OVERVIEW OF MEXICO'S FOREST TENURE REFORM

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In the wake of the Mexican Revolution in the early 20th century, the Mexican state initiated a process, based on Article 27 of the 1917 Constitution, to grant land tenure to *campesinos* (peasants) and Indigenous communities. The intention was to ensure that the neediest rural populations would have access to land for farming and housing, while at the same time destroying the concept of *haciendas* (large estates) as economic organizations.

Article 27 of the Constitution legally created two types of socially owned property: *ejidos* and *communidades*.¹ The agrarian policy that arose from this lasted more than 60 years, during which time almost 100 million hectares (51.2 percent of the national territory²) were distributed to 28,662 *ejidos* and 2,393 *communidades*.³ This allocation included farmland, pastures, and forest lands.

Ejidos

The Constitution created *ejidos* as rural communities with land held as collective property and self-governance based on Indigenous and rural traditions. The post-Revolution state maintained "direct control" (ownership) of the land, granting "civil ownership" to the *ejidos*. This meant that *ejido* occupants could not sell, rent, or mortgage the land, or offer it as collateral for credit.

These legal restrictions were established based on the rationale that, given their economic and political vulnerability, *campesinos* would lose their lands if granted full ownership, leading to the resumption of the pre-Revolution *latifundismo* (large landownership). Therefore, it was the state's mission to be a champion for *campesinos* and their lands, even against their will.⁴

Communidades

Ccommunidades were recognized under a system similar to the *ejido* system. Both were created through the recognition by the Mexican Constitution of traditional Indigenous territories.

The new agricultural regime recognized the rights of *communidades* in a partial manner, replicating the self-governance models used for the *ejidos*. However, most Indigenous communities have always strongly considered land to be community property (belonging to all those born in the village or town), and an inalienable right that cannot be transferred to someone from outside the community. Despite the state's attempt to assimilate them all into the *ejido* model, to this day many *communidades* maintain unique types of self-government over their lands in line with cultural and sustainability-oriented criteria.⁵

The Mexican collective property experience in forest regions before 1992

The establishment of these systems within the legal regime created incentives for *ejidos* and *communidades* to pursue a range of territorial and forest management initiatives. They have done so, however, in the face of often ambiguous and changing forest policies. These have included

centralized intervention by the federal government.

Article 27 in the 1917 Constitution granted *full ownership* of land and water to the "nation"; inspired by North American conservationist policies, it gave *ejidos* and *communidades* control of the land but the state the authority to regain such control if required for the public good. Thus, centralized government control was maintained over forests between 1917 and 1940.

In 1940, stemming from the emergence of an import substitution economic policy, and to guarantee raw material supplies for national industry, changes were made to the Mexican law which gave the federal government the ability to grant concessions to private enterprises for the exploitation of forest resources and also strengthened the role of forestry industry in national development policy. Concessions for periods of 25–60 years were granted in a centralized manner, with no consultation with affected *ejidos* or *communidades*, primarily in the states of Chihuahua, Durango, Oaxaca, Chiapas, and Quintana Roo. Affected *ejidos* and *communidades* were to receive payments for these rights through a fund controlled by the *Dirección Agraria* within the federal government, although some did not know this right existed and did not receive such payments.

The private enterprises that were granted these concessions often imposed tight restrictions on communal access to the forest resources. Consequently, the communities lost, *de facto*, the legal rights to access, and to exploit, their forest resources. Moreover, the poor forest extraction methods employed by concession-holders degraded the forest and caused a loss of ecosystem services, to the extent that many logged forests remain degraded today.

In response to this forest depredation process, the deforestation caused by tropical rainforest colonization policies, and the influence of conservationist groups, restrictions on forest use were introduced in the middle of the 20th century, affecting 58 percent of the forest estate by 1958. Once again, *ejidos* and *communidades* were left out of the decision-making process, to their disadvantage.⁹

By the end of the 1970s the national forest sector was in crisis. Illegal logging was widespread, driven by restrictions on legal forest use, corruption, a decrease in forest production, and the emergence of semi-public concession enterprises in Durango, Guerrero, Chihuahua, Nayarit, Jalisco, Quintana Roo, Chiapas, and Oaxaca. Increasing discontent in *ejidos* and *communidades* led to their mobilization against the negative impacts of forest concessions.¹⁰

