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THE WORLD BANK

Rethinking Forest Partnerships and Benefit Sharing

Insights on Factors and Context that Make Collaborative Arrangements Work for Communities and Landowners



REPORT NO. 51575-GLB

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INSIGHTS ON FACTORS AND CONTEXT THAT MAKE COLLABORATIVE ARRANGEMENTS WORK FOR COMMUNITIES AND LANDOWNERS

Report No. 51575-GLB



THE WORLD BANK
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Agriculture and Rural Development Department

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Acronyms and Abbreviations

ARD	Agriculture and Rural Development Department
ARR	afforestation, reforestation, and restoration
CBFM	Community-Based Forest Management
CSR	Corporate Social Responsibility
CSRM	Center for Social Responsibility in Mining
DRC	Democratic Republic of Congo
EIA	environmental impact assessment
ENVCF	Environment Department Carbon Finance
ESW	Economic and Sector Work
FAO	Food and Agriculture Organisation
FM	Forest Management
FONAG	Fund for the Protection of Water
FSC	Forest Stewardship Council
ICSID	International Centre for Settlement of Investment Disputes
IFC	International Finance Corporation
INRENA	Instituto Nacional de Recursos Naturales
LEGEN	Law and Development Unit—Environment and International Law
MOU	memorandum of understanding
NGO	nongovernmental organization
NRM	Natural Resources Management
NTFPs	nontimber forest products
PROFOR	Program on Forests
REDD	reduced emissions from deforestation and degradation
PES	payment for environmental services
SDN	Sustainable Development Network
SDV	Social Development Department
SFM	sustainable forest management
TA	technical assistance
USA	United States of America

Executive Summary

Forest-sector collaborative arrangements come in many forms. The local partner may be a community, an association, or a set of individual landholders. The outside partner may be a private organization or a government. The interest of the local partner may be production of income from the forest, security of access to land, increased labor or small business opportunities, protection of traditionally valued resources, or other values. The interest of the outside partner may be similarly varied, from securing access to forest products, to obtaining the cooperation of the local community in the partner's resource use, to securing a source of labor, to alleviation of rural poverty, to production of environmental services and management of risks. Establishing arrangements that effectively deliver sustainable forest management and benefit local communities is a challenge because of the range of participants, objectives, and scales of partnerships and benefit-sharing arrangements.

This study uses an evidence-based approach to provide insights into developing and maintaining collaborative arrangements in the forest sector. It aims to inform discussions and approaches to forest partnership and benefit-sharing arrangements. It also offers guidance on how to implement key factors that influence contract-based forest partnerships and benefit-sharing arrangements.

A review of literature, interviews and surveys of forestry partnership participants, and examination of extractive industry partnerships form the basis of this study. New data on collaborative arrangements was collected through two avenues. The study conducted a web-based survey of people who have worked in collaborative arrangements. It also interviewed selected participants on their experiences. The study also gathered secondary data through published materials, and through reports and contracts supplied by the interview subjects.

Building on negotiation and dispute-resolution literature for the analytical framework, this study identifies factors and practices promoting the formation and maintenance of partnerships, and explains how the factors are influenced by context. The results should be of interest to those promoting partnerships and developing benefit-sharing arrangements. This includes government, private sector, and non-governmental organizations, development partners, and managers of forest programs offering payments for carbon sequestration and reduced emissions from deforestation and degradation (REDD).

What Do Contracts and Agreements Include?

This report uses "contract" in two ways, depending on context. A contract in the abstract is simply an agreement. So, contract-based partnerships are partnerships built upon an underlying agreement. The basic agreement may be written down somewhere, or not. A contract in the concrete sense is a document whose main purpose is to set out the terms of an agreement.

Sometimes people capture their agreements in a document whose main purpose is something other than recording the agreement. People have captured elements of community-based partnerships in legislation, in property records, in the bylaws of organizations, in forest management plans, and in other places. It would be a stretch of language to call all of these contracts. So, this report looks beyond written contracts, to consider other kinds of documents that reflect agreements.

