Legal frameworks can also provide flexibility since they can specify different types of community forestry models in response to different objectives. They are, as a rule, publically available as they enter into force upon publication in a government official journal. However, effective access to laws for local communities and indigenous peoples is often problematic in practice due to both the lack of availability of laws in local languages and the lack of awarenessraising in contexts where literacy can be low.

Moreover, laws should provide for accountability, with mechanisms to raise complaints when they are not respected, whether those are based on judicial or traditional dispute-resolution or a combination of both.

Finally, legal frameworks can be critical in achieving community forestry's objectives. Indeed, they create a set of rules recognising communities' rights to manage forests and so may be either enabling or restrictive, depending on their design and implementation.

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13 Baynes et al. (2015); Pichdara et al. (2018).
14 Gilmour (2016).
15 Macqueen (2013); FAO (2012).

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For all these reasons, it is important to ensure that legal frameworks are accessible, well understood, clear and comprehensive. They will ideally govern the whole cycle of community forests, from their creation and operation to their potential termination. It is equally important that legal frameworks are not over-prescriptive but are tailored to a specific community's context. These general characteristics of legal frameworks have the potential to secure long-lasting economic, social and environmental benefits generated by the development of community-forestry schemes. To realise this potential, we must understand both the content of the laws (especially the core substantive areas that are regulated) and their design (the legal design or reform process and who should be involved). We explore both of these aspects in this report, looking particularly at what has made legal frameworks enabling for the development and sustainability of community-forestry.

Section 1 of this report provides an overview of the models of community forestry analysed in Nepal, the Philippines and Tanzania.

Section 2 identifies ten legal building blocks for consideration in legal frameworks, for community forestry to be as effective as possible. These are drawn from experiences in the case-study countries.

Section 3 explores overall legal and governance elements to support the legal building blocks. We highlight key elements for building or revising legal frameworks so that they are clear, coherent and inclusive, beyond the laws' substantive content.

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1. Country case studies: Nepal, the Philippines and Tanzania

The findings presented in this report result from analyses of the laws governing community forestry in Nepal, the Philippines and Tanzania. This section introduces some of the key features of each model analysed.

In all three countries, several models of community forestry coexist, each based on a specific objective and its own set of rules. Within each country, we studied the model with the strongest devolution of rights to local communities and indigenous people, and with the longest history and widest scope.

The methodology developed to select these models, and the common framework used to analyse the laws governing them and conduct site visits are detailed in **Annexe 2. Figure 1** provides an overview of the extent of the models of community forestry studied in each country.[16]

Figure 1 Extent of community forestry in Nepal, the Philippines and Tanzania

	Nepal	Philippines	Tanzania
■ Community forest	1.81	1.62	2.37
■ Forest land	3.64	8.04	46.06
■ Total surface	14.72	30.00	94.73
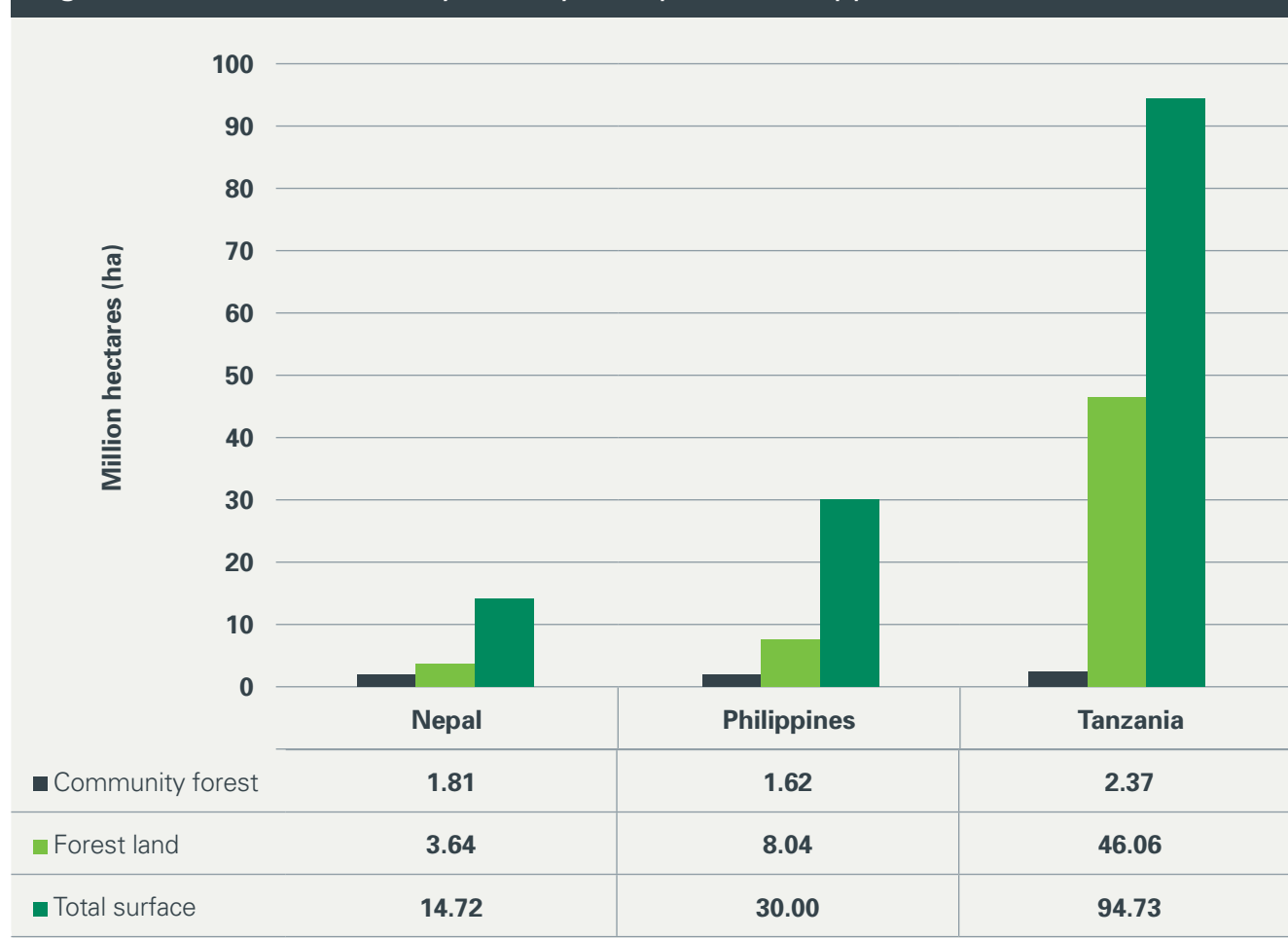
16 All figures in Figure 1 are rounded to one decimal place. Figures used to determine the territory extent from: CIA (2018), 'The World Factbook' https://bit.ly/1GKUmck; figures used for forest cover from: Nepal and Tanzania, FAO (2018); the Philippines, FAO (2015); figures used for extent of community forestry from: Nepal Ministry of Forests and Soil Conservation (2018), data available at https://bit.ly/2Qwlq98; Philippines (2017), p23, https://bit.ly/2OMEOwc; Tanzania (2012) 'Participatory Forest Management, Facts and Figures', Ministry of Natural Resources and Tourism, Forest and Beekeeping Division, http://www.tfs.go.tz/uploads/Facts_and_Figures.pdf.

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Case study 1:
Community-Based Forest Management in the Philippines

Communities manage over

1.6m

hectares of forestland under CBFM agreements

Forests cover about **8 million hectares** in the Philippines, or **27% of its territory**.[17] The main drivers of deforestation are logging, forest conversion for agriculture (including slash-and-burn farming), charcoal-making, fuelwood-gathering and mining.[18]

A nationwide moratorium on logging in natural and residual forests has been in place since 2011.[19] To address deforestation and forest degradation, and growing dissatisfaction of the rural poor, 'people-oriented' forestry programmes emerged in the 1970s. Major political changes in the 1980s, marked by the end of Marcos' regime, led to progressive reforms promoting popular participation in natural-resource management. This enabled large technical and financial donor support to forestry development.[20]

In 1995, CBFM, as it is known today, was institutionalised as a national strategy.[21]

This was followed by significant Government support to incentivise communities to obtain CBFM agreements. Organised as people's organisations (POs), communities can enter into CBFM agreements with the Government and are given rights to occupy, cultivate and develop the area, with exclusive use of forest resources.[22] CBFM agreements are concluded for a period of 25 years, renewable for another 25 years.

Today, communities manage over **1.6 million hectares** of forestland under CBFM agreements, with **1,884 agreements** officially registered.[23] Although the model of CBFM in the Philippines has had some positive environmental impacts, such as decreased deforestation, protection of watersheds, and increased forest cover and water resources, its overall results have been mixed, particularly in terms of socio-economic benefits for local communities.[24]

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17 FAO (2015). However, 52% of Philippines territory is classified as 'forestland' by the Government, referring to land in public domain, owned by the State (see 'Philippine Forestry Statistics 2017').This is a legal, not botanical, category, and these forestlands often do not contain forests. See Pulhin et al. (2007).
18 Carandang et al. (2013).
19 Philippines (2011) Presidential Executive Order No. 23.
20 Carandang et al. (2010).
21 Philippines (1995) Presidential Executive Order No. 263 of 29th July.
22 The DENR, the primary Government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, also issues two other types of CBFM 'tenurial instruments'. In proclaimed protected areas, recognition of access rights is given through Protected Area Community-Based Resource Management Agreements. For individuals or families actually occupying, tilling, developing, managing or protecting portions of forestlands, Certificates of Stewardship Contracts are awarded within CBFM agreement areas.
23 Philippines (2017). These numbers are currently being updated.
24 Pulhin et al. (2007.

Case study 2:
Community forests in Nepal

Communities manage over

1.8m
hectares of forestland

Forests cover some **25% of Nepal** or about **3.6 million hectares**, and play a vital role for rural communities and indigenous people.[25] The main drivers of deforestation in Nepal are unsustainable and illegal harvest of timber and fuelwood, overgrazing, forest fires, encroachment, resettlement and infrastructure development.[26]

Community forestry in Nepal evolved from dispersed forest-management initiatives at community level in the 1970s to becoming embedded as a priority programme in the forest department of the Ministry of Forests and Soil Conservation today. The 1976 National Forestry Plan was the first to solicit community participation in the management of forest resources. After the transition to democracy in the 1990s, the Government adopted the Forests Act (1993), devolving rights to local communities and empowering them to manage their own resources. Communities now manage about **34% of all forestland** and there are more than **22,266 registered community forests**.[27]

A community forest in Nepal is a state-owned forest handed over to a community group registered as a legal entity (the Community Forestry User Group or CFUG) for the development, conservation and use of the forest for the collective interest. There is no time limit to the community forest; the community can therefore manage and use it indefinitely, with periodic 5–10-year reviews of the management plan. Communities can develop a wide range of activities in the forest, such as forest protection or development (e.g. watershed conservation, grazing management), timber harvesting, ecotourism or other income-generating activities (e.g. collection of non-timber forest products (NTFPs)).

Community forestry in Nepal has gone through major changes and phases of development over the last 40 years, as reflected by the multiple adaptations of the laws and policies framing it.[28] It is now considered one of the most advanced models in the region. Overall, the model of community forestry in Nepal is considered a success, even though certain challenges persist.[29]

25 FAO (2015), p6 and FAO (2018), p80. The total forest cover of Nepal is given by the FAO as 25.4% and by the Nepalese Ministry of Forests and Environment as 40.3%. The FAO data has been preferred here to ensure consistency across the three countries studied. See Department of Forest Research and Survey (2015).
26 Nepal Ministry of Forests and Environment (2018) 'Nepal National REDD+ Strategy', https://bit.ly/2Qc6ZYY.
27 Nepal Department of Forests (2017) 'Community Forestry Division', http://dof.gov.np/dof_community_forest_division/community_forestry_dof.
28 Those include the Master Plan for the Forestry sector (1989), the Forest Act (1993), the Forest Regulation (1995), the Guidelines for community forestry inventory (2004) and the guidelines for community forestry development program (2009).
29 Nurse and Malla (2005).

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Case study 3:
Village Land Forest Reserves in Tanzania
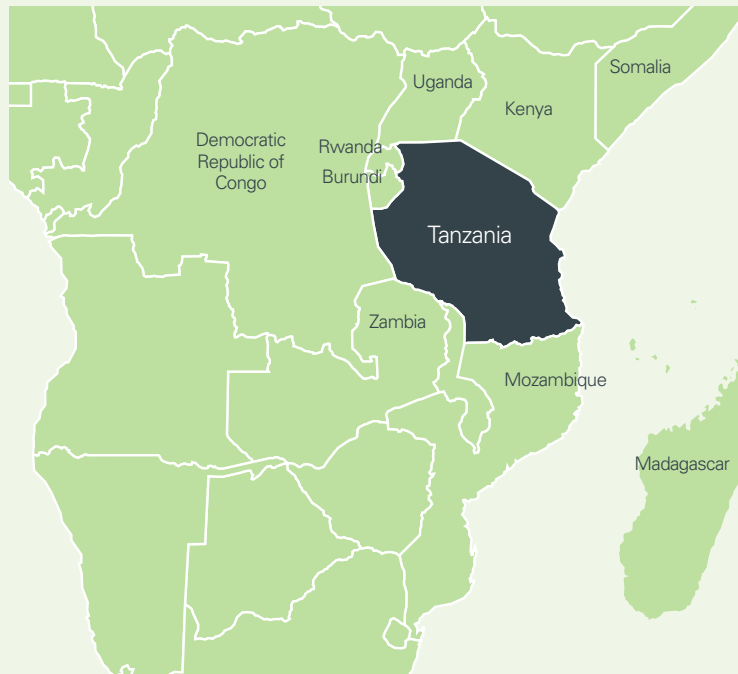
Communities manage about

2.4m

hectares of forestland

Tanzania's forests cover about half of its land surface area or about **46 million hectares**.[30] Deforestation rates are high and result mainly from the expansion of subsistence agriculture. Forest degradation is driven by the production of charcoal and fuelwood, and by livestock farming.[31]

Village Land Forest Reserves (VLFRs) are one of the community-based forest management models developed in the Forest Policy (1998) and regulated by the Forest Act (2002) as a shift away from centralised forest governance to devolve forest-management responsibility to communities. The creation of VLFRs is rooted in decentralisation laws and policies that began in the 1980s. In 2012, VLFR was the most extensive community-based forest management scheme in Tanzania, having about **2.4 million hectares** of forests managed by **2,285 villages**.[32]

The Tanzanian VLFR model allocates community forests to villages, i.e. to a local administrative authority. Within a VLFR, community members can carry out activities provided for by a management plan and by-laws developed following a participatory process.[33] These activities must comply with the overall principle of respecting the socio-economic and ecological sustainability of the forest, as defined in the Forest Act.[34] Once created, the VLFR is not limited in time; its extent is set by village land demarcations. The VLFR is governed by village institutions in accordance with villages' internal governance mechanisms.