The government's first response to this mobilization was to promote, through the Agrarian Reform Secretariat (*Secretaría de la Reforma Agraria*), a parallel forest-use policy in regions where there were no concessions or restrictions, in which *ejidos* and *communidades* were to participate. The initiative was unsuccessful, however, and ended after the bankruptcy and closing of many community enterprises. ¹¹ Nevertheless, the government's drive to create community forest enterprises (*empresas forestales comunitarias*—EFCs) continued through the Directorate General for Forestry Development (*Dirección General de Desarrollo Forestal*—DGDF), which was founded in 1976.

A later response to the social mobilization came in 1986, with the enactment of a new forest law that abolished forest concessions and recognized community rights. The DGDF supported the

creation of hundreds of EFCs; by 1992, EFCs were providing 40 percent of the national production of forest raw materials and 15 percent of the nation's output of sawn timber. ¹²

Land tenure changes and community access to resources, starting in 1992

The Mexican economic crisis of the 1980s brought on a rural structural adjustment and accelerated a push towards free trade. This led to the gradual abandonment of the countryside and the decline in the forest sector, which was perceived as economically inefficient; meanwhile, deforestation continued.

With the rise of an urban environmental agenda, the Mexican government, environmental entrepreneurs, and scholars mistakenly blamed socially owned property for deforestation, arguing that this tenure structure created an "open access" effect. Their argument ignored other factors, however, such as the pivotal roles played by forest concessions, the growth of illegal logging, restrictions on legal use, and agricultural expansion. The federal government moved to increase its control over the lands of *ejidos* and *communidades* through changes to Article 27 of the Constitution (see below) and the creation of new government institutions aimed at conserving biodiversity through the regulation of natural resource use.

Despite this, federal programs to develop the community forest sector prior to 1992 made important progress that has served to counterbalance efforts to diminish rights, enabling *campesinos* in the country's forest regions to retain a large part of their rights.

1992 constitutional reforms and agricultural legislation

As part of structural adjustment, changes were made to Article 27 of the Constitution and a new agrarian law was enacted. One of the aims was to create a land market that would encourage agro-industrial investment which, in turn, would boost the productivity of the rural sector. ¹³

While these changes did not produce a significant land market, ¹⁴ they nevertheless constituted a radical change in the socially owned property regime, including by promoting the legal fragmentation of territories into small properties. Over time, this has led to widespread forest degradation and deforestation in regions where there are urban, tourist, and agro-industrial expansion pressures.

New environmental institutions emerging from the 1992 Earth Summit

As a result of the non-binding, but assumed, commitments made by the Mexican government at the 1992 United Nations Conference of Environment and Development (the "1992 Earth Summit"), two federal institutions were created in June 1992: the Federal Attorney for Environmental Protection (*Procuraduría Federal de Protección al Ambiente*) to regulate at-risk industrial activities, soil and air contamination, and natural resources; and the National Institute of Ecology (*Instituto Nacional de Ecología*), to generate knowledge and scientific information to support the development and implementation of environmental policies and sustainable development.

In 1994, the Ministry of Environment, Natural Resources and Fisheries (*Secretaría de Medio Ambiente, Recursos Naturales y Pesca*—SEMARNAP)¹⁵ was created to promote national

environmental protection. Eventually, and as a result of the strengthening of the environmental agenda, two other institutions were created under the SEMARNAP umbrella: the National Commission for Protected Natural Areas (*Comisión Nacional de Áreas Naturales Protegidas*—CONANP), in 2000, with responsibility for creating and negotiating protected natural areas; and the National Forestry Commission (*Comisión Nacional Forestal*—CONAFOR), in 2001, with the aim of promoting forest production, restoration, and conservation, and developing and applying sustainable forest development policies.

Although Mexican environmental policy started formally in 1982 with the creation of the Ministry of Urban and Ecological Development (*Secretaría de Desarrollo Urbano y Ecología*), it was not until after 1992 (with the creation of the new federal environmental institutions) that it was able to significantly influence strategies for sustainable national development. It was during this period that the Ministry expanded its capacity for restricting the access of *ejidos* and *ocommunidades* to forest resources.