Source: Authors

TYPOLOGY OF COLLABORATIVE ARRANGEMENTS

Using property rights, risk exposure, and market orientation, a typology of collaborative arrangements was developed. This contained four broad categories of arrangements. The twenty-nine cases examined in detail for this study were classified into these categories. The categories included:

- Market-driven community arrangements, on private land with a profit motive and shared risks.
- Supply-driven community arrangements, on public lands, to produce forest products or environmental services, offering low risk to the community.
- Benefit-sharing arrangements with the local community by private entities investing on public lands for long or short term. This is at low risk to the community.
- Public-private community partnerships, on lands where the communities have long-term rights, aimed at sustainable use but not necessarily profit, at low risk to the community.

Making and Keeping Good Arrangements

From the literature of negotiation, and dispute resolution and expert opinion, the study identified twelve factors hypothesized to be important to success in collaborative arrangements:

1. That the arrangement be **legally valid.**
2. That the arrangement be **fully bargained.**
3. That the partners demonstrate **mutual respect.**
4. That the partners have **common expectations about the project.**
5. That the partners have similar **understanding about what it means to keep agreements.**
6. That the partners join the project freely, exercising **self-determination.**
7. That the partners **trust** one another.
8. That the project is **practical.**
9. That the efforts to meet partnership obligations are **verifiable**.
10. That the partners maintain good **communication.**
11. That the arrangement addresses any **past history** of conflict between the partners.
12. That the arrangement provides **incentives** to the parties involved.

Eighty-nine survey and twenty-four interview respondents indicated which factors were important, and found four factors nearly universally important—mutual respect, trust, practicality, and communication. Different combinations of the remaining factors were important for different collaborative arrangements. This study also presents a list of "missing factors" suggested by respondents.

The twelve factors apply both to agreement-making and agreement-keeping. In part that is because the two processes blend. In keeping a long-term agreement, the sides frequently must come together, renegotiate bits and pieces, and revise their relationship to account for new information or

changing conditions. In making the agreement, the parties must be thinking about agreement-keeping and settle on a plan that can be easily kept. But arguably some of the factors are more important to making the agreement (e.g., full bargaining) and others are more important to keeping the agreement (e.g., verification and practicality).

Viewing the factors in terms of inputs, outputs, and outcomes forces identification of practical steps to achieve desired goals; this study presents the factors in these terms in a table format (see Table 2). The "Inputs" column provides a practical list of tasks. The "Outputs" column provides a list for short-term verification of success. If a project is not achieving desired outputs, project managers should look for causes and remedies. The outcomes represent the larger goals that contribute to a successful project with managed levels of conflict.

Elements of a Good Contract

The study obtained contracts and other agreement-related documents from several cases. Based on the literature, it developed a list of good practices for forest partnership contracts. These practices fall into several broad categories:

- Ensuring that the contract is legally valid.
- Ensuring that the contract is clear, understandable, and complete.
- Ensuring that the contract addresses points that promote agreement-keeping, including practicality, verification, communication, and incentives.
- Ensuring that the contract provides ways of handling disputes short of going to court.
- Ensuring that the contract considers common issues that have led prior partnerships into disagreements.

Analysis against this framework of a subset of the seventeen contracts obtained in this study found that contracts play a range of roles in a collaborative arrangement. The structure and content of contracts should be informed by the purpose of the contract. Each of the contracts contain a variety of approaches and ideas for establishing formal communication, grievance-resolving institutions dealing with shared risks, structuring of milestones, transparency, and other issues of general interest to forest partnerships.

The analysis shows some differences among contracts that could be explained by their context. In the benefit-sharing arrangement, the contract emphasizes communication and conflict resolution. The commercially oriented contracts for market goods or land tended to have more detail concerning contingencies, prevention of loss, and allocation of risks than did the payment for environmental services arrangements.