The VLFR model is considered successful for forest preservation and livelihood enhancement,[35] although some internal governance challenges, in particular to integrate pastoralist groups, limit inclusive local development.

30 FAO (2015).
31 FAO (2015); Milledge et al. (2007); World Bank (2010) .
33 Tanzania (2002), Forest Act, Sections 14 and 33.
34 Tanzania (2002), Forest Act, Section 34 (4).
35 Blomley and Ramadhani (2006).

2. What are the key elements of an enabling legal framework on community forestry? Ten building blocks

Based on our analysis of legal frameworks and their practical implementation in Nepal, the Philippines and Tanzania, this report suggests ten key elements to consider in building an enabling legal framework on community forestry:

1. **Land and forest tenure**
2. **Community forests allocation**
3. **Community internal governance**
4. **Community participation and representation of vulnerable groups**
5. **Community forestry management**
6. **Access to markets**
7. **Benefit sharing**
8. **Conflict resolution**
9. **Enforcement**
10. **External support**

These building blocks touch on different stages of the creation and development of the community forestry model yet are sometimes interlinked, and are thus not always as sequential as laid out for the purposes of this report.

Figure 2 offers an illustration of these thematic areas and how they interact.

In this section, we discuss these elements in terms of key questions or topics, illustrating them with particular country examples. While certain elements apply to all three countries, others are drawn from a specific country experience and therefore reflect a particular country's success or challenge. The questions presented in relation to each theme are not intended to be exhaustive but rather to highlight certain options for how to build a community forestry model in relation to that theme.

Nepalese community

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Figure 2 Community forestry legal building blocks

Community organisation

mechanisms

Conflict resolution

Community internal governance

External support

Community participation and representation of vulnerable groups

External

Benefit sharing

Enforcement

Access to markets

Community forest life stages

Community forest management

Allocation of community forests

Land and forest tenure
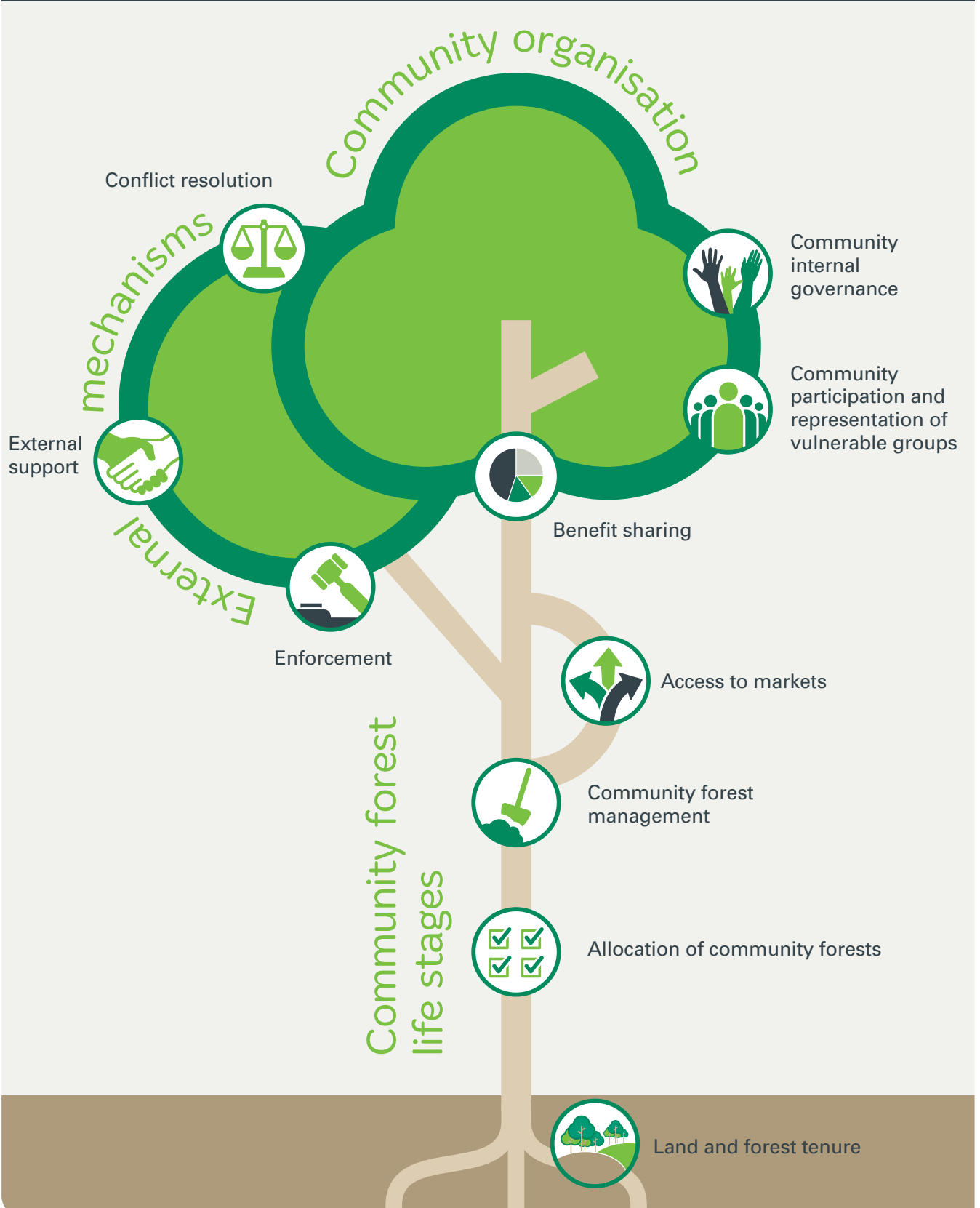
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2.1 Land and forest tenure

In this section, we explore why the relationship between forest and land tenure matters, focusing on two particular aspects of land tenure relevant to community forestry: community land tenure and indigenous peoples' land tenure.

How are land tenure and forest tenure connected in community forestry?

To understand the relationship between land and forest tenure, it is useful to:

1. establish how these two concepts can interact and sometimes overlap,

2. understand what they can encompass and

3. explore how statutory and customary tenure differ and how they are both relevant to community forestry laws.

Land tenure encompasses all rights to land, including the rights to possess, control, exploit and sell the land. Forest tenure includes the right to access forests and to manage and use timber and NTFPs. As mentioned above, community forestry defines the rights of communities to use, manage and benefit from forests and their resources. In this sense, it primarily relates to forest management rights and more generally to forest tenure (rights over forests), rather than to land tenure (rights over land).

However, a clear link exists between these two concepts, as rights to forest resources cannot be entirely dissociated from rights to the land on which they stand. In many countries, rights over forests and trees are tied to rights over land.[36] In other cases, forest and land rights may be distinct; a community may, for example, hold the land rights while the government might still grant a private logging concession in the same forest.[37] Alternately, communities or community members may have formal rights to forest resources, but not to the land.

Understanding both the land and forest tenure regimes is therefore important to gain a full picture of communities' rights over the forest. They often fall in the remit of different state administrations and are therefore often regulated by different legislation. These regimes can define for example the surface area that can be covered by community forestry, the scope of rights allocated to those who acquire community forests and/or the duration of the community forest allocation. Communities' forest and land tenure can vary on a wide spectrum of different rights, from the right to access forest resources to the right to harvest forest products or exclude outsiders' use of the forest area, to cite only a few examples.[38]

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36 In the Philippines for example, indigenous communities may be granted private land titles on forestlands (Larson et al., 2016).
37 Larson et al. (2016).
38 See further details under the bundle of rights approach in Almeida (2012).

Another element to consider is whether land and forest tenure rights are recognised by the law. They may be statutory (recognised by law) or customary (implemented according to traditional practices). Customary rights do not depend on statute to exist; however, there is a risk that these rights may not be upheld by actors such as companies or governments if they are not embedded in statutory law.

There is an ongoing debate about whether statutory land and forest tenure is necessary to ensure successful community forestry. In other words, can community forestry flourish based on customary rights to the land and resources?

Research suggests that statutory land and forest tenure is one of the strong enabling factors that can make community forestry work.[39] Even statutory recognition of customary land ownership rights can have a positive impact on the involvement of communities in forest management. In addition to formalising customary rights, statutory recognition secures these rights and thereby encourages forest stewardship over a long-term resource of which communities cannot be dispossessed. Where land laws formalise customary land tenure rights, these should also be reflected and recognised in community forestry laws.

However, statutory tenure rights alone are not sufficient to make community forestry successful. Also, community forest management can exist without statutory tenure rights. In the absence of statutory recognition of customary rights, community forestry legal frameworks can take into account de facto customary land tenure rights. This can help ensure that communities maintain and preserve the forest on their customary lands, therefore ensuring long-term success of community forestry.

To understand how land tenure can influence community forestry models, the next two sections illustrate how both community and indigenous peoples' land tenure have been taken into consideration in the three countries studied.

Is community land tenure a basis for the allocation of community forestry?

None of the three countries ana lysed requires communities to (customarily or statutorily) own the land over which the allocation of community forest is sought. However, customary land rights are taken into account to a certain extent.

In the Philippines, available forestland for CBFM is identified jointly by the government and the community in question, while the community takes the lead in boundary delineation, taking into account community customs, traditions and beliefs.[40] In practice, however, the participation of communities is often weak and the areas tend to be designated according to existing maps and land-use plans developed by the Government. In those cases, CBFM areas do not reflect areas of traditional community activities and may not be easily accessible due to their remoteness from community members' dwellings. While CBFM is largely seen as a tool for land tenure security, CBFM agreements are concluded for a limited period of 25 years (renewable once).

The Government can withdraw this agreement at any time by reclassifying the CBFM area for the benefit of other groups, while compensating the PO members for "all improvements made in the CBFMA area".[41]

In Nepal, in the absence of recognition of collective land ownership in the law, community forestry has also been seen as a way to secure rights over a portion of forestland, which may correspond to customary rights. While the law does not define the 'perimeter' of the forest area to be allocated to communities, the Community Forestry Development Program (CFDP) Guideline provides that the membership of CFUGs must be defined based on the customary practices of local communities on access and use of forest products.[42] This means that the allocation of community forestry to a specific CFUG should, albeit indirectly, be based on these customary practices and rights. However, customary uses may not always match customary land tenure areas, because of migration and changes in communities' practices. Once boundaries are identified, community forests are granted for the time of the approved management plan. There is no limit set in the Forest Act but, in practice, management plans are prepared for renewable periods of 5 to 10 years. The withdrawal of community forest rights by the Government is possible in certain circumstances.[43] It is avoided in practice, as it is not based on due process and compensation and remains contentious.

39 Gilmour (2016); Sikor et al. (2013); Pagdee (2006); Larson and Springer (2016).
40 DENR Administrative Order 2004-29, Art. II, Section 7; Art. III, Section 9.
41 Ibid., Section 16.
42 This Guideline also defines the process for documenting customary practices or use rights.
43 Forest Act 1993, Sections 27 and 28; Forest Rules1995, Art 37.

In both the Philippines and Nepal, therefore, the law does not require customary or statutory land rights as a condition for the allocation of community forests. In both countries, however, guidelines and practice have made space to take into account existing communities' customs and uses of forest to grant forest management rights.

How is indigenous peoples' land tenure taken into account in community forestry?

Customary land rights of indigenous people have received particular attention in certain countries in the allocation of community forestry areas. In the Philippines, statutory law allows collective land ownership by indigenous peoples.[44] However, relatively few have registered their land and obtained a title, due to the long, cumbersome and expensive procedures.[45]

Although titling is not necessary for the recognition of indigenous peoples' land ownership rights, it can offer stronger protection of those rights, particularly in terms of providing formal evidence of ownership and land boundaries. Because the titling process is so complex, several indigenous communities who established CBFM POs before the adoption of the Indigenous Peoples' Rights Act (IPRA) in 1997 in order to maintain control and access to their customary forest lands, have opted to remain under the CBFM regime and not seek land titling. This law also affected the allocation of CBFM agreements, as it provided for a new requirement for POs to obtain the Free, Prior and Informed Consent (FPIC) of indigenous communities living within CBFM areas before obtaining CBFM agreements (**Box 1**).

Box 1 Rights of indigenous peoples and CBFM in the Philippines

The Philippines recognises the right to FPIC of indigenous peoples. Under the 1997 IPRA, indigenous peoples' right to FPIC gives them the right to be consulted and give their consent before projects are implemented on their lands, to negotiate the terms of engagement and to veto certain projects.

In the context of CBFM, before the Department of Environment and Natural Resources (DENR) enters or renews a CBFM agreement, the PO applying for the agreement has to provide certification from the National Commission on Indigenous Peoples (NCIP) that the area affected does not overlap with any ancestral domain of indigenous peoples or that, if there are indigenous peoples in the area, the required FPIC procedure has been followed.[46] The Revised 2012 FPIC Guidelines lay down a mandatory procedure to ensure the FPIC of indigenous peoples is sought for all activities within the ancestral domain, including allocation and renewal of CBFM areas. In cases where CBFM agreement holders are indigenous communities themselves, a full FPIC process is not required but a validation process should be undertaken, determining whether indigenous communities affected by a CBFM agreement understand its scope and implications.

However, if it is common knowledge that the CBFM area does not overlap with any ancestral domain, a certificate of no-overlap will be issued without the need for an FPIC procedure.[47]

The recognition of indigenous peoples' FPIC in the context of CBFM is a remarkable advancement for the rights of indigenous peoples and should further help secure their rights to land and resources. However, in practice, operationalising FPIC in CBFM areas seems to be fraught with challenges. Generally, the FPIC Guidelines are not simple enough for CBFM POs. Even DENR and NGOs are grappling with the process, faced with high transaction costs, bureaucratic procedures, a lack of coordination between DENR and NCIP, and inconsistent interpretation of rules by DENR field offices.

There are also numerous practical questions that remain unanswered, including: who owns the improvements introduced in the CBFM agreement area if a CBFM agreement is rejected by indigenous peoples and cannot be renewed; how is the FPIC process to be conducted if the ancestral domain is not formally titled; and how are potential benefits shared between the CBFM PO and affected indigenous peoples? More specific guidance around FPIC in the context of CBFM is required, to provide clarity and legal certainty.