Expansion of protected natural areas

With the emergence of SEMARNAP and the new global agenda to conserve biodiversity, there was an inflow to the country of financial resources from international and conservationist non-governmental organizations for biodiversity conservation. An example of this was the Protected Natural Areas Fund (*Fondo para Áreas Naturales Protegidas*), financed by the Global Environment Facility through a public–private investment program, which created and strengthened the National Network of Protected Natural Areas (*Sistema Nacional de Áreas Naturales Protegidas*—SINAP). ¹⁶

The drive towards biodiversity conservation resulted in a tripling of totally protected natural areas between 1998 and 2010—from 7.75 million to 25.93 million hectares. In many forest areas, however, this had the effect of eliminating the incentive for natural area conservation through sustainable management among *ejidos* and *communidades* by removing their rights to resource access and use.

According to Leticia Merino of the National Autonomous University of Mexico (*Universidad Nacional Autónoma de México*), biosphere reserves were promoted in the period after the 1992 Earth Summit to overcome the limitations of previous conservationist models, such as national parks, which had been based on land expropriation. In biosphere reserves, communities formally maintain tenure rights, although use rights for lands in core areas are expropriated, and land control is transferred to the environmental bureaucracy. The establishment of biosphere reserves tends to create ambiguity in tenure conditions, and communities often see this as an undercover expropriation. This emphasis is paradoxical given a history in which forest restrictions have tended to stimulate deforestation and illegal forest activities. "The weight given to this policy contrasts with the weak capacity of environmental institutions within protected areas in such fundamental aspects as supervision, regulation, and the promotion of sustainable resource use," says Merino. "Until 2000, the incorporation of new areas to SINAP was regarded as an indicator of the advance of conservation policy and it was assumed that the creation decrees were equivalent to conservation processes".¹⁷

The case of the Monarch Butterfly Biosphere Reserve illustrates the negative impacts that can result from a biodiversity conservation policy based on the establishment of protected areas without the prior consent of *ejidos* or *communidades*.

In 1980, the State of Michoacan decreed the wintering grounds of the monarch butterfly to be a nature reserve and wildlife refuge, a result of pressure from Canadian and Mexican biologists and ecologists. This was done without a process of consultation with affected *ejidos* and *communidades*. In 1986, the federal government expanded the area of the Monarch Butterfly Biosphere Reserve to 16,110 hectares, and there was another expansion in November 2000. The total area now encompassed by the reserve is 56,258 hectares, comprising 13,551 hectares in the core area and 42,707 hectares in the buffer zone, straddling Michoacan.¹⁸

The last expansion of the protected area happened as a response of a campaign by the World Wildlife Fund (WWF) and other conservation organizations, both foreign and Mexican. These organizations argued that deforestation and forest degradation in the region would be stopped by increasing the area encompassed by the reserve and by the total prohibition of forest use in the core areas and restrictions within the buffer zone.

According to research by Jürgen Hoth, however, a prohibition on use, and restrictions on use in the buffer zone, was not necessarily the best conservation option for the monarch butterfly, since a certain level of disturbance in the ecosystem actually improved the reproductive conditions for the species.¹⁹

In 2000, Salomón Nahmad carried out a social evaluation in four Mexican protected natural areas for the Global Environment Facility. He found that the Monarch Butterfly Biosphere Reserve would only be conserved if the interests of *campesinos* were taken into account: "the way to conserve the forests and rainforests is through their exploitation, not by turning them into an enclosure for contemplation by outsiders, but rather by being a means for survival for those who live within them. The only way in which we are going to be able to achieve conservation and protection of our rainforests and forests is by encouraging *campesino* organizations to become owners themselves, and upon receiving benefits from the rainforests, becoming responsible for their care." The management of the Monarch Butterfly Biosphere Reserve is centralized and in the hands of the federal government. However, the continuing loss of forest due to the artificial generation of "open access" and continuous social conflicts in the zone made it clear that government capacities were overstretched and mere legal protection will not solve the problem.

