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Forest commons vs the state?

Thomas Sikor and Tran Ngoc Thanh

Research has long portrayed the modern state as an adversary to forest commons around the world. But is this really the case?

The common management of forests has seemed on the verge of extinction for some time. In 18th century Europe, state enclosures excluded local communities from agricultural fields, pastures and forests while colonial governments in Asia claimed forests as public domains, thereby limiting community access. The development of forestry in Europe and Asia was not only similar but also closely linked, as colonial governments appointed European foresters to leading positions and sent their staff to be trained abroad. Later, the Food and Agriculture Organisation of the United Nations, among others, disseminated European ideas and practices all over Asia. Both European and Asian states established bureaucracies to manage forests according to the principles of 'scientific forestry', leaving little space for community management.

The role of the state

The literature often describes the state as the key actor behind the disappearance of forest commons, and local communities as preferring to keep the state at arms-length. In Thailand, for example, local communities were excluded from forests over the last century as the state sought to strengthen its control over national territory. Communities contested the exclusion, building nation-wide alliances among themselves and with other civil society actors, which culminated in a Community Forestry Bill proposal in the 1990s. But as the state was unwilling to cede control over forests, community efforts failed.

Yet forest commons and states may not be as incompatible as the literature suggests. A closer look at forestry in Asia and Europe reveals the continued existence of forest commons, even in countries with well-developed state forest administrations. In Austria and Sweden, forests have been owned and managed in common next to privately and state-owned forests and have shown remarkable resilience in the face of political, economic and social upheavals over the past two centuries. In Romania, only mid-20th century communism wrested control of forests from local communities, and in China a significant portion of forests has been collectively owned since the collectivisation drive of the 1950s. Clearly community ownership and state authority are not mutually exclusive.

Community forest management has at times been supported by states, with both Asian and European governments recognising forest commons and developing systems of governance that support community management. China's constitution acknowledges collective ownership of land (*jiti suoyou*) as equal in legal status to state ownership. Sweden supported the creation and formalisation of forest commons (*Skogsallmänningar*) in the late 19th century, while Austria granted forest commons the status of corporations under public law (*Agrargemeinschaften*) in 1950 and placed them under the supervision of a specialised agency.

Decentralisation

The need to look afresh at relations between states and local communities becomes apparent when we consider the changes in forest policy currently taking place across much of Asia and Eastern Europe. Governments are in the process of decentralising power and responsibilities to local authorities; many are also devolving ownership and quasi-ownership rights over forests to local public authorities, communities and other local actors. As a result of this world-wide trend, communities today manage 11% of the world's forests and 22% of the forests in developing countries.

As part of this decentralisation, many countries in Asia and Eastern Europe are introducing reforms that favour forest commons. In Eastern Europe, the Romanian government is returning forest commons to the original owners and their heirs, including groups of households and communal authorities, while the Albanian government is transferring forest ownership rights to local authorities who in turn can grant local communities administrative rights. In Southeast Asia, the Philippine government enacted the Indigenous Peoples Rights Act in 1997, creating the legal foundation for indigenous peoples to secure common titles over land. In Indone-

sia, decentralisation has strengthened the influence of district governments over forests previously under the exclusive control of the central forest department.

Indigenous groups are taking advantage of these reforms to grant small-scale concessions for logging, thereby creating new sources of income. In Vietnam, a recent revision of the Land Law allows allocation of forests to communities – not just to individual households, enterprises and state organisations as in the past. Local communities in these countries have welcomed the new opportunities, registering their property claims with the state and requesting technical and financial support from the state for forest commons.

Reality on the ground varies, in the rights demanded by and granted to local communities. In many places, governments limit community management to forest protection, withholding from local people the rights of management and use. The recent logging ban instituted by the Chinese government severely constrains local people's use of forests, even though they legally own them. In some countries such as Vietnam, common management is closely tied to joint ownership. In others, such as Sweden, forest commons are owned by individual shareholders but managed in common. Different kinds of 'communities' also manage forest commons. Philippine legislation recognises the rights of 'indigenous peoples' while in China collective ownership is generally assumed to be the purview of the administrative village. There are differences within countries as well: in Romania, both local authorities and groups of villagers may own forest commons.

Codification, governance and tenure claims

At the workshop, Asian and European scholars – together with government officials and NGO activists from Indonesia and Vietnam – pinpointed three issues for further research: legal codification, governance, and property claims.

Legal codification of commons remains a vexing problem. While codification is necessary to recognise forest commons in statutory law, the very process of codification tends to change the customary regulations it intends to preserve. In 19th century Sweden, for example, one form of locally practiced commons was favoured over others, thus significantly altering common practice. Similarly, the Indigenous Peoples Rights Act in the Philippines is informed by notions of communal tenure unable to accommodate the diversity of local practices. Analysing past attempts by Asian and European states to codify forest commons in national legislation will aid the development of new approaches to codification that preserve common practice.

A challenge for governance remains analysing the distribution of powers and responsibilities between local communities and state actors under different systems, and to fine-tune new modes of deliberative and discursive governance. Property claims on forest commons come in various forms and from different actors, and in turn are variously recognised by different forms of authority informed by patronage, the market, and custom. The question is how common control relates to individual property claims in different types of forest commons, and how forest commons can mediate competing claims in an equitable and fair manner.

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