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44 The 1997 IPRA was adopted after CBFM had been instituted in the Philippines as a national strategy. This Act recognises and protects collective land rights of indigenous peoples without requiring formal titling of these lands. However, titling is provided for and encouraged by the law (Wily, 2018). Indigenous peoples whose ancestral domains have been officially delineated and determined by the NCIP are issued a Certificate of Ancestral Domain Title (CADT) in the name of the community concerned.
45 As of March 2018, 221 CADTs have been granted to indigenous communities, covering an area of approximately 5.4 million ha and encompassing over 1.2 million rights-holders (Philippines (2018) Ancestral Domain Office, NICP, https://bit.ly/2AheKT8). Considering that an estimated 14 to 17 million indigenous people live in the Philippines (UNDP, 2013), not many indigenous communities to date have obtained titles.
46 Indigenous People's Rights Act 1997, Section 59; DENR Administrative Order n°2004-29, Section 15, para. 2.
47 NCIP Administrative Order n°3 2012.48 Agrawal and Gibson (1999).

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2.2 Allocation of community forests

Providing appropriate and effective allocation of community forests to local communities and indigenous peoples is one of the core features of an enabling legal framework on community forestry. Elements to consider here include exploring who can manage a community forest area, the process for allocation of such forest and where community forestry can take place.

Who can be allocated a community forest?

It is important that legal provisions governing community forests both clearly identify who can be allocated a community forest area and tailor this access to the local context. There are two aspects to analyse when considering who can be allocated community forests: the nature of a 'community'; and the form that members should take to gain access to community forests.

What is a 'community'?

A community is rarely a unified group of people with identical interests or values. Research also shows that there is not necessarily a correlation between the unity of a group and sustainable resource use.[48] Therefore, we must be cautious when trying to define 'community' in the context of community forestry. The need for clarity on who can be granted a community forest, and therefore to define the community, has to be balanced with existing social realities and structures. An innovative approach in Nepal shows how the law can recognise different interests and values within a community (**Box 2**).

Community members discussing the management of their forest (Tanzania)

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48 Agrawal and Gibson (1999).

Box 2 How legal frameworks can recognise the heterogeneity in communities[49]

The word 'community' is a basic concept in community forestry but tends to be used very loosely. It often refers to a 'community of residence' defining the group of people that will or can participate in managing community forests. It also tends to imply that members of a 'community' may act jointly according to their common interests. However, members of a community of residence do not necessarily share common interests in terms of forest use. The interests of wealthy and poor people are likely to be divergent, as are the interests of farmers and graziers, men and women. The concept of 'interest groups' can assist in the identification of relevant social groups within a heterogeneous society. This heterogeneity needs to be recognised and the different interests identified during the process of management planning.

With effective facilitation of the process, this can ensure that all interests are given a voice in the development and implementation of community forestry management plans.

In most countries, the community of residence is the main focus in the regulatory framework. Nepal is one of the few countries that incorporates procedures to address the heterogeneity of community interests into its legal framework. The community forestry implementation guidelines explicitly require the identification of different interest groups (farmers, graziers, blacksmiths, women, indigenous peoples, etc.) and the documentation of their interests.[50] This process, if done well, can help to avoid elite capture of the process, and other inequities.

Where the law provides for a definition of community, it is important that it remains context-driven and socio-culturally sensitive. This is key to ensuring clarity and legal security for the beneficiaries of community forests. One particular element to integrate, in this case, is the identification of the group itself as a community, or, in other words, self-determination of the community members.

In Tanzania, communities must form a village in order to manage a VLFR.[51] Villages constitute a local administrative authority. They are created when a prescribed number of households has settled in a clearly bounded area.[52] The governance systems rely on checks and balances: the Village Assembly elects and can revoke members of the Village Council; and the Village Natural Resource Committee (VNRC) reports regularly on and takes account of the views of the Village Assembly.[53] The village structure affects who can be part of a community for the management of community forests. Pastoralist groups, for example Maasai, are not considered to be village residents since they move from one village to another. The Nepalese legal framework does not provide a definition of community but rather of the CFUG that needs to register to access community forestry (**see below**). In the Philippines, the definition used for community considers peoples' ties to the land and its resources as well as their common interests, needs, visions, goals and beliefs.[54] However, the definition remains unclear as it provides that a community 'may or may

not' share these common attributes. While it might be difficult to know specifically who can be considered a community in this respect, this definition also allows for some flexibility, which could help in making community forestry more widely accessible.

What form does the community need to take to be allocated a community forest?

In addition to considering how to approach the notion of 'community' in a locally sensitive way, a legal framework can specify what form, if any, the community needs to take to have access to a community forest. This could involve, for example, relying on already existing structures at the local level (Tanzania) or requiring communities to set up an independent entity (Philippines and Nepal) to manage a community forest.

The Tanzanian model relies on pre-existing villages as the administrative bodies in charge of local-level governance for all matters relating to community members. This model has proved effective in Tanzania because villages are already vested with management power over village land[55] and are based on clearly organised and participatory structures. The Village Assembly represents all village members and meets every three months, and the Village Council is a small group of elected members that governs the village.[56]

49 Text provided by Don Gilmour.
50 As part of the community's application to receive a community forest and before registering as a CFUG and establishing bylaws, the community must identify and discuss with these interest groups. See Nepal CFDP Guideline (revised 2015), Rule 27.
51 In the absence of any definition in the Forest Act 2002, the 2007 Community-Based Forest Management Guidelines provide that communities are "those who live in within or directly next to forests on their own village land. Their historical relationship with the forest and their closeness to the forest makes them the people best able to sustainably manage the forest."
52 Local government (District Authorities) Act 1982, Section 22; Village Land Act 1999, Section 7.
53 Local government (District Authorities) Act 1992, Section 141; Forest Act 2002, Section 33
54 A community is "a group of people who may or may not share common interests, needs, visions, goals and beliefs, occupying a particular territory which extends from the eco-system, geographical, political/administrative and cultural boundaries, and any resources that go with it", Philippines DAO 2004-29.
55 Village Land Act 1999, Section 8.
56 Local government (District Authorities) Act 1992.

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Nepal offers a contrasting example, as it requires a 'user group' to be created for managing community forests (**Box 3**).

This is a new type of legal entity created by the forest law for the purpose of community forestry.[57]

Box 3 Nepal's independent Community Forest User Groups (CFUGs)

In Nepal, the registration of communities as independent CFUGs is considered one of the keys to the success and longevity of community forestry.

The main features and rights attributed to CFUGs are as follows.

- **Creation:** The CFUG is a group registered by the community for the management and use of a community forest and for the collective interest.[58] Applications to register as a CFUG are submitted to the local forest office (District Forest Officer or DFO).[59] A 'constitution' or by-law must be prepared in a participatory manner by all forest users of a certain forest area, with technical support from the local forest office if needed. This specifies the objectives of the group, and the composition and organisation of the community (e.g. number of households, committee formation method, internal procedures and method of auditing). Once the application is processed, the DFO issues a certificate of registration. To create and define a community forest, the registered CFUG will then submit an application to the DFO, including a forest management plan.

- **Rights of the CFUGs:** CFUGs have strong decision-making power over the use of the forest area they manage, and how they organise themselves.

  – Self-governance rights include the right to constitute as a CFUG, formulate by-laws and amend them at any time, identify (through an election or otherwise) the executive committee (EC) members any time, and to punish members who break the rules.

  – Forest-management rights enable CFUGs to mortgage their standing forest products to obtain loans from financial institutions. They can establish a community forest enterprise and make profits, as well as fix prices and market their forest produce. This has, however, proven quite challenging in practice.[60]

- **Funding arrangements** require the CFUG to set up an account for the management of the community forest. This fund can then receive grants from the Government, or any person or organisation, as well as benefits from the sale of forest products or amounts collected through fines. The group can invest in any areas, persons or development activities according to the decision of the general assembly (all the members of the community) as per the approved management plan.

The main advantage of the registration of communities as CFUGs in Nepal is the **degree of independence** it gives communities from the administrative structures of the state. Community forests can be allocated beyond the existing administrative or political boundaries. This means that community forest areas can be tailored to the local geographical context. It has also ensured that communities benefit from strong legal protection and have the independence to carry out community forestry activities (within the approved management plan), making them resilient over time. For example, community forests continued to operate during the decade-long Maoist insurgency (1996–2005), when state institutions were dysfunctional or absent.[61] The high degree of autonomy this gives communities also means they are less likely to be affected by arbitrary bureaucratic decisions.

The formation of a CFUG is a **community-driven process**, as it can be created according to the willingness, capacity and customary right of communities. Moreover, the CFUG is an inclusive group, which represents the community as a whole, being formed of all community members, including different interest groups. CFUGs also benefit from strong self-governance and forest management rights, as reflected in the legislation (Forest Act 1993, Forest Regulation 1995 and Community Forestry Guidelines 2002).[62]

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57 Forest Act 1993, Section 25; Forest Rules 1995, Sections 26 and 27.
58 The forest law does not define any criteria to check whether or not the collective interest has been met during the handover of the community forest.
   However, the collective interest should be fulfilled through appropriate provisions of the bylaw and the forest management plan of the CFUG.
59 Following the recent State restructuring based on the new Constitution, the DFO position will be covered by the new Divisional Forest Officer.
   We use the wording of the applicable legislation here.
60 Gritten et al. (2015).
61 Ojha (2009).
62 See Section 2.5 on community forest management and Box 7 on community forestry activities in Nepal.

Box 3 continued

The creation of a registered separate entity to conduct community forestry has also allowed communities to seek **collaboration with third parties**, such as civil society or the private sector, without relying only on support from the Government. Moreover, the CFUG, as an autonomous and corporate body or a legal person, has perpetual succession. This means it can own and transfer property or sue or be sued in its own name.

The model foresees the **possible withdrawal of CFUG status** by the administration, as it can dismantle the CFUG if it is found to engage in large-scale deforestation or acts against the management plan. In this case, the registration of a CFUG can be cancelled and community forest taken back.[63] However, the law provides against the arbitrary withdrawal of the CFUG, as it is also the duty of the Government to reconstitute the CFUG and give it enough warning and time to address the situation.[64] It also provides for the possibility of applying sanctions against any officials acting beyond their capacity, ensuring a strong safeguard for communities. Finally, the community can raise concerns by filing a complaint with the Regional Forest Director.[65] It seems that in practice the local administration takes a collaborative approach and tries to address specific problems with the community rather than using legal means to challenge or cancel the CFUG.

How can a community forest be allocated?

Ensuring good access to community forestry in practice requires simple and appropriate procedures – in particular the legal steps for communities to apply to manage a community forest. The procedure for allocating community forest needs to be simple and affordable. In most countries analysed, the allocation process consists of numerous steps and requires the development of technical documents. This makes it very difficult for communities to apply for and obtain a community forest without considerable external support, whether from local government, consultants or others.

What constitutes a simple allocation procedure?

The allocation procedure determines to whom the community forest is granted, the boundaries of the allocated forestland, and the rules specifically applied to the community forest. The procedures for granting community forests usually require communities to file an application, submit technical documents and follow certain procedural steps. While the allocation procedure is, in most countries, provided for in the legislation (as in Nepal and the Philippines), it can sometimes be provided for in non-binding guidelines (as in Tanzania). To make community forestry accessible, the process should be manageable for communities (**Box 4**). For example, it is helpful to have templates in plain language, with clear instructions on the information communities must provide.

Ideally, communities would be able to follow the process by themselves, with the option of calling upon others to facilitate the process. One particular difficulty with the allocation process is often the elaboration of a forest management plan, which can be a requirement for obtaining a community forest. Forest management plans aim at providing a framework to identify and guide the activities to be carried out in the community forest. However, the complexity of these plans can hamper effective access to community forestry, if requirements are over-demanding and technical.[66] For these reasons, access to community forestry is improved if regulations are practical and easy to understand and monitor, especially concerning management plans (also **see Section 2.5**).

The allocation procedure must take into account the time needed for granting a community forest and costs associated with it. The procedure in Nepal details the various steps required to form a CFUG and to allocate the forest area. The costs associated with the allocation procedure can be quite important. The inventory of forest resources and the preparation of the management plan, both required before the community forest is granted, can reach a minimum of 150 euros for a forest area of less than 10 hectares.[67] The time required for allocating community forest can vary depending on various factors including the size of the community, the size of the forest area, and the availability of facilitators and government staff for technical support. It can take about six months for a forest of 100 hectares, provided there is no conflict concerning forest boundaries and membership of the CFUG.[68]

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63 Forest Act 1993, Section 27, 'Community forest may be taken back'.
64 Forest Act 1993, Section 28, 'Community forest may be re-handed over'.
65 As above, the position of the 'Regional Forest Directorate' (used in current legislation) will be handed over to a Provincial Forest Directorate, due to recent restructuring.
66 Gritten et al. (2015).
67 The total cost of the forest inventory and preparation of management plan depends on the size of the community forest. Other different costs, such as the preparation of the by-law, organisation of the general assembly and public hearing, preparation of progress reports and audit reports, etc. must also be borne by the CFUG.
68 This timeline includes the formation of the CFUG, formulation of by-laws, preparation of the forest management plan and approval from the DFO.

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It is helpful if the criteria applied to allocate community forests are clearly outlined in the law. In Nepal, the law mentions two factors that must be considered by the DFO while handing over national forest to CFUGs as community forest: the distance between the community and the forest, and the willingness and capacity of the community to manage the forest.[69]

However, the law does not specify any objective standard for determining either the willingness and capacity of the groups or what is considered an 'accessible forest' in this context.[70] As a result, DFOs have used their discretionary power for determining those. Finally, communities should not be required to travel long distances to submit technical documents (as detailed in the next section on decentralisation).

Box 4 An accessible allocation procedure in Tanzania

In Tanzania, the process for declaring a Village Land Forest Reserve (VLFR) is relatively straightforward. It is, to a small extent, provided for in the 2002 Forest Act.[71] The CBFM Guidelines offer more detail, in six distinct stages. The process starts with choosing members of a VNRC within the community. The VNRC first identifies the boundaries of the forest to become a VLFR and drafts the management plan and by-laws. These documents are then passed to the District Council for comments before being approved by the Village Assembly. Once these documents are endorsed by the Village Assembly, the VLFR is declared.

Despite this accessible procedure, there appears to be a contradiction between the Forest Act and the

CBFM guidelines as to who validates creation of the VLFR: the Village Council or the District Council. In practice, and despite this inconsistency, it seems communities have been able to obtain VLFRs without issues. Despite the non-binding character of the guidelines, they are generally followed by communities. The completion of the allocation procedure took about a year, in one community we visited, for the creation of about 70,000 hectares of village land forest reserve.

Tanzania's allocation process allows the design of by-laws by communities themselves, and benefits from the decentralised approach. It is also accessible because communities exist as villages already, and do not have to create a new structure.