The Monarch Fund was created to solve the reserve's problems, with contributions from WWF, the Mexican Fund for Nature Conservation (*Fondo Mexicano para la Conservación de la Naturaleza*), The World Bank, the federal government, and the governments of the states of Mexico and Michoacan. The purpose of this fund is to compensate communities for restrictions on their forest use. These payments partially resolved the problem of the lack of conservation incentive, but did not pay attention to the development of institutional and community capabilities, since they were made for "not touching", not for "conserving". This encouraged a passive attitude and the weakening of community governance.²¹

Twelve years after the last expansion of the reserve, its managers and supportive organizations are starting to change their conservation strategies. They are now considering the possibility of sustainable community use in some areas. This, in combination with support to strengthen governance and the continuation of conservation payments, has had encouraging results, demonstrating that alternatives to strict protection can have a positive conservation effect. Nevertheless, despite widespread doubt that protected areas are the only (or even the most) effective way of achieving ecosystem conservation, only recently did CONANP open discussion about the need to redesign protected-area management mechanisms.²²

Over-regulation of forest use

In 1992, as part of wider liberal economic reforms to promote private investment, a new forest law deregulated forest use, the transportation of forest goods and industry, and the provision of technical services. By 1997, an additional modification had been made in response to the escalation of lumber imports, which occurred as a result of free-trade agreements with Chile (*Acuerdo de Complementación Económica*, 1992) and the United States and Canada (North American Free Trade Agreement, 1994). This reform designated natural forests for "conservation" (without management) and promoted the production of raw materials through commercial plantations. The aim was to increase the competitiveness of local wood production against imported products (some of which were subsidized by their country of origin) and to reduce pressure on biodiversity. ²⁴

The General Sustainable Forest Development Law (*Ley General de Desarrollo Forestal Sustentable*—LGDFS) was enacted in 2003. The objective of this law is to promote sustainable forest management and use for economic development by the owners and inhabitants of forest regions. Even though this objective is stated explicitly, SEMARNAP (now SEMARNAT— Ministry of Environment and Natural Resources) continues to over-regulate wood production by imposing costly bureaucratic procedures.

Today, to receive forest use authorization, owners must provide documents certified by the National Agrarian Registry (*Registro Agrario Nacional*), including a forest management plan, an environmental impact assessment (in the case of rainforests and protected natural areas, even if use only involves non-timber forest products), the minutes of meetings of the relevant *ejido* or *communidad* showing agreement to undertake the activity, the rules of procedure of the *ejido* or *communidad*, a copy of the property's ownership titles, and payment for use rights. The approximate cost of preparing the forest management plan and other documentation ranges from US\$30,000 to US\$80,000. In addition, other requirements in the production chain, such as permits for lumber transportation, storage, transformation, and sale; phytosanitary certificates; and CITES permits (for species listed in Appendix II or III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora); also incur significant costs.

Ejidos and *communidades* are commonly extremely poor. In addition to the costs that they incur simply to apply for permission to use their lands, they face another obstacle in Article 84 of the LGDFS. This holds that, for those applications to which authorities do not respond within 30 working days, "it is implied that the authorization for forest utilization has been denied, without

affecting the responsibility that the public servant may incur..." Given the small number of people in the federal government available to inspect their applications, *ejidos* and *communidades* typically need a year to obtain authorization.²⁵

An investigation in 2008 into the impacts of over-regulation on forest use in Mexico found that "the regulations and the management of the authorizations were fundamentally restrictive, raise transaction and production costs in general, and have direct negative impacts on producers and the sector's performance." This situation is reflected in a decrease in the granting of use permits, from a maximum of 5,567 in 2001 to 1,711 in 2005.²⁶ "Many communities have become discouraged and have abandoned their intentions to take advantage of the forests in a legal manner", the investigation found. Legal timber production fell from 9.4 million cubic meters in 2000 to 6.8 million cubic meters in 2010, a decline of 28 percent.²⁷

The development of sustainable community forest management in Mexico

In response to the negative impacts of the policy of greatly restricting the sustainable use of natural forests by *ejidos* and *communidades* and consequent protests by *campesino* organizations demanding subsidies for timber production, SEMARNAP designed a community forest management promotion strategy in 1997. The strategy involved two new programs: the Forestry Development Program (*Programa de Desarrollo Forestal*—PRODEFOR) and the Conservation and Forest Management Program (*Programa de Conservación y Manejo Forestal*—PROCYMAF). PRODEFOR was created to promote forest production and the development of production chains in communities by providing support for training, the drafting of management plans, activities aimed at forest protection and reforestation, the diversification of production, and the commercialization of non-timber resources.