Context Matters

Context elements such as community reliance on the natural resource, legal framework, scale, and scope of partnership can influence the process elements and need to be considered. Some of the linkages with context appeared to be relatively strong. For example, in contexts where communities were very reliant on the forest resource, the factor "fully bargained" was almost always considered important. "Incentives" appeared more important when community reliance on the forest for livelihood was low. The study offers several other hypotheses on how context may affect the relative importance of these factors.

Another dimension of context that influences collaborative arrangements is the role of government. The cases examined for this study illustrate the fact that government can both facilitate and hinder making and keeping effective collaborative arrangements.

Lessons for Collaborative Arrangements

For collaborative arrangements it is important to note the following points:

- Contracts are not the only mechanism for recording rules governing the partnership. Some partnerships have put parts of their understanding in management plans, which an agreement can incorporate by reference or which can be officially approved or adopted by a government agency. Some partners have promised to adopt certification, with the effect of promising to follow the certifier's set of rules. A partnership could also put its agreement into the founding documents of a new association or business entity.
- To ensure that the rights of parties are fully documented, there may need to be more than a single contract involved in a partnership, and there may need to be contracts with others besides the main partners.

- Contracts have roles to play even if they are not legally enforceable because of the context. In many of the cases the courts were viewed as weak, not trustworthy, and expensive to navigate. Still, almost every case used written documents to record their agreements.
- Fully-bargained arrangements can be costly to achieve especially when there is a need for multiple deals. In situations where standardized contracts are necessary, it is important to develop the contract template based on consultation and discussions with the key stakeholders. An additional approach is for the "outside" partner to use the advice of experts who have worked in the area for many years and have a good sense of the local context.
- Not all practical issues will be apparent at the beginning of a project; parties should think about structuring their agreement to address new issues as the project unfolds.
- Partners should talk about foreseeable risks before the project starts, to understand what each side's responsibilities would be in case of the event. Also, partners should design the project to minimize the losses from risks.
- The written document is a tool and not an end in itself. Entering a written contract can lead the sides to explore roles and risks in detail; it produces a reference point for further discussion, and its execution impresses upon the parties that they are making a true commitment. It can also be a means of informing potential outside investors and others about the agreement; if the contract can be recorded in the official property records, it may be a means of binding future owners of the land.
- Collaborative arrangements, including benefit-sharing arrangements, should also aim to engage local communities in productive activities that generate positive social, economic and environmental outcomes for local communities (Lewis, Freeman, and Borreill 2008). As seen in the Ecuador case (Annex IV case 27), cash transfers can be victim to misuse and elite capture, reducing their potential contribution to poverty alleviation.
- Government can both facilitate and hinder making and keeping effective collaborative arrangements. Government can play a positive role where it has policies and mechanisms for fostering partnership, dialogue, and negotiation. The role of government is less constructive where government processes are lengthy and capacity limited, or if there are irreconcilable differences in perspective between government and community regarding key issues such as land tenure.
- The scale and scope of a partnership can influence whether the partnership is individually crafted—where the parties can afford to bargain, to innovate, to tailor the agreement carefully to each party's needs—or mass-produced, because the transaction costs of bargaining each agreement would just be too high.
- Context matters as context influences the factors that are important in processes for establishing collaborative arrangements.
- Measures to mitigate and address conflicts are important in partnerships.

Introduction

A convergence of trends in the forest sector is underscoring the importance of partnerships and benefit-sharing arrangements. The first trend is the increase in forest area designated for use by communities and indigenous peoples. Estimates by White and Martin (2002) indicate that more than 11 percent of the world's forests are managed or owned by communities, and in developing countries the figure is approximately 22 percent. A recent updating of this information found that worldwide, there are at least 350 million hectares of forest land owned by communities and indigenous groups. In addition, 77 million hectares of public forest land are designated for use by communities and indigenous peoples. In 2008, in the same countries examined in the 2002 study, 27 percent of the forests were owned by or designated for communities and indigenous peoples (Sunderlin, Hatcher, and Liddle 2008).