Community members pointing at their community forest boundaries (Philippines)

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69 Forest Regulation 1995, Rules 26–28.
70 Accessible forest has been further interpreted as the forest where forest users have a continuous and close distance (a few kilometres) to the forests by the Forest Resource Survey Report 1999, but this is not a standard uniformly applied.
71 Forest Act 2002, Sections 34 and 35.

At what government level should the procedure be conducted?

The level of decentralisation of the allocation procedure can play a big part in ensuring a streamlined and accessible allocation process. Where the forest allocation process is devolved to the local forest administration, communities seem to have benefited from relatively good access to community forestry, as in Nepal. In the Philippines, the recent increasing centralisation may increase difficulties for communities (**Box 5**).

Box 5 A new centralised approach for allocating CBFM in the Philippines

In the Philippines, the CBFM-agreement allocation consists of multiple stages, including: (1) the preparatory stage in which CBFM areas are identified and delineated, (2) the PO-formation stage, and (3) the processing and approval of the CBFM agreement.[72] Until recently, the CBFM-agreement approval process was decentralised, in line with the size of the proposed CBFM area: community-level offices of DENR used to approve small CBFM areas (up to 500ha), with larger areas approved by provincial (500–5,000ha) and regional offices (5,000–20,000ha).

The central government was in charge of approving CBFM areas above 20,000ha.[73]

Now, however, the allocation process has been centralised, with all CBFM-agreement applications requiring final approval by the central DENR offices in Manila, regardless of the area size. This lengthens the allocation time and removes the decision-making from realities on the ground, and might make it more difficult for communities to be granted a CBFM.

One benefit of decentralisation is to bring communities, and their members, closer to the centre of decision-making. This allows good physical access for depositing the required documents for an application, and also for receiving support from the local administration. On the government side, decentralisation means that the allocation procedure better reflects the specific local area, as required by certain application conditions, e.g. the type of forest solicited. Local officials are more likely to understand the forest and communities in their area, making their decision-making more informed

and tailored. Finally, devolving power locally helps to build links between local officials and communities for longer-term work on CBFM activities such as monitoring and enforcement.

Decentralisation is not a panacea however and can have its pitfalls too. For example, devolution of power can come with increased local corruption.[74] It is important, therefore, to consider careful design of the laws with regard to allocation procedures, outlining clear rights and responsibilities of local government bodies. The capacity of local administrations, in terms of financial and human resources, may also influence local effectiveness.[75] For example, local officials can manage only so many community forests, and will require appropriate means to do so, such as transport. They also require appropriate technical capacity (knowledge and skills) to best assist communities and monitor community forests.[76]

Where can community forestry take place?

Legal frameworks generally identify a specific forest domain or area where community forestry can take place. It is important that the law provides for this, and foresees the community management of quality forest areas and not only degraded forests. In Tanzania, community forestry can take place in village forests, which consist of any forests located on village land.[77] The CBFM Guidelines detail that community forestry "may apply to any kind of forest i.e. those which are rich or poor in biodiversity, intact or degraded, large or small, moist montane, woodland or mangrove."[78] Also, there is no maximum size prescribed by law for a VLFR.

Community forests in Nepal can be allocated in any part of the national forest.[79] Community forestry can also be recognised outside the national forest area if forest users have planted or want to plant trees there. The law moreover clearly states that the boundaries of villages, towns, and districts have no effect on the determination of a community forest.[80] This flexibility allows for community forests to be created beyond the limits of administrative boundaries. The law then requires the two or more districts and local forest officers concerned to liaise on the allocation of the community forest.

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72 Philippines (2004), Philippines, DENR Administrative Order n°2004-29, Revised Rules and Regulations for the Implementation of Executive Order 263, 2004, Art. III.
73 Philippines (2004), DENR Administrative Order n°2004-29, Revised Rules and Regulations for the Implementation of Executive Order 263, 2004, Art. III, Section 15.
74 Ferguson and Chandrasekharan (2011).
75 Gritten et al. (2015).
76 Gritten et al. (2015).
77 Forest Act 2002, Section 4.
78 Community Based Forest Management Guidelines 2007, p1 (https://bit.ly/2zi4MBx).
79 Other types of community forest can also be allocated in public lands, buffer zones or conservation areas.
80 Forest Rules 1995, Section 29(3).

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2.3 Community internal governance

Management of community forests generally relies on local governance, through creation or use of community bodies which ensures that the system is tailored to community practices. Therefore it may not be helpful for laws to prescribe a set model for all community forests across a country. However, legal provisions can enable development of by-laws, which are rules generated by the community explaining how they aim to run the community forest, according to their own structures and practices. There are some common elements to consider in supporting this process.

Is it necessary to establish decision-making bodies to manage a community forest?

Creating or identifying various bodies with clear objectives, roles and responsibilities can help in the effective management of community forestry. Some countries, like the Philippines, prescribe the formation of specific bodies within the community to run community forestry. Others, like Nepal, do not

require communities to structure themselves around one or multiple bodies to implement community forestry. All countries visited, however, rely on a combination of:

- an executive body that runs the day-to-day community forestry activities (the Executive Committee in Nepal, the VNRC in Tanzania and management boards in the Philippines), and

- a regular meeting of all members of the community forest (the General Assembly in Nepal and the Philippines and the Village Assembly in Tanzania), where major decisions around community forestry are taken by consensus-building or voting.

There can also be other groups formed to undertake a specific activity. In Nepal for example, some CFUGs have sub-committees on planning, distribution of forest products, internal audit, and monitoring and evaluation. These are the main governance mechanisms of CFUGs for ensuring full and effective participation of forest users in the community forest.

Members of a community forest's executive committee (Nepal)

© Nathalie Faure

Board showing the name and role of community members in the community forest bodies

© Nathalie Faure

How can accountability be ensured?

It is important that those in charge of implementing community forestry or who hold decision-making positions are accountable to all forest users within the community. Accountability mechanisms are key tools of good governance as, when efficient, they can safeguard against corruption or arbitrary decisions. They can also ensure that decisions lead to action, and help to hold decision-makers responsible for their actions.

In Nepal, for example, although CFUG do not often have an overall internal system for community members to monitor all the activities of the Executive Committee, a few mechanisms exist. First, the Executive Committee generally presents the key updates about the running of the community forest, as well as points for decision-making, during the General Assembly. Moreover, a regular audit of the fund of the CFUG is required when the community generates benefits from the sale of forest products or related activities. This audit is performed by a member of the community or an independent registered auditor, depending on the amount of income generated, and the audit report has to be validated by the General Assembly.[81] In the event of any complaint against members of the Executive Committee, the General Assembly can form an investigation committee.

How can an appropriate system of information-sharing be ensured?

Transparency is another cornerstone of good governance, and requires community members to have access to information about decision-making structures and processes and activities in the community forest. It is useful for the legal framework to set the principle of transparency within community forestry, in either an overarching text (e.g. the forest law) or specific legislation on community forestry. However, it is important for legal provisions to be flexible, to allow diverse community practices.

Various tools have been used in community forestry to ensure access to information. In Nepal and the Philippines, for example, many of the CFUGs and POs that ClientEarth visited maintained easily accessible notice-boards. These featured lists of people previously and currently involved in community forestry, in the local language in the office of the Executive Committee or on the building's wall. This allows members of the community, and visitors or neighbouring communities, to see who is primarily responsible for the community forest. These boards can also present wider information, sometimes using illustrations and thereby being inclusive to non-literate members of the community.

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81 Community Forestry Financial Procedure Directive 2016, Sections 52 and 60.

2.4 Community participation and representation of vulnerable groups

In truly community-based forest management, communities manage and control their forests autonomously, and choose whether or not to ask others for support (**Section 2.10**). A legal framework should include safeguards to encourage participation of all segments of a community – particularly women, ethnic minorities, and socially marginalised and indigenous peoples.

What mechanisms help to ensure participation?

It is important for legal provisions to frame community participation, as local customs may not always provide for full inclusion of all groups in community forestry. One method of ensuring good participation of community members in Nepal is the legal obligation that falls on the DFO to ensure, before handing over the community forest, that all forest users are represented and have participated in the preparation of their by-law.[82]

In Tanzania, effective community participation in community forestry is provided for in the law and organised according to local democracy mechanisms. The Village Council takes decisions on community forestry during meetings that have to reach a minimum quorum of members. The community at large then endorses those decisions during quarterly Village Assembly meetings, at which all village residents older than 18 years can participate. This ensures relatively good participation of all members of the community.

However, community representation can, in some instances, be limited. In the Philippines, POs can represent only a fraction of the entire community,[83] contrasting with the size of a larger community that can reach a few thousand people. As a result, not all community members may participate in community forestry activities. This may have direct impacts on benefit sharing within the community as a whole.

Gender equity provisions in Nepal have empowered women beyond community forestry making them leaders in their community

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82 According to CFDP Guideline, at least one man and one woman have rights to represent their household in the discussion meetings and general assembly of CFUG and if the representatives of any households are not satisfied with the by-law and forest management plan preparation process, they can register their complaints to the DFO and local government.
83 POs are required to register as cooperatives, non-profit associations or workers' associations in order to be granted CBFM agreements. The minimum number of members required for establishing a cooperative is, for example, 15 people, whereas creating an association requires a minimum of only 5 incorporators.

How to ensure the participation of minorities, women and other marginalised groups?

Certain vulnerable groups may be more likely to be excluded from the development and operation of community forests. In Tanzania, some pastoralist groups moving from one village to another in search of pasture, like the Maasai, find themselves excluded from community forestry activities when they are not village residents. Their nomadic livelihood pattern, however, may mean that they carry out activities in the village during part of the year and should therefore be able to benefit from community forestry.

Within legal frameworks, particular attention is needed to prevent the exclusion of marginalised groups. Nepal demonstrates provisions to avoid further marginalisation of minorities, aiming to ensure participation of indigenous peoples and of poor and socially marginalised groups, in community forestry (**Box 6**). Moreover (and as noted in **Section 2.2**), the identification of different interest groups within a community during the CFUG formation stage can ensure that all community members are involved in

discussions about the community forest from the early stage of its creation. This can also be a good way to avoid elite capture.

Enabling the participation of women in community forestry is essential to ensure the involvement of all community members. The legal frameworks of Tanzania and Nepal require a certain level of female participation in community forestry. In Tanzania, the Forest Act states the general principle according to which "the Village Natural Resource Committee should be formed with due regard to gender balance", while the Guidelines further specify that a third of this body should be women.[84] In addition, in each Committee, village by-laws can further detail participatory mechanisms. Similarly, in Nepal, the guidelines ask that 50% of the Executive Committee positions are held by women. While it seems, in both countries, that these provisions are taken into account, the proposed quotas can be challenging to reach. Also, while it is useful for the guidelines to indicate how to ensure gender inclusiveness, they have limited legal force since they are not mandatory.

One of the women-only-led community forests in Nepal

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84 Forest Act 2002, Section 33(2)(b); Community Based Forest Management Guidelines 2007 (https://bit.ly/2zi4MBx).

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Box 6 Provisions on gender equity and social inclusiveness in Nepal

Constitutional provisions and legislation in Nepal promote the equal rights of men and women and the equitable rights of indigenous people and other socially marginalised groups, including concerning the access and use of forest resources.[85] In Nepal, the community forestry legal framework is composed of key laws and regulations (mainly the 1993 Forest Act and the 1995 Forest Rules), as well as non-binding guidelines on how to interpret legal provisions.

The 2015 CFDP Guidelines provide the following recommendations on how to integrate gender representation and participation issues within community forestry:[86]

- At least 50% of positions should be occupied by women within the executive committee of the CFUGs, including in key positions (either the chairperson or secretary).

- The names of men and women from each household must be mentioned in the membership list of the CFUG by-laws and the representation of one man and one woman from each household in the general assembly should be mandatory.

- The participation of each household in the community-forestry-related activities should be pursued in a gender-friendly manner.[87]

The guidelines also contain provisions for the effective participation of indigenous peoples and of poor and socially marginalised groups of the community, and for social inclusiveness in benefit sharing, though the following requirements:

- mandatory representation of the poor, Dalits and indigenous peoples in the executive committee[88]

- allocation of 35% of the income of the CFUG for livelihood support and income-generation of the poor, women, indigenous people and socially marginalised groups

- priority to poor households for employment in forest-based enterprises

- allocation of land in community forestry to poor people for income-generation activities

- special provisions for poor people in the by-laws and operation plan of the CFUG.

The identification of poor households is carried out during preparation of the management plan. Each CFUG is required to conduct well-being ranking, using indicators such as land-holding, number of cattle, employment status, and family size. Likewise, the CFUG uses tools such as social surveys and maps to identify indigenous peoples and socially marginalized groups.

The implementation of these guidelines remains challenging in practice, especially for the participation of poor people, Dalits and other indigenous groups, whose presence is marginal in the governing bodies of community forestry. However, these recommendations have contributed to women taking the lead in community forestry management. About 1,000 community forests have women-only-led executive committees today in Nepal.[89]

The positive impact of increased women's involvement in community forestry has extended to wider increases in the confidence and capacity of women to engage, resulting in stronger female leadership overall in Nepal, well beyond forest management. In the last local elections (May to September 2017), the first held in decades, many women who had engaged in community forestry ran and won seats at unprecedented levels.[90] The greater presence of women in community forestry institutions has also demonstrably improved forest conservation outcomes.[91]

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85 Arts 18 (right to equality), 24 (right against untouchability and discrimination), 38 (rights of women), 40 (rights of Dalit), 42 (right to social justice), 51(g)(1) and 59(4)&(5) (preferential rights to local communities while sharing benefit from natural resource management).

86 CFDP Guidelines 2015, Section 3.7.

87 The word 'women' is used 62 times in all sections and subsections of the Community Forestry Developed Program Guideline (Revised 2015) and given special emphasis for the gender-friendly activities in community forestry. For example, Sections 3.7 (general assembly), 3.9 (fund mobilization), 5.1 (annual plan preparation), 5.3 (poverty alleviation), 5.7 (capacity building) highlighted gender-friendly activities.

88 In the remaining (about) 50% of positions in the Executive Committee not occupied by women, there should be a proportional representation of these groups.

89 WOCAN/UN-REDD (2013).

90 FECOFUN/RRI (2018).

91 Agarwal (2010).

Cardamom pods are some of the non-timber forest products harvested in community forests (Nepal)

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2.5 Community forest management

Most legal frameworks on community forestry require the implementation of community forestry activities in accordance with a workplan or forest management plan designed by the community and which lays out the different uses of forest areas. Laws can be more or less prescriptive as to the type of information required for management plans.

What should an appropriate management plan look like?