PROCYMAF started as a pilot project, with resources from the World Bank, in the state of Oaxaca, to develop the social capital of *ejidos* and *communidades*. It financed training, technical assistance, management plans, and the diversification of forest use through ecotourism, the bottling of spring water, and the use of non-timber products.

In 2001, the Community Biodiversity Conservation Program (*Programa de Conservación Comunitaria de la Biodiversidad*—Coinbio) began, with financial assistance from the Global Environment Facility, with the aim of supporting community biodiversity conservation initiatives through sustainable forest management.

Today, it is estimated that 2,300 *ejidos* and *communidades* (of a total of 8,400 with rights to about 40 million hectares of forests and rainforests) have timber use permits over an area of approximately 5 million hectares. Of these, more than 200 have EFCs with capacity for industrial transformation, board production, and/or the commercialization of added-value products such as furniture, moldings, and flooring.²⁸

The experience of community forest management developed by *ejidos* and *communidades* under PRODEFOR, PROCYMAF, and Coinbio, combined with the continuance of Indigenous conservation culture and the positive incentives derived from the recognition of common property status, have enabled Mexico to develop the most successful community forest certification program globally. In

2006, the area of community forest certified as responsibly managed by the Forest Stewardship Council²⁹ was 715,154 hectares,³⁰ providing compelling evidence that collective land ownership can combat forest resource degradation and also showing that well-considered government policies can greatly assist communities in pursuing their economic development through sustainable resource management.

Sustainable community forest management has been shown to work as a powerful local development tool in Mexico when community governance mechanisms guarantee an adequate distribution of benefits, thereby increasing local incomes and generating employment.

Researchers at the Autonomous National University of Mexico carried out surveys on the Yucatan Peninsula to compare the incomes of *ejido* dwellers (Indigenous and non-Indigenous) in rainforests. It showed that those people who were able to harvest timber and process it in community sawmills earned sufficient income to keep them above the poverty line—meaning that they could cover their minimum needs for housing, footwear, dress, transport, food, education, and health. On the other hand, those *ejidos* that were unable to harvest and mill timber were commonly in poverty, with income insufficient to cover minimal food needs. This shows the importance of resource access and governance in Mexico, especially in forest regions.³¹

CONAFOR has historically allocated more than 85 percent of its annual budget to the financing of forest restoration, reforestation, commercial plantation development, soil conservation, and payments for environmental services requiring the protection ("no touching") of the forest resource. This has meant that programs that promote sustainable forest management in *ejidos* and *communidades* have had little support.

Since 2010, however, and in response to pressure exerted by civil-society organizations, CONAFOR has had a policy of supporting community forest management with the aim of achieving sustainability in forest regions. Thus, the budgets for the Community Forestry Program (*Programa de Silvicultura Comunitaria*, previously PROCYMAF), PRODEFOR, and other special programs have increased and are now close to 30 percent of the total budget. As a result, community forestry is now being strengthened in the states of Chiapas, Oaxaca, Durango, Michoacán, México, Colima, Jalisco, Campeche and Quintana Roo.³²

Conclusion

The Mexican Revolution in the early 20th century resulted in a Federal Constitution that recognized social land ownership by local communities through *ejidos* and *communidades*. Today, these communal tenure regimes account for about 70 percent of the country's forest estate and involve close to 13 million people. Most of these are Indigenous groups that maintain traditional and local forms of self-government and resource use.

Even so, the development of *ejidos* and *communidades* has been hindered by almost 100 years of contradictory government policy, which privileged first forest concessions over community enterprises and then forest conservation over sustainable management by *ejidos* and *communidades*. Today, however, government community forestry programs are demonstrating that community approaches are a viable option for achieving timber productivity, good

governance, and ecological conservation in forests. Recent changes in the allocation of CONAFOR's budget, with a greater proportion going towards promoting community forest management, and the apparent change in the view of CONANP regarding the best way to manage protected areas, suggests a potential change in environmental policy and the regulatory framework towards decreasing restrictions on forest access by *ejidos* and *communidades*.