The second trend is the growth in private sector investment in forestry. Globalization of forest industries and the forests' significant commercial value has made the private sector the principal source of finance in forest production in most countries. While there is no systematic information on domestic or foreign direct private investment in the forestry sector of developing countries, there is a common view that the bulk of investment in forestry is from domestic sources. In the processing industries, especially pulp and paper, foreign sources are significant in many developing countries (M. Simula 2008). Indeed, the level of activity and influence of the private sector in forestry often dwarfs that of the international community—and sometimes of the national government.

A third trend is that several countries have adopted forest legislation that enhances the opportunity for local involvement in forest management,[1] including through participatory or joint forest management and community forestry. Some of the same countries also

1 The recent monograph, *Forest Law and Sustainable Development*, sponsored by the World Bank, PROFOR, and FAO (Christy et al. 2007), lists several categories of "legal changes that have enhanced the opportunity for local involvement," including handing over management of selected state forests to local groups, as in Nepal; comanagement of forests with local groups, as in the Philippines, Canada, South Africa, Mexico, and many other countries; allowing limited local use of protected areas and buffer zones, notably in Latin America but also elsewhere; leasing state land to local communities, as in the Kyrgyz Republic, Nepal, Sri Lanka, Uganda, and Vietnam; transfer or restoration of ownership to communities, as in the Philippines, several Latin American countries, Australia, Canada, South Africa, and several countries in Central and Eastern Europe; and granting local benefits without direct control, in the United States and Kosovo.

mandate compensation of forest communities affected by concessions and plantations as well as recognition of their right to forest resources. For example, in both Ghana and Liberia, forest concession laws require concessionaires to negotiate social agreements with affected communities and require the government to transfer a portion of concession income to local governments. Kosovo's laws recognize the traditional rights of citizens to enjoy certain nontimber resources from forests, including privately owned forests, and require the central government to share a percentage of forest income with local governments.

The increased recognition of communities' and households' reliance on and rights to forests and growing private investment in the sector present additional opportunities for using forests to alleviate poverty. Partnerships and benefit-sharing arrangements that involve communities, private entities, or government offer a way of structuring forest activities that benefit forest-dependent communities. For example, community-company partnerships for timber and nontimber forest product production, including outgrower schemes, can offer communities a source of income with minimum market risks. Similar private-community partnerships can be formed around payments for environmental services (PES). PES schemes can provide needed additional revenue to enable a community to adopt sustainable management approaches that provide positive externalities (see examples at www.carbonfinance.org). Company–community partnerships can result in positive impacts. Some of the positive outcomes include better returns to capital, labor, or land than alternatives, for both company and community, encouraging diversification, opening doors to new opportunities, achieving corporate goals, contributing to secure land rights, sharing risks, developing infrastructure for communities, offering better job opportunities, and producing positive environmental effects by promoting sustainable multipurpose forest management (Mayers and Vermeulen 2002).

Partnerships between government and communities through joint management, participatory management, community forestry, or community concessions grant communities management rights to state forest lands and allow them to use (in some cases select) forest resources for commercial purposes (Carrera, Morales, and Gálvez 2000). In government–community partnerships, forest resources must be managed according to a state-approved management plan. If implemented well, community concessions can generate environmental, social, and economic benefits for all parties involved (Joshi 1999; Khare et al. 2000).

Benefit-sharing arrangements,[2] between communities and private sector or communities and government, are another means for transferring forest benefits to communities. Social responsibility agreements (often required by law) can provide communities with services, training, and infrastructure that they otherwise cannot access (Ayine 2008). Benefit-sharing arrangements also often include a mechanism for collecting and redistributing a portion of revenues to affected communities. Some of the arrangements use ensure direct benefits for citizens and limit government's ability to divert funds to undesired ends (Fischer 2007).