The legal framework can support the design of a simple management plan by communities, as well as providing templates as guidance documents. Requirements can be adapted, based on the size of the forest and community, and the type and complexity of the proposed activities. Management plans that are simple and practical for communities to complete can help to ensure more ownership over their content, as well as a higher level of compliance. The plans' level of complexity should be defined according to the capacity and needs of forest users and the types of activities (e.g. livelihood-oriented forestry or community forest enterprises) foreseen in the community forest, so they remain a useful planning tool.[92] Technical details,

such as a detailed trees/timber inventory for example, could be required only if the community envisages selling forest products or receiving payments for environmental services.

Experience has shown that complicated management plans can hamper the implementation of community forestry. In the Philippines, for example, POs require considerable technical support for the preparation of management plans and five-year workplans due to their complexity and associated costs. It is estimated that currently fewer than 50% of the CBFM agreement holders have completed their management plans due to limited financial and technical capacity of POs as well as inadequate human resources and financial support from the DENR.[93] In 2016, DENR responded by issuing simpler Community Resource Management Framework (CRMF) Guidelines, but the effectiveness of this remains to be seen.

The body or members responsible for implementation of the management plan must be clearly identified. In the three countries analysed, community members have this responsibility, either through the body in charge of community forestry implementation (the Executive Committee in Nepal, the VNRC in Tanzania) or, as in the Philippines, the PO as a whole.

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92 The FAO provides a useful account of the experiences of various countries in developing 'simpler management plans' for community forestry, as well as some guiding principles. It also offers insights on appropriate legal frameworks for different forest activities (FAO, 2004).
93 Philippines (Technical Bulletin).

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What activities can be carried out in community forests?

As outlined above, the management plan is a key document outlining activities to be carried out by the community over the next five, ten or more years. In framing the development of management plans, legal provisions sometimes explicitly prohibit certain activities (**Box 7**).

This can be useful as it provides guidance to communities, prevents discretionary administrative decisions and can ensure that the sustainability of the resource is maintained.

Box 7 Scope of community forestry activities permitted by law in Nepal and the Philippines

The Nepalese legal framework identifies both activities that may be pursued by communities, and that are prohibited. According to the law, communities cannot:

- destroy the forest or mortgage or transfer the government ownership of the forestland covered by the Community Forest

- clear forest areas for agricultural purposes

- build huts and houses for individual/personal purpose or for families

- take any action which may cause soil erosion

- capture or kill wildlife in violation of prevailing laws

- extract or transport rocks, soil, boulders, pebbles, sand, etc.[94]

The guidelines also provide information on the kind of activities that can be carried out by communities.[95] These include forest protection and development, harvesting of timber and other forest products, ecotourism and other income-generating activities (e.g. cultivation of plants and cash crops), as well as community development and governance activities (e.g. energy, health and education, general assembly meetings and training).

The management plan of a community forest in Nepal is a useful tool for forest management, but also community development. Since only the activities specified in the management plan can be executed, it is imperative for community members to identify in this plan what they intend to do in their community forest.

In the Philippines, community members can develop a wide range of activities, such as reforestation, forest protection, agroforestry, timber harvesting,[96] ecotourism or other income-generating activities (e.g. collection of NTFPs, rattan furniture-making). These are determined by management plans and five-year workplans. There are no legal provisions prohibiting certain types of activities. However, priority is given to forest use that incurs little resource extraction (e.g. NTFPs) or no extraction (eco-tourism), with timber extraction as the lowest priority.[97] Communities may be granted access to community forestry provided they employ environment-friendly, ecologically sustainable and labour-intensive harvesting methods.

This recreational area in a community forest can be hired by members to provide income to the community

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94 Forest Rules 1995, Rule 31.
95 Community Forest Directives 1995, Section 6.
96 However, timber harvesting is subject to a current logging ban.
97 DENR Memorandum Circular 1997-12, Section 1; Guidelines for the Formulation of CRMF and Annual Work Plan for Community Based Forest Management Areas.

How should community forests be managed, and with what help?

Community forestry that is sustainable, rather than dependent on projects that may bring only short-term gain, may ensure longer-term viability. However, short-term projects can help to establish community forests.[98] In the Philippines, CBFM tends to be viewed as a project rather than a long-term forest governance strategy.[99] POs have been dependent on particular livelihoods and reforestation projects and tend to disband after project funds are exhausted. This does not create strong enough incentives for PO members to continue implementing activities once the project is over. However, some more successful POs have managed to continue activities beyond the initial project, although this seems to be due to strong leadership, PO-member cohesion and continuous external support.

The law can allow communities to involve third parties in forest management, while providing protections against power imbalances between communities and companies. In Tanzania, the Guidelines for Harvesting in Village Land Forest Reserves from 2013 provide non-mandatory "guidance on how village land forest reserves can be harvested for the benefit of rural communities and in a sustainable way".[100] This is a list of steps for a community to follow, from marking trees to harvesting and transporting timber. The law additionally provides that the Village Council needs the approval of the Village Assembly to enter into agreements to allow third parties to conduct activities in their VLFR.[101] In practice, these elements seem beneficial to a balanced relationship between communities and loggers: when contracting with logging companies, communities sell standing timber at a set price. During operations, they monitor logging activities, including the fulfilment of the obligation to obtain a harvesting licence and the payment of taxes by the logger.[102]

The Philippines model additionally foresees the liability of the PO for any failure of the subcontractor or third party, in development of the CBFM area or economic activities within it, to fulfil the terms and conditions of the CBFM agreement.[103] This can enhance the accountability of the PO in entering into contracts with third parties. However, considering frequent power imbalances between communities and companies, it can also put the PO in a difficult position by shifting the liability for a third party's misconduct to the weaker contractual party.

A seedling nursery contributing to reforestation activities within the community forest (Philippines)

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98 Sikor et al. (2013).
99 Pulhin et al. (2007).
100 Guidelines for harvesting in village land forest reserves 2013 (https://bit.ly/2yI8gTo).
101 Forest Act 2002, Section 49(6).
102 Community consultations, July 2018.
103 DENR AO 2004-29, Art. III, Section 17.

2.6 Access to markets

Sawmill in a Nepalese community forest

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Community forestry not only helps to secure communities' livelihoods and protect forests: it can also contribute to local development. The legal framework can support communities by facilitating access to markets, enabling entrepreneurial communities to generate revenues. This can be through the harvesting, processing and sale of timber or non-timber forest products, as well as other types of income-generating activitiew s, such as like ecotourism or activities generating payments for environmental services.[104] Some of the main challenges for communities in accessing markets relate to the complexity and proliferation of regulations, the quality of the forest allocated to communities, access to finance and business partnerships, the poor quality of infrastructure, and limited business capacity and know-how.[105]

Enabling legal frameworks can support access to markets in multiple ways. They can facilitate access to different levels of the supply chain for sustainable provision of forest-related services and products (e.g. from harvesting to processing, transporting and selling timber).

- The law can provide for an easy procedure to develop an economic activity, such as by not requiring the setting up of a new legal entity to allow access to markets. In Nepal, the current legal obligation for a CFUG to register as a micro-enterprise or cooperative in order to set up a community enterprise is in an additional step for communities, which can make it more difficult and takes longer to gain access to markets.[106]

- Regulations can provide tax breaks, easier access to capital and technical support (e.g. training in financial management) for community-owned enterprises. For example, allowing tax exemptions or low levels of taxes for the sale of forest products can make it affordable for communities to engage in commercial activities. In Tanzania, timber harvesting benefits from tax exemption, making timber from community forests more competitive.[107]

- Rules on commercial transport can either facilitate or hinder market access. In both Tanzania and Nepal, the main difficulty in marketing timber results from the need for communities to obtain a transport permit, which is not easily granted by the administration. In this context, transport is mostly undertaken by traders carrying the legal burden. Enabling rules tailored to community forests could allow community members to transport and market their own products, thereby improving their revenues.

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104 The portfolio of forest-related enterprises is laid out in Macqueen and Bolin (2018).
105 Gritten et al. (2015); Macqueen (2008); Gilmour (2016), chapters 5 and 9.
106 The Forest Act is currently being revised and this is one of the points of discussion.
107 Forest Act 2002, Section 78(3). Local governments can collect taxes on community forestry forest-products transport (Blomley and Iddi, 2009).

- Rules on processing and manufacturing can affect community forests' profitability if, for example, they deter communities from selling processed products. Developing local infrastructure may reduce costs for business operations.[108] In Nepal, prohibition of commercial timber processing within community forests results in high transport costs for CFUGs.[109] Communities are permitted to saw timber nearby only for their internal use and with prior authorisation from the DFO.

- Allowing for flexibility on the fixing of product prices can also benefit communities. In Tanzania, the framework for community forest enterprises is based on communities' bylaws. In VLFRs, communities can decide to fix the price of timber. They most often choose to align this price to the official price set by the Tanzania Forest Service. When more than one customer is interested in buying community forest timber, it is auctioned. The selling price is generally lowered when timber is sold to community members.

- The law can also increase accessibility by making it possible for community groups to call on private-sector organisations to harvest, transport or process products.

- Facilitating technical capacity-building and support is another way in which the law can increase access to markets. The transfer of knowledge has to be made possible by allowing third parties' involvement in community forestry, as well as in marketing support (e.g. on price-fixing, distribution and branding).

The above non-exhaustive areas show how the law can facilitate access to markets without being restrictive and over-regulating. Related enabling conditions also have to be considered in this respect, including access to finance, quality infrastructure and access to information.[110]

2.7 Benefit sharing

One objective of community forestry is the improvement of community members' livelihoods. But how are benefits from community forestry shared with the community as a whole, to ensure fair and equitable gains? Benefits can be monetary or non-monetary (e.g. employment or training).[111] They can also either benefit to community members or families (e.g. through sharing fodder collection) or a wider group (e.g. through a new health center or school). Benefit sharing is a key element of successful community forestry, and can be enabled by a legal framework in different ways.

Legal provisions can require a sharing of benefits within a community while allowing the community itself to choose the mechanism to use. The community forestry framework can outline options, such as the allocation of a percentage of community benefits to agreed community projects. This would ensure that the benefit sharing reflects local cultures and customs, as well as different notions of equity among communities. Community forestry models we analysed all feature benefit sharing – but using different approaches (**Box 8**).

One challenge observed is ensuring that the model of benefit sharing is truly equitable and fair to all community members, as benefit sharing can be affected by societal divides in the community, and is susceptible to elite capture.[112] For this reason, it is useful to think about which safeguards may be included in legislation or guidelines to prevent these problems.

A system for monitoring and transparency is key (see **Section 2.3** above), at least at community level, so that all community members know how funds or benefits are used and shared. Such mechanisms can reduce the risk of capture by elites. In Nepal, for example, while communities regularly report to the DFO on the overall implementation of community forestry,[113] including on how funds are used, the DFO on-site monitoring focuses mainly on the quota of timber cut and other forest-related products. There is therefore little if no monitoring of whether fair and equitable sharing of benefits is ensured between community members, including with disadvantaged and marginalised groups.[114] Moreover, the overall regularity of on-site checks by the DFO (in principle once a year) can vary depending on budget available.

108 Gritten et al. (2015).
109 Sawmills must be located 3km outside the forest in the south Terai region of Nepal and 1.5km away in the hills and mountains region. This measure was set up to reduce the risk of illegal logging (Gritten et al., 2015).
110 Gritten et al. (2015); Macqueen (2013).
111 Lawlor et al. (2013).
112 Persha and Anderson (2014).
113 A progress report and an audit report (if the community generates an income) are submitted to the DFO annually.
114 Some CFUGs however do include certain pro-poor provisions in their by-laws and management plans, such as subsidies on the price of forest products or access to loans (Ojha et al., 2009).

Box 8 Different models of benefit sharing

In the **Philippines**, benefit sharing takes place on two levels. An established rule specifies vertical benefit sharing for timber harvesting inside designated CBFM areas: of the gross sales, the PO receives 75% and the Government 25%.[115] Horizontal benefit sharing (among PO members) however, is not regulated by any pre-established rules and is designed and implemented by the PO itself as this is considered an internal matter for the PO. In practice, sharing monetary benefits among PO members remains challenging due to members' lack of capacity for accounting and financial monitoring, and to elite capture.

In **Tanzania**, the Forest Act and its guiding document provide that communities fully retain the benefits arising from community forestry but do not specify how benefit sharing should be implemented within the community. In practice, revenues generated from community forestry are directed to the village finances. They are not shared back directly to community members but can be used to fund local development projects or to re-invest in forest management. Such projects are proposed by the Village Council and approved by the Village Assembly. This system, if not fully participatory, is consultative and allows some transparency on revenue use.

In one village we visited, 40% of revenue had been used for development projects such as the renovation of a classroom, construction of a second classroom, installation of a water pump and inclusive village health insurance. The remaining 60% covers patrolling, monthly VNRC meetings and costs of fire-management control. Some communities also choose to share part of their revenues (about 5%) with DFOs. This non-mandatory mechanism aims to fund administration support in a context of low financial capacities.

In **Nepal**, the CFUG can use its funds for any purpose, within the minimum required use of at least 25% of the income invested in forest development and at least 35% for income-generating activities focusing on marginalised groups. The remaining 40% must be spent on community development, such as the construction of roads, drinking water supplies, irrigation and electricity systems, health posts, community buildings and controlling soil-erosion. The application of these shares, advised by the CFDP guidelines, is often challenging in practice as a large share of benefits is often spent on infrastructure development and maintenance (roads, electricity and irrigation) and to run schools.

Revenues from the community forest may help building infrastructure, here a school

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115 DENR AO1998-42, Section 4. No other vertical benefit sharing rules exist with respect to any other natural resources or CBFM activities.

2.8 Conflict resolution

As there can be conflicts in the implementation of community forestry, it is important to consider mechanisms of dispute resolution. Conflicts may arise between members of the community or between the community (or one of its members) and third parties (including government representatives, companies or NGOs). Here, we focus mainly on disputes between members of the community. Other disputes may fall under contractual arrangements (with their own resolution procedures) or within the remit of the formal judicial system. It is also key that those formal mechanisms are available to community members.

Most sources of tensions observed on the implementation of community forestry models were around land use (Tanzania), the identification of forest boundaries, membership processes for CFUGs (especially in Terai region in Nepal, where significant migration has taken place), benefit sharing (Philippines, Nepal) and illegal logging (Nepal, Philippines). Legal frameworks can assist in anticipating and specifying tools for use in case of future conflicts. The main question to consider is whether a specific conflict resolution mechanism should be created for disputes related to community forestry or whether the existing legal mechanisms are sufficient.

In the countries analysed, there is no formal mechanism for dispute resolution specific to community forestry. Conflict resolution mechanisms have therefore been defined by communities depending on their own traditional or social practices. In Nepal, the key institution in charge of conflict management is the Executive Committee, which may either try to resolve the conflict by involving the parties or seek help from the local Federation of Community Forestry Users Nepal (FECOFUN) or the DFO.[116]

The CFUG may also form a mediation committee at community level to resolve certain disputes, as advised under the CFDP Guidelines. Some communities have also set up advisory committees, which may help settle conflicts. When the matter is difficult to solve at community level, members of the CFUG can call upon the local administration (DFO) or local government where the matter is resolved, if possible, by mediation and consensus-building. Finally, if other methods have failed, the judicial system may be called upon as a last resort.