This leaves the door open to an exciting possibility: that the progress made by *ejidos* and *communidades* in forest management and economic development will serve as a basis for sustainable development in Mexico's forest regions for the remainder of the present century.

¹The literal translation of communidades, the term used in the 1917 Constitution, is "communities". It refers to a term in Mexican agrarian law that means Indigenous communities with demonstrated long occupation of the land (in contrast to ejidos, which are based on a group's new land grant from land redistributed through the agrarian reform process) (Bray et al. 2006). Bray, David, Camille Antinori, and Juan Manuel Torres-Rojo. 2006. The Mexican model of community forest management: The role of agrarian policy, forest policy and entrepreneurial organization. Forest Policy and Economics 8 (2006): 470-484.

² Madrid, Lucía et al. 2009. La propiedad social de los bosques en México, México, D.F. Centro Geo y CCMSS.

³ Galeana Rodríguez, Fernando.

 $^{^4}$ Garibay, Claudio. 2012. Impactos de las reformas a la tenencia de la tierra en México, Mexico City: CCMSS.

⁵ Garibay 2012, as cited in endnote XX.

Merino-Pérez and Segura-Warnholtz (2005), in Bray et al. 2006, as cited in endnote XX.

⁷ Bustamante, 2003; Klooster, 1997

⁸ Bustamente 2003 and Klooster 1997, as cited in endnote XX.

⁹ Merino p 82

¹⁰ Bustamante 2003, as cited in endnote XX; Merino p 83

¹¹ Merino p 83.

¹² Bray, David and Merino, Leticia. 2002, p 87

¹³ (Leticia Merino)

¹⁴ Arturo Warman

¹⁵ In 2000, responsibility for fisheries was transferred from SEMARNAP to the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA), and SEMARNAP became the Secretariat for Environment and Natural Resources (Secretaría de Medio Ambiente y Recursos Naturales—SEMARNAT). Among other things, SEMARNAT has been assigned the task of formulating and implementing the national policy for sustainable forest development.

¹⁶ Logros 2010, CONANP

¹⁷ Merino

¹⁸ http://www2.ine.gob.mx/publicaciones/gacetas/282/monarca.html

¹⁹ Hoth, Jürgen. 1995. Mariposa monarca, mitos y otras realidades aladas. Revista Ciencias 37, January–March 1995.

Nahmad, Salomón. 2000. El proyecto del Fondo Mundial para la Protección del Medio Ambiente (Gef) en cuatro areas naturales protegidas de Mexico y su impacto social. Journal of Political Ecology 7(2000): 19–41. Merino.

²² This was in response to the need to both guarantee conservation and solve the inhabitants' social problems—CONANP, personal communication, ???]

²³ Merino Bosques comunitarios p 89.

²⁴ For a history of Mexico's forest laws, see the article by Mauricio Limón Aguirre titled "La nueva Ley General de Desarrollo Forestal Sustentable" on the website of the Legal and Environmental Studies Center (Centro de Estudios Jurídicos y Ambientales) at: http://www.ceja.org.mx/articulo.php?id rubrique=29&id article=127

Nota CCMSS sobre Tramitología en el sector forestal.

²⁶ Ibidem.

²⁷ CCMSS Nota Info 30. Balanza Comercial Forestal 2010. SEMARNAT does not provide information on the area of forest under management; therefore, it is not possible to estimate the impact of this over-regulation in terms of the area of forest under sustainable management.

²⁸Bray et al. 2006, as cited in endnote XX.

²⁹The Forest Stewardship Council (FSC) is an international, membership-based, non-profit organization founded in 1993 by environmentalists, social interest groups, Indigenous Peoples' organizations, responsible retailers and leading forest management companies to develop standards based on ten principles by which responsible forest practice can be measured. For more information on forest certification by the Forest Stewardship Council in Mexico go to: http://www.mx.fsc.org/inicio-mx.html 30(Gerez & Alatorre).

³¹ Nueva evidencia. Informe de Investigaciones...

³² CCMSS Nota Presupuesto 2011. A detailed analysis of the CONAFOR budget and its forest policy is available at: www.subsidiosalcampo.org.mx