While partnerships and benefit-sharing arrangements can make a positive development contribution, they also do have shortcomings. Benefit-sharing arrangements are often victim to elite capture, and where consultations and information sharing is inadequate, they can result in communities signing away their rights and foregoing long-term benefits (Barr et al. 2006). When benefit-sharing arrangements involve cash transfers, often they are spent on nonproductive consumption especially where there are no supporting financial institutions (for saving and investment) (Fischer 2007). Similarly, company–community partnerships do also have shortcomings. For example, they tend to involve high transaction costs on both sides, often result in misunderstandings between partners, perpetuate low-wage labor and inequitable land distribution, and exclude disadvantaged community members where schemes require some initial capital resource or land (Nawir and Santoso 2005; Cuny, Ango, and Ondoa 2006; Pokomy and Johnson 2008). Where forests are cleared for plantations or where plantations are poorly managed and involve planting of alien species, these partnerships have negative environmental effects (Mayers and Vermeulen 2002).

Shortcomings notwithstanding, contract-based partnership arrangements can involve productive engagement of communities in sustainable forest resource management. These arrangements could be promoted with emerging opportunities for rehabilitation of degraded forest lands, harvesting of commercially valuable forest products,

2 For purposes of this study, these arrangements are distinguished from partnerships in that communities can receive a share of the benefits without being engaged in productive activities.

production of biomass, fuelwood, and timber, and management of forest resources for environmental services (including carbon). Similarly, benefit-sharing arrangements associated with carbon schemes (e.g., payments for avoided deforestation) and forest concessions can provide opportunities for communities to capture some of the rent associated with these activities and minimize any unintended negative consequences.

OBJECTIVE OF THE STUDY

Using an evidence-based approach, the primary objective of this study is to provide insights for existing and emerging collaborative arrangements. This includes discussions regarding design and development of benefit-sharing arrangements linked to carbon payments from reduced emissions from deforestation and degradation (REDD). Also of interest are efforts to develop and implement partnerships in areas such as feedstock production for pulp and paper and bioenergy, partnerships between communities and corporations (including agribusiness) involved in large-scale land acquisition, and schemes for community-based forest management for production of forest goods and services.

This study also aims to provide guidance on making and keeping contract-based partnerships and benefit-sharing arrangements (see Box 1 for definitions of some key terms used in this study). The study draws on both forest sector experiences and experiences from extractive industries and other related sectors. While several of the cases examined in detail have a commercial dimension, this study does not examine the financial aspects of collaborative arrangements or assess arrangements against equity or efficiency measures.

The following were some of the study's initial assumptions:

- To make and keep collaborative arrangements, they need to be practical, reliable, equitable, predictable, secure, and worth investing in.
- Perceived fairness in the distribution of costs, revenue, and benefits is a necessary but not sufficient condition for successful collaborative arrangements.
- Processes through which both parties feel their perspectives are heard and respected, and a contract that reflects the parties' expectations are necessary for durable collaborative arrangements.

The research focused on two things: (i) testing these assumptions to understand what are important process elements (the "what is important" factors) and (ii) asking what, if any, is the relationship between key process elements and the context in which the collaborative arrangement is being established.

This study is aimed at individuals and organizations promoting partnerships and developing benefit-sharing arrangements. This includes government, private sector, and nongovernmental organizations, development partners, and managers of forest programs offering payments for carbon sequestration and REDD.

STRUCTURE OF REPORT

The main body of the report is divided into six sections including the introduction. The next section provides a brief description of the approach and methodology used. The third section provides a overview of factors identified in studies as important for developing lasting collaborative arrangements. The third section also shares the "what is important" factors used in this study to frame the analysis. This is followed by the fourth section presenting the analysis. The final two sections provide key guidance and insights from the analysis. More specifically, the fifth section provides guidance on how to apply process elements that influence the outcome of the