In the Philippines, one responsibility of the CBFM PO is to develop mechanisms to address conflict, including rules, regulations and sanctions regarding forest use and protection. Indigenous dispute-resolution processes and mechanisms apply when the dispute involves indigenous groups.[117] CBFM agreements provide for informal arbitration between the parties to the agreement (CBFM PO and DENR) before any adjudication in courts.

For the resolution of disputes between PO members, in practice, the local-level barangay justice system (Katarungang Pambarangay) is used. This is an alternative and community-based mediation process following the 1991 Local Government Code, which is mandatory before filing any complaint in court.

2.9 Enforcement

Ensuring the proper application of forest rules is another building block of community forestry models. Two types of enforcement are relevant in this context.

- **First**, forest enforcement may be led by communities entrusted with the power to sanction community members or third parties for wrongdoing.

- **Second**, the State generally oversees the implementation of community forestry by communities.

What role can communities play in enforcing community forestry rules?

In some countries, such as Tanzania and the Philippines, communities given authority to enforce community forestry rules, including taking action towards third parties as they monitor the forest. In these cases, it is important that communities are given the means and tools to carry out checks, and that safeguards ensure transparent and fair sanctions.

In the Philippines, POs are primarily responsible for the protection and conservation of natural resources within the CBFM agreement area.[118] PO members can have legal authority to apprehend illegal loggers and confiscate illegally cut timber and tools used for cutting.[119] Some communities apply so-called 'meta-legal' flexible approaches, with community forest guards apprehending encroachers and settling the issue internally through mediation, resulting in what a community deems a fair sanction (e.g. the encroacher commits to participating in the reforestation project and signs a promise of 'non-repetition').

116 RECOFTC (2016).
117 DENR AO2004-29, Section 7.
118 Ibid. Art. III, Section 25, para. 1.
119 Ibid, Art. III, Section 25, para. 2.

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These community-based approaches can be more responsive to each community and encroacher. DENR field offices often lack the financial and human capacity to perform regular checks and deal with violations.

In Tanzania, VNRCs are in charge of regular patrolling, while Village Councils issue fines based on penalties set in the community forest by-laws.[120] The intervention of two different bodies protects against arbitrary decisions. In addition, it is possible for anyone convicted to appeal to a judge. During forest patrols,

VNRC members can apprehend any person undertaking activities in breach of national legislation and by-laws. When they encounter difficulties, VNRC members tend to call public authorities, in particular the police and district forest officers, for support.

The Village Council can issue fines and seize products. By-laws clearly define the offences and fines that can be given by the village. In one village we visited, for example, an illegal logger was fined 50,000 Tanzanian Shillings (about €20).

Tower for the monitoring of encroachment into a community forest (Nepal)

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120 Section 167 of the Local Government (District Authority) Act provides that "any by-law, made by or in respect of a village council for any village, may annex to the breach of the by-law such fine not exceeding two thousand shillings as the authority making the by-laws may determine" (Local Government (District Authority) Act 1992, Section 167).

Forest guard patrolling a community forest (Nepal)

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What are the administration's enforcement duties?

Local authorities are responsible for ensuring the proper enforcement of management plans by communities. Sanctions can be taken against communities – for example, temporary corrective measures, such as freezing funds or suspending the implementation of activities in Nepal; or permanent sanctions with the possibility to withdraw the community forest (although this has not happened in practice). While it can be useful that the law clearly lays out possible sanctions for breaches of the management plan, these should be fair, proportionate and dissuasive. It is also key to ensure clarity about who is liable for wrongdoing within the community forest.

In Nepal, the Executive Committee manages community forestry, and its members are held responsible for any breach of the management plan. One community we visited faced legal action filed by the DFO against an Executive committee for alleged timber cutting in excess of limits set in the management plan. The Committee claimed that illegal logging by external actors was responsible.[121] However, it was found guilty in court and ordered to pay damages. This case has affected the morale of the community, and especially members of the committee.

It also shows the complexity of ensuring a system of enforcement with fair sanctions as, in this case, the same level of damages was applied to all members of the EC, including a representative of the poor.

In the Philippines, in 2006, DENR attempted a mass cancellation of more than 1,000 CBFM agreements nationwide, allegedly due to various violations of CBFM rules committed by POs. However, the cancellation order was later suspended as subsequent DENR assessments, combined with widespread civil society advocacy, showed that only a few POs had committed serious violations of the law.[122] Currently, DENR's approach seems to be to 'heal' CBFM POs rather than to apply strict enforcement rules and pursue sanctions across the board.

In Tanzania and Nepal, the administrations appear to be conducting few checks. These are mostly 'book checks' which compare the provisions of the management plan with the documents developed by communities on amounts harvested and sold. Social and governance aspects remain largely unmonitored. The Tanzanian Forest Act lays out a single sanction: suspension of non-compliant VLFRs by the Minister.[123] To our knowledge, this has not yet been applied.

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121 The community claimed that illegal logging they could not control was taking place partly due to the earthquake and the need for people to rebuild houses.
122 Pulhin et al. (2007).
123 Forest Act 2002, Section 29.

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2.10 Support from external actors

Different actors can be involved in the design and implementation of community forestry models. Here, we consider how the legal framework can facilitate third parties' involvement, and in particular allow for support from the administration, NGOs, the private sector and international institutions.

Some countries have legislated on this issue. The Nepalese framework, for example, explicitly recognises the role of assistance from external actors to communities by providing that "the Department [of forests] and the Users' Group may receive necessary assistance from national and international governmental and non-governmental agencies."[124]

What is the role of the administration?

Communities need a certain amount of support from the administration to practise community forestry. For legal frameworks to support this, there are several elements to consider. Sufficient budgetary, human and technical resources should be allocated to the implementation of community forestry to ensure that the administration can carry out its supporting role. Moreover, the allocation of resources should be

sustainable, to ensure that the model of community forestry can develop over time. We have witnessed that this is often lacking in practice. In the Philippines, there is often inadequate financial and technical capacity in DENR to support CBFM (**Box 9**). In Tanzania, the absence of support from the Government has proved problematic. This is due to the lack of both funding and a clear mandate of the different administrations on community forestry.

Individual local government officials can have a positive or negative impact on community forestry depending on their will to support the community and their relationships with it. Some CBFM POs in the Philippines face certain political pressures and challenges, connected to local government unit (LGU) endorsement, a mandatory step in the CBFM allocation procedure. LGUs are required to act on the CBFM-agreement applications within 15 working days, failure of which automatically vests in DENR the authority to process the application. However, this provision is not always observed and in cases where an LGU might not be favourable to a community obtaining a CBFM agreement, this can result in serious deadlocks in the allocation process, effectively disabling access to CBFM.

Box 9 Lack of financial capacity to support community forestry in the Philippines

Executive Order 263 envisages the creation of a CBFM Special Account in order to provide the support for the establishment and implementation of CBFM projects and PO activities. According to DENR guidelines,[125] part of the Government share from the harvest and management of forest resources, as well as various donations and other revenues, was to be deposited in the special account.

However, this account could not be legally established as a special fund due to the State Auditing Code, which prohibits earmarking for specific fund objectives. Specific funds are allowed only if created by law passed by Congress. Therefore, the Government share from the harvest and management of forest resources has been accruing in the general fund of the Government, contrary to the intent of Executive Order 263.

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124 Forest Rules 1995, Section 38.
125 DENR AO998-44, Section 2.

What is the role of NGOs?

NGOs' participation in forest governance is increasingly recognised as promoting fairness and transparency in decision-making. In addition, the role of NGOs is particularly important for the success of community forestry. NGOs take part in awareness-raising and information-sharing on the rules around community forestry, as well as in supporting communities to apply for allocation of a community forest. This can involve help with drafting a management plan, and capacitybuilding for implementation of community forestry.

In all countries analysed, support from NGOs is a key factor behind the development of community forestry. In Tanzania, the success of community forestry relies heavily on associations' activities, in part funded by donor support that is greater than Government funding. This illustrates the importance of having an enabling legal framework for NGOs to operate within a country and support local communities and indigenous peoples. The legislation regulating NGOs is likely to detail how they are registered and organised, their rules of operation, the activities they can carry out and their funding base. This framework can help to ensure an enabling environment by allowing NGOs' self-governance.[126]

In addition, community forestry laws can explicitly make space for the role of NGOs. In the Philippines, NGO support in CBFM is envisaged by both policy and regulation.[127] Laws provide for example that the local forest administration "shall work with local governments, people's organisations (POs), non-government organisations (NGOs), religious groups, business and industry, and other concerned organisations to ensure that communities are empowered to initiate and achieve the objectives of this Order".[128] However, information from the ground suggests that the number of NGOs working on CBFM has declined in recent years, largely due to diminishing institutional and private funding.

In Tanzania, NGO support is not explicitly foreseen by the community forestry law. Nevertheless, NGOs play an important role in capacity-building, helping community organisations to become more resilient and more competitive. For example, Mpingo Conservation and Development Initiative (MCDI) has been supporting community forests to produce FSC-certified timber.[129] In addition to receiving NGO support, communities have organised themselves in a federation, Mtandao wa Jamii wa Usimamizi wa Misitu Tanzania (MJUMITA), providing knowledge and linking communities in order to improve capacities. This support complements administrative support.[130]

In Nepal, communities have benefited from active NGO support

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126 Hayman et al. (2014).
127 DENR AO2004-29.
128 Ibid., Section 6.
129 Massao (2015).
130 See https://bit.ly/2RUkJFN.

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What is the role of the private sector?

Wood transformation in a small sawmill in Nepal

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The notion of 'private sector' can cover a wide range of stakeholders, from multinational companies to different-sized local businesses, individual private investors or cooperative enterprises. Communities can also be part of the private sector themselves, if they choose to set up a community forest enterprise.

In the context of community forestry, and particularly in the three countries analysed, communities most often engage with local or national-level businesses. These businesses can play an important role supporting or even participating in community forestry. Their relationships with communities can be multiple, as described for example by Mayers' typology of community– company relationships.[131] Moreover, there is a wide range of arrangements under which communities and the private sector may engage.

Some of the interactions between the private sector and communities in the context of community forestry may include the private sector as:

- a business partner involved in the production or transformation of forest products, e.g. undertaking activities in or outside the forest, such as harvesting, transforming or transporting community-forest products

- a business partner commercialising community-forest-derived products, e.g. relying on out-grower schemes whereby communities provide certain products to support the company's own production

- a partner for the development or operation of community forest enterprises by helping to develop the technical know-how and skills of communities, e.g. providing capacity building on understanding contractual models, market niches, technology and innovation, marketing and cost management.

Legal frameworks can allow and facilitate communities to collaborate with the private sector, as well as providing safeguards to minimise potential power imbalances or capture of community forestry by private companies.

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131 Mayers (2000), as cited in Gilmour (2016).

What is the role of international institutions?

Some countries have received technical and financial support from international institutions, helping them to establish the basic elements for community forestry. In some cases, this support has been incremental to the creation of the model of community forestry or its durability.

However, when a model of community forestry is created or revised, it is important to consider sustainable funding and support options. If a model relies entirely on external donors, it may not survive the first decades of implementation. The experiences of Nepal, Tanzania and the Philippines have shown that, while funding (international, in particular) was widely available at the time of creation of the model, the implementation the model was affected by the lower amount of funding available in subsequent years.

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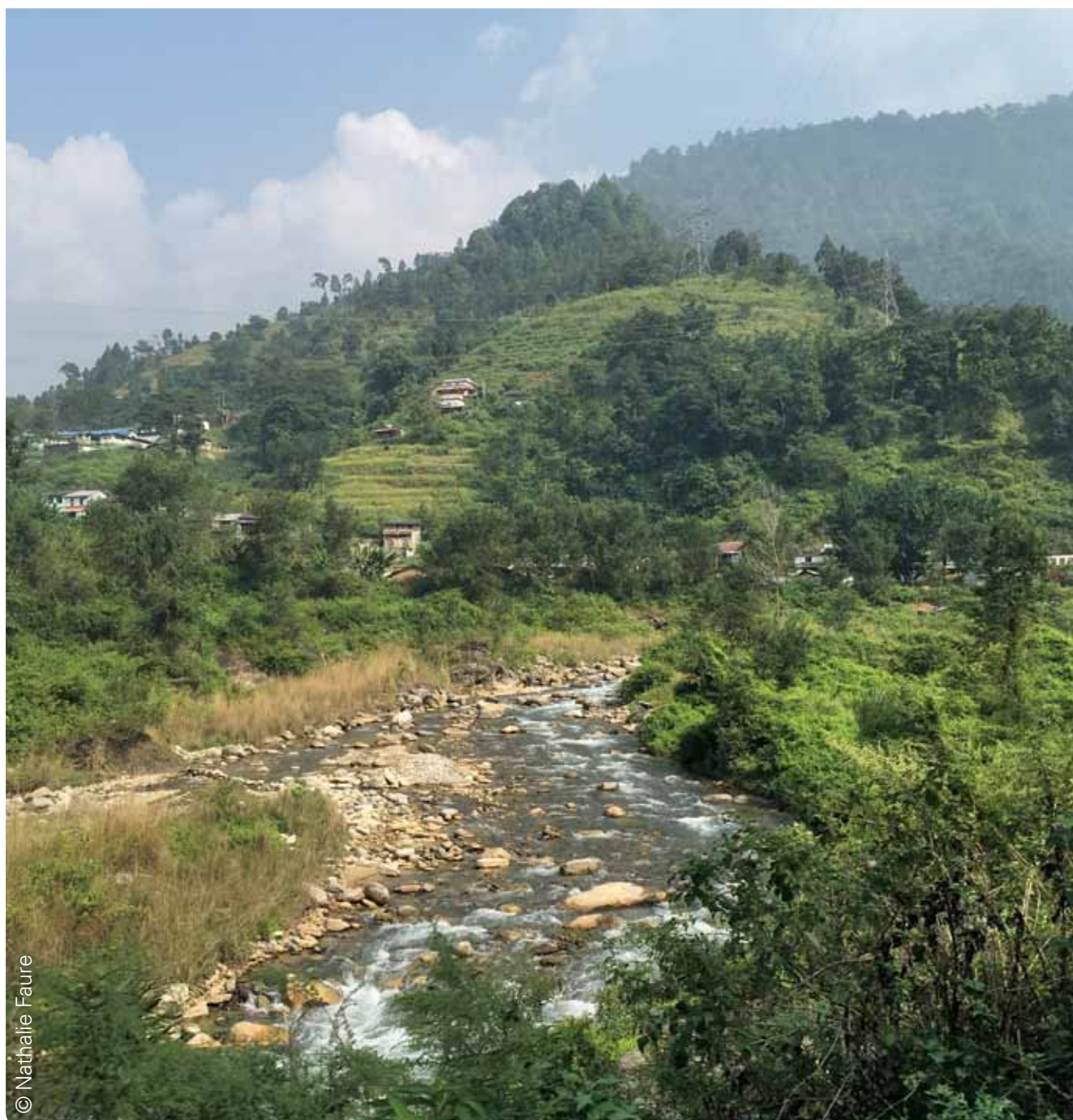
3. How to design an appropriate legal framework on community-forestry

The ten legal building blocks in **Section 2** inform us about what legal frameworks can consider to enable community forestry. In addition to those, it is important to consider how legal frameworks on community forestry are designed and implemented. In this section, we focus first on key principles for designing legislation on community forestry, and second on where to locate different legal provisions. Both aspects when considered together can help in establishing a clear, coherent and inclusive framework on community forestry.

3.1 Key principles for designing legislation on community forestry

The application of some key principles during law reform can contribute to the design of enabling legal frameworks on community forestry. Among these principles, it is important for law-makers to develop a clear vision of the objectives foreseen by the model of community forestry. Further, it is key that the law recognises community forest rights to provide legal security and a strong basis for community forestry led initiatives. It is also crucial that legal reforms are participatory, iterative and can adapt to context.

A clear vision for community forestry

It is important that community forestry models are developed according to a shared overarching vision with a clear objective. In other words, why has the model been developed and what it is trying to achieve? This should be clear from the start of the legal design or revision process, and helps to ensure that community forestry building blocks are developed systematically to pursue specific goals.

This rationale and vision for building a community forestry model is generally provided for in the law or in a sectoral or overarching policy by government. It should give the desired direction envisaged for community forestry. The overall objective of community -forestry in Nepal, for example, is the development, conservation and sustainable management of forest for meeting basic needs, social and economic development and community development for collective interest. The Philippines' framework provides that "community-based forest management shall be the national strategy to achieve sustainable forestry and social justice". In Tanzania, community forestry's objectives are not explicitly stated in a single document but their development is generally viewed as focusing on forest conservation.

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Clear recognition of community forestry and community rights in legislation

Community forestry should be recognised in its own right in the law. A clear recognition of community forestry helps to ensure the elaboration of clear and stable policies for its implementation. Legal recognition of community forestry is particularly important as the law, which is passed by a legislative body, is unlikely to be subject to frequent political changes and can therefore contribute to stability of community forestry. It can also ensure that community forestry is recognised in an instrument with stronger legal force than a governmental issuance or lower-level legal text.

Some countries have recognised the principle of forest management by local communities and indigenous peoples in primary legislation, for example in acts passed by the legislature, while others have established their model through various administrative issuances or by allowing community forestry to develop as one or multiple pilot projects. **Box 10** describes the situation in the Philippines.

Generally, providing communities with strong rights, such as use and access rights, will make it most likely for the community forestry model to be viable, as it will then benefit local communities and indigenous peoples as its primary users.[132] The duration of communities' management rights over the forest is particularly important, having the potential to incentivise communities to invest time and effort in sustainably managing the forest. Strong rights are those recognised in legal instruments that cannot be easily revoked, such as the Constitution or an act passed by Parliament.

Box 10 The importance of legislating on community forestry in the Philippines

CBFM in the Philippines emerged as a national strategy for the sustainable development of forestlands with the adoption of Executive Order 263 in 1995.[133] There have been many attempts to legislate on CBFM in updated and comprehensive forest legislation, as executive orders issued by the President and various administrative issuances do not carry the full force of the law and are susceptible to frequent changes.[134] However, these attempts have yet to succeed.

The 1975 Forestry Code remains the legislative basis for general forest management and utilisation, and Executive Order 263 remains the basis for recognition of CBFM. The difficulty in passing a revised forestry law has led to a large number of related policies and administrative orders promulgated by the Government to respond to current issues related to forest governance. CBFM is therefore regulated by a plethora of administrative issuances, from various implementing rules and regulations to circulars, memos and guidelines. The multiplicity of texts prone to frequent changes has led to a number of overlaps and operational issues. It also means that the legal framework around CBFM is unstable and vulnerable to political pressures, exacerbated by frequent changes in DENR leadership.[135]

Passing legislation is not only crucial to ensuring a clear and stable framework around CBFM but also allows the allocation of corresponding budgetary support.

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132 According to Gilmour (2016), "it is generally hypothesized that the stronger each rights in the 'bundle' [of rights], the more effective community-based forestry is likely to be in achieving its intended objectives".
133 Executive Orders derive from the rulemaking power of the President.
134 Pulhin (2002); see also Pulhin et al. (2007) and Carandang et al. (2010).
135 Pulhin (2007).

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Coherent and consistent legal framework

It is crucial to consider all laws relevant to community forestry to ensure coherence of the overall legal framework.[136] This includes coherence of provisions in forest legislation but also across relevant sectors affecting regulation of community forestry, such as through land laws and corporate laws. In Tanzania, Section 64 of the Environmental Management Act (2004) provides that forests are managed in accordance with the Forest Act, but that in case of concerning management, the Environmental Management Act over-rules the Forest Act. This means that, when community forestry is likely to affect water sources or causes pollution, provisions of the Environmental Management Act would apply.

It is particularly important to ensure that all sectoral laws are taken into account in the creation and revision of community forestry rules. This will ensure that no provisions contradict one another and that the rights, responsibilities and key features around community forestry are clear and applicable. This in turn will create a strong legal architecture for the model to rest on. Ensuring consistency is particularly challenging in the context of community forestry, which touches upon a wide range of sectors involving numerous different laws.

Developing a coherent legal framework also requires a preliminary review of existing legislation in order to determine what national laws need to be repealed or amended. This also encompasses a review of ratified international treaties to ensure compliance with existing international obligations.

Because forests are providing many important services, cross-sectoral coordination is crucial

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136 See http://www.fao.org/docrep/008/a0146e/A0146E08.htm.

Coordination across sectors

Cross-sector and internal institutional coordination is key when designing and implementing laws on community forestry. At the law-development stage, coordination can ensure that the inputs of various administrative bodies and departments relevant to community forestry are taken into account, such as those in forestry, agriculture, infrastructure, investment, etc. In turn, it should allow the new legal framework to reflect these institutions' experiences and duties. In the absence of government bodies' collaboration, sectoral laws can be inconsistent with the community forestry framework. This can affect the application of community forestry.

In addition to the coordination of government agencies in the drafting of a consistent community forestry framework, it is usually necessary for different administrations to collaborate in implementation of the law. Clarity of their roles and responsibilities, as well as functioning coordination mechanisms can ensure they work in synergy. In Tanzania, for example, forest administration is divided between the Forest and Beekeeping Division and the Tanzania Forest Services Agency, but the respective roles of each body are not clearly defined, which can lead to conflicts. The Forest and Beekeeping Division lacks human capacity to provide sufficient support to communities, while the Tanzania Forest Services Agency support to CBFM is weak.

The process: iterative, adaptive and participatory

Building a legal framework on community forestry is not a linear process. To ensure that the new or reformed legislation takes into account the practice of communities on forest management, the process needs to be iterative, allowing laws and regulations to be developed and revised over time. This will strengthen the community forestry model, as it will then be based on empirical learning and will allow the model to adapt to new situations or needs. Good practice could include a regular review of the main policies and laws, including through prior assessment of the effectiveness of the law, with feedback from users (**Box 11**).

Wide participation of stakeholders who are or will be engaged in community forestry is key to ensuring the commitment of those who will be applying the law in practice. It will also ensure that the law takes into account the realities on the ground and is therefore designed to be appropriate. Research confirms that "as a general rule, policies developed in a top-down and elitist manner are less effective than policies formulated with meaningful input from all interested and affected parties".[137]

For these reasons, although law-making remains a governmental prerogative, it should be designed in an inclusive way, by inviting local communities and indigenous peoples' representatives, NGOs, the private sector and other appropriate stakeholders to participate. The level of involvement of stakeholders can range from public reviews, consultations or hearings and requested inputs from stakeholders (e.g. in Bangladesh, Bhutan, Indonesia, the Philippines and Sri Lanka), to the facilitation of stakeholder discussions (as in India), or the establishment of taskforces composed of diverse stakeholders (as in Nepal).[138]

Community meeting in a village in the Congo basin

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137 Durst (2002) cited in FAO (undated).
138 FAO (undated).

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Box 11 Nepal demonstrates the value of action learning in reforming its legal framework

Nepal's community forestry owes some of its success to the action learning approach used to develop and reform its community forestry laws and policies. The first major enabling policy, the Forest Sector Master Plan in 1988, was based on a decade of project-supported field experience that identified the key technical and social requirements for community forestry. The resulting conceptualisation of community forestry that fitted the social and environmental conditions of the Middle Hills of the country led to the development of a set of implementation guidelines. These two instruments, the Forest Sector Master Plan and the implementation guidelines, informed the framing of the Forest Act in 1993. This cemented in place the final piece of the legal framework that legitimised community forestry.

This enabling framework was largely responsible for the rapid expansion of community forestry in the following two decades.

Action learning, with its emphasis on deliberative learning, flexibility and adaptability, has continued to play a pivotal role in subsequent policy reforms. Periodic reviews of the legal framework have been carried out since 1993, drawing on the experiences of local actors implementing community forestry, to fine-tune the law and subsidiary instruments. The community forestry programme in Nepal is regarded by many as a learning ground for governance reform in terms of: participatory decision-making; bottom-up planning processes; gender and equity sensitivity; partnership among government, non-government and private-sector agencies; and participatory monitoring and evaluation.[139]

3.2 Relevant 'rules' on community forestry

One of the fundamentals of establishing a clear and coherent framework on community forestry is to ensure that legal provisions around community forestry both exist and are accessible. To do this, it is necessary to identify which laws are relevant to community forestry.

Why is it important to ensure good access to the law?

Access to information is a prerequisite for good forest governance.[140] Proper development of community forestry also requires all involved parties, particularly local communities and indigenous peoples, to have access to and understand legislation in order to fully exercise their rights and duties.

It is particularly important for civil society and local communities and indigenous peoples to have an understanding of the relevant provisions on community forestry in order to identify their priorities and advocacy strategies. Moreover, a lack of legal knowledge often results in lesser use of the law. This can lead to reduced access to or compliance with community forestry rules by communities, as well as weaker law implementation and enforcement by the State.[141]

Outreach to local communities and indigenous peoples is therefore important in ensuring implementation of community forestry. Sufficient funding must be allocated to 'legal dissemination' for this to materialise.

We have observed frequent poor access to, and understanding of, legislation on community forestry by communities, sometimes linked to a lack of government personnel able to raise awareness on these provisions. In the Philippines, it appears that communities are often unaware of frequent policy changes, which results in misunderstandings around requirements for CBFM allocation procedures, permitting and approvals of management plans. CBFM coordinators in regional DENR field offices are responsible for explaining CBFM policies to communities but they often lack resources and capacity to do so. CBFM POs group themselves into national, regional and provincial federations, which serve as platforms for information exchange and public discussion around CBFM issues. Local-level PO federations may organise awareness and information-sharing sessions but they often lack resources to convene.

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139 Kanel and Kandel (2004).
140 Minang et al. (2017).
141 FAO/ITTO (2005).

Which laws should be considered to understand the community forestry framework?

Although community forestry is mostly established and regulated by forest laws and policies, it is equally important to consider other sectoral laws and regulations. Other essential legal provisions include recognition of the rights of communities and the empowerment of various governmental bodies, which are often found in the Constitution and non-forest sectoral laws, such as those on land tenure, the environment and decentralisation (**Box 12**).

Legal knowledge of community forestry laws and provisions can improve the use and application of the law. It will also empower stakeholders in participating in legal reform processes.

Box 12 Which laws are relevant to community forestry?

Depending on the country's legal framework, a wide range of legislation[142] can offer provisions relevant to community forestry, including:

- **The Constitution**. For example, the Constitution in Nepal has general provisions, some of which are relevant to community forestry:

  – the development of national policies pertaining to the use of natural resources, including a preferential benefit sharing right to local communities and indigenous peoples[143]

  – the development of national policies on social justice and inclusion, including by creating special provisions for the participation of indigenous people in decision making, in a way that recognises their identify and promotes their traditional knowledge and culture[144]

  – the fundamental rights to a clean and healthy environment, to food and housing, of women and of Dalits[145]

  – the distribution of power and the identification of specific institutions in charge of implementing the model of community forestry (e.g. the list of state, federation and local-level powers in Nepal).[146]

- **Forest laws:** forest codes/acts and their implementing legislation (rules, decrees, etc.) provide the core rules and procedures dealing with the access, use and management of community forestry.

- **Environmental laws:** many of these contain relevant provisions for community forestry, especially laws relating to protection of the environment, wildlife conservation, national parks and reserves. These laws generally provide for certain restrictions on the rights of local communities and indigenous peoples in protected areas (e.g. on the use of forest products), as well as mechanisms to ensure environmental protection, which will be relevant for community forestry (e.g. the use of environmental impact assessments).

- **Land laws:** laws pertaining to access and use of land are particularly relevant for community forestry, as the allocation and use of the forest area can depend on the tenurial arrangements of community forestry models.

- **Legislation on indigenous people:** certain countries, such as the Philippines, have enacted specific laws to protect and promote indigenous peoples' rights. Provisions on access to land, the use of natural resources, rights to public participation and consultation and non-discrimination are particularly relevant to community forestry. In the case of the Philippines, the legal recognition of indigenous peoples' right to FPIC is directly relevant to the allocation of a community forestry area.

- **Gender-related laws**: specific provisions on gender inclusion can be found in sectoral laws, but also in gender-specific laws. The Philippines has enacted the 'Magna Carta for Women', a women's human rights law that seeks to eliminate discrimination through the recognition, protection, fulfilment and promotion of the rights of women, including to representation and participation.[147]

Box 12 continues on next page

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142 Only legal instruments are covered here, with a recognition that sectoral policies giving overall guidance to the drafting of legal texts should also be coherent across the board.

143 Article 51(g)(1) of the Nepalese Constitution recognises the need to develop policies "to protect, promote, and make environmental friendly and sustainable use of, natural resources available in the country, in consonance with national interest and adopting the concept of inter-generational equity, and make equitable distribution of fruits, according priority and preferential right to the local communities". Articles 59(4) and (5) additionally state that "(4) The Federation, State and Local level shall provide for the equitable distribution of benefits derived from the use of natural resources or development. Certain portions of such benefits shall be distributed, pursuant to law, in forms of royalty, services or goods to the project affected regions and local communities; and (5) if, in utilising natural resources, the local community desires to make investment therein, the Federation, State and Local level shall accord priority to such investment in such portion as provided by law on the basis of the nature and size of such investment."

144 Art. 51(j)(8) of the Nepalese Constitution provides for national policies on social justice and inclusion "to make the indigenous nationalities participate in decisions concerning that community by making special provisions for opportunities and benefits in order to ensure the right of these nationalities to live with dignity, along with their identity, and protect and promote traditional knowledge, skill, culture, social tradition and experience of the indigenous nationalities and local communities".

145 Arts 30, 36, 37, 38 and 40.

146 Art. 57 and Schedules 6–9.

147 Act providing for the Magna Carta of Women, 2009.

Box 12 continued

- **Corporate and/or associations laws**: the legislation relating to the establishment of corporations, associations, cooperatives or other types of legal entities is relevant to community forestry models if it requires communities to register formally as one of these bodies. This may be necessary for a community-forestry organisation to have legal personality and the ability to access CBFM, enter into contractual agreements and commercialise products from the forest.

- **Tax laws:** fiscal laws provide rules around taxes on the sale of timber and NTFPs.

- **Governance-related laws**. Two types of laws can be relevant to the overall framework in which community forestry operates:

    – laws related to the organisational structure of the state (e.g. the 1982 Local Government Act in Tanzania, which regulates for example the mandate and functioning of village bodies in charge of implementing community forestry)

    – laws relating to overall good governance (e.g. the 2002 Prevention of Corruption Act in Nepal).

This list is not exhaustive and there may be other legislation relevant to community forestry in a particular country, depending on its legal framework. This includes, for example, laws or provisions in a specific sector regulating activities carried out in the forest area, such as ecotourism or agriculture.

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In which legal instrument should these rules be found?

To keep the legal framework comprehensive and consistent, it is important to ensure that it is not scattered.[148] It is also important to ensure the right balance between provisions in legislative instruments and those resulting from regulatory ones.[149]

Questions are often raised about what falls within the legislative remit and what can be left to be developed in implementing legislation. **Box 13** attempts to clarify this.

Box 13 What should be in the law v. secondary legislation?

Legal frameworks generally consist of a law, which sets the broad outlines and principles, and several complementary instruments called implementing or secondary legislation (such as decrees, orders or rules). Depending on the legal system of a specific country (civil or common law), different legislative or governmental institutions design these texts. The level of detail of various legal texts can vary between countries.

Taking these elements into account, in the context of community forestry, **the law or primary legislation can integrate**:[150]

- a clear and culturally sensitive definition of community forestry, including its purpose

- rights for communities to access and manage forest areas, taking into account vulnerable groups and minorities

- recognition of traditional forest uses and rights

- identification of mechanisms and rights by which forests will be allocated, providing clarity over the forest areas that can be handed over

- provision on the size and time allocation of the forest, whether there are limits or not

- provision identifying the tool or document specifying which activities will be carried out (e.g. a management plan), without specifying detailed content

- the principle of a fair and equitable mechanism for sharing benefits among community members, to be designed at community level

- the principle of a dispute-resolution mechanism, either already specifically identified in legislation or to be developed by local stakeholders (e.g. community-based mechanisms, if appropriate)

- sanctions or penalties for violations of the provisions on community forestry

- provision allowing for income-generating activities in the community forest, including sale of timber and non-timber resources where appropriate

- identification of institutional bodies in charge of implementing the model of community forestry and of accountability mechanisms – clarity around the role and mandate of various administrations who can intervene in community forestry is crucial to avoid overlaps or conflicts between these bodies

- identification of other actors who can be involved in supporting implementation of the community forestry model (e.g. civil society, the private sector).

Secondary or implementing legislation can provide for:

- specific rights of institutions, groups and individuals involved in community forestry

- specific responsibilities of institutions, groups and individuals involved in community forestry

- procedure for the allocation of community forestry management areas

- procedure for the development and validation of community-forestry management plans, including the criteria for allocation (and possibly also containing an annexe offering a management-plan template)

- any specific decision-making mechanisms needed to balance the interests of government and the needs of communities.

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148 Pulhin (2002).
149 Gilmour (2007) lists elements that should respectively be governed by law and by subordinate legal instruments.
150 Adapted from Gilmour (2007).

Box 13 continued

Further to secondary legislation, **non-binding guidance documents** can help provide support to communities on how to interpret legal rules or by providing practical tools. These documents can be enabling when they provide the following.

- Guidelines to assist government staff and NGOs in the process of working with communities to re-establish or strengthen traditional institutional arrangements for managing community forests.

- Guidelines to support communities in preparing community forest management plans – these should offer a simple and clear guide to the elaboration of these plans, including by outlining the various steps and order in which they can be developed, as well as the type of information to collect.

- Any additional requirements, such as registering village or community forest user groups as legal entities so that they can operate bank accounts.

The use of guidelines on community forestry has been one way to ensure good access and understanding of the law and how it can be applied in practice. The Tanzanian Guidelines for CBFM, for example, give clear definitions of the key terms used in CBFM. It is important to ensure that guidelines are consistent with the legal instruments they refer to, and do not cause legal uncertainty.

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Conclusion

There is growing evidence that community forestry can help to secure community livelihoods, improve ecological conditions and support revenue generation, particularly if enabled by a facilitative legal framework.

Given their importance, our analysis has explored what such frameworks could look like. There is no one-size-fits-all approach to community forestry – and therefore to how it is regulated – but our research on the legal frameworks in Nepal, the Philippines and Tanzania offers learning opportunities based on their common features, as well as particularities.

Our analysis identified ten key building blocks that can support the development of enabling laws on community forestry. First, we suggest the inclusion of strong communities' forest and land tenure rights in legislation, which will lay a robust foundation for community forestry. We moreover recommend that the law foresees clear rules and easy-to-follow procedures at the different life stages of community forestry, including for the allocation of community forests and their management. Legal provisions can further enable communities to access markets and generate revenue by providing tax breaks and other supportive measures. We moreover suggest establishing broad principles in law in relation to community internal governance, community participation, benefit sharing and conflict resolution, and then allowing space for communities to design more detailed mechanisms for implementing the law in different local contexts and according to their practices. This can ensure communities' ownership of community forestry and the design of appropriate tools. Finally, we advise that the law provides for two other supportive elements: clear enforcement rules, including defined mandates for communities and the administration, accompanied by the necessary financial and material resources, and the possibility for communities to receive support from external actors, a factor that can greatly helped the implementation of community forestry models.

Laws on community forestry work best when they are unambiguous and easy to understand for the people they most affect – those practising community forestry. For community members to understand the relevant laws, they need sufficient technical support to understand the rights and obligations stemming from these laws. Enabling legal frameworks should also be coherent across the range of laws relevant to community forestry – on environment, agriculture, gender and financial regulation for example, as well as with forest laws.

Legal frameworks on community forestry are most enabling when they are built in a transparent, participatory and coherent manner, starting with a clear vision of what community forestry should look like. It is important to allow the legal framework to be responsive and adaptable, and to be developed by all stakeholders, especially local communities and indigenous people. Conducting an iterative and bottom-up legal reform process in particular, allowing periodic reviews of the laws to ensure they reflect local needs, can be one basis of success of a community forestry model.

Further research is needed to add to this body of evidence. In particular, additional country case studies and examples of legal frameworks on community forestry would provide other opportunities for learning, and contribute to identifying and sharing what constitute enabling norms and best practices on what works. In turn, these international norms, together with the detailed national case study analyses, can inform the development and application of legal frameworks on community forestry in specific countries, making the law work for both communities and forests.

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Annexe 1: Overview of the global extent of community forestry

Community forestry has developed in diverse contexts across the world and as a response to different objectives, ranging from the protection of forests to meeting subsistence needs, to the enhancement of communities' livelihoods through, for example, the commercialisation of forest products and services. Often, community forestry programmes seek to achieve a combination of these objectives. Community forestry models range from those featuring strong devolution of rights to communities to manage forests independently, through joint management with the State or other stakeholders, to approaches of passive participation of communities.[151]

Community forestry schemes have spread globally over the last few decades. Although their implementation has been gradual, they continue to grow. There is currently a wide variety of models across the world, including in industrial countries.

In Asia and the Pacific, community forestry first emerged in the 1970s as an attempt to address alarming rates of deforestation and environmental degradation, recognising that direct participation of local communities and indigenous peoples in forest governance could restore forests. It later evolved to enable socio-economic development of the rural poor as well. Community forestry was further promoted to address fuelwood shortages, and in response to the perceived failure of the industrial-exploitation model to improve socio-economic conditions, plus growing recognition of the existing role of local communities and indigenous peoples in managing rural land and resources. The size and stages of development of community forestry models differ widely in the region but, overall, it is estimated that communities manage 34% of Asian forestlands.[152]

Community forestry is also widespread **in Latin America**, where it takes place in about a third of forestlands, but with significant disparities across the region.[153] Its development from the 1980s was originally closely linked to rural social struggles and the recognition of communities' rights over lands and forests. Consequently, community forestry is based on strong tenure rights in most Latin American countries.[154] Diverse models coexist in the region, some being oriented towards livelihoods, mostly in South America and in the Amazon, while others, primarily in Central America, have a business-oriented approach.

In Africa, community forestry areas cover only about 1% of forested lands, as most States own and administer the land and natural resources.[155] Community forestry first appeared in the 1990s in francophone West African countries.[156] It developed for different reasons, including: attempts to manage timber and firewood production in West Africa; forest conservation in East Africa; and community-based wildlife management in Southern Africa.[157] In Central Africa, community forestry is still nascent. African models of community forestry remain largely geared towards providing subsistence for communities, with fewer models allowing for market-based activities.

151 Sikor et al. (2013), Chapter 3.
152 Sikor et al. (2013) as cited in Gilmour (2016), p26: this figure includes smallholder forestry .
153 The extent in the region ranges from less than 10% in French Guiana to over 60% in Venezuela and Ecuador (Pacheco et al., 2011, cited in Gilmour (2016), p29.
     This figure corresponds to areas of "community-based forest management" as defined in Gilmour (2016).
154 Alcorn (2014).
155 FAO (2010), cited in Gilmour (2016), p22. This figure corresponds to areas of "community-based forest management" as defined in Gilmour (2016).
156 Hagen (2014).
157 Blomley (2013), p19.

Annexe 2: Research methodology

This publication is the result of a combination of desk-based legal analysis, literature review and visits and interviews on community forestry in Nepal, the Philippines and Tanzania. ClientEarth designed its methodology with the primary aim of providing guidance to Congo-basin countries developing or revising their legislation on community forestry. A comparative table of legal frameworks in the Congo basin allowed us to review key issues around community forestry, including the weaknesses of each legal framework.[158] This work completed diagnostic studies carried out by ClientEarth and its CoNGOs partners. It was furthered by more detailed analyses of community forestry frameworks in Gabon and the Republic of Congo.[159]

Based on the above, we followed a two-stage process to select three countries to study that could provide the most relevant learning for the Congo basin. First, a broad literature review of a large number of African, Latin American and Asia-Pacific community-forestry models helped us to identify a shortlist of countries that have both community forestry experience and a comprehensive legal framework potentially relevant to the Congo basin. Second, we compared elements of the models' designs and outcomes including, among other criteria, the length of experience of community forestry, the perceived success of the model and the availability of legislation. This comparative review, complemented by consultations with international experts on community forestry, led to the selection of Nepal, the Philippines and Tanzania for comprehensive legal analyses.

We critically analysed the national legal frameworks of each country, with the support of national legal advisers, in order to identify legal and institutional mechanisms and requirements that either enable or disable community forestry. For this research, we selected one model of community forestry in each country presenting devolution of control and management rights to communities that could best inform the Congo basin. We analysed available documentation in English, which excluded certain relevant publications or laws. However, secondary sources of information helped complement our research.

We complemented the desk-based research with site visits to all three countries, both at government level and in selected community forests, in order to understand how laws were applied in practice and the particular challenges to their implementation.

In Nepal, we met: central and district-level officers of the Ministry of Soil and Forest Conservation (MSFC), the FECOFUN and NGOs (Forest Action and RECOFTC). We visited six CFUGs in the districts of Makwanpur and Chitwan in the south, and Kavre in the middle hills:

- Churekali Lekh Community Forest (Makwanpur)
- Bagmara Buffer zone Community Forest (Chitwan National Park buffer zone)
- Gyanesswor Community Forest (Chitwan)
- Kaliban Community Forest (women-led) (Makwanpur)
- Chaubas Community Forest (timber sawmill) (Kavre)
- Dhaneshwor Baikiwa Community Forest (NTFPs) (Kavre).

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158 Venisnik et al. (2017). This analysis focuses on Cameroon, the Republic of Congo, the Democratic Republic of Congo, Gabon and the Central African Republic. See also Eisen (2014).
159 Djinang, Ichou and Faure (2018); Venisnik and Faure (2018).

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In the Philippines, we met: central and provincial level officers of the DENR, local government units' authorities and NGOs (Non-Timber Forest Product Exchange Program Philippines and the Forest Foundation).

We visited seven CBFM POs across the three provinces of Palawan, Leyte and Biliran:

• Bacungan Mangrove Eco-Tourism Service Cooperative, Puerto Princesa, Bacungan (Palawan)

• Macatumbalen Community Based Forest and Coastal Management, San Vicente (Palawan)

• Isogud Multi-Purpose Cooperative (IMPC), Isogud (Palawan)

• Young Innovators for Social and Environmental Development Association Inc. (YISEDA), Maasin City, Lunas (Leyte)

• UMACAP Foundation Inc., Capoocan (Leyte)

• Villaconsuelo Tree Planters Association (VTPA), Villa Consuelo, Naval (Biliran)

• Kawayan CBFM Producers Association, Kawayan (Biliran).

In Tanzania, we met: the Tanzania Forest Services Agency, District Officers and NGOs (Tanzania Forest Conservation Group, MCDI and MJUMITA). We visited four villages in three districts across Tanzania Eastern Arc Mountains and Coastal Forests:

• Nanjirinji A (Kilwa District, Lindi Region)

• Kitunduwete (Kilosa District, Morogoro Region)

• Ulaya Mbuyuni (Kilosa District, Morogoro Region)

• Kipangege (Kibaha district, Pwani Region).

To ensure consistent and comparable data, we used a common framework of analysis, including standard questionnaires. In addition, where possible, the community consultations included consideration of the circumstances of vulnerable groups through focus groups and/or one-onone meetings with indigenous people and women.

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ClientEarth is a non-profit environmental law organisation.

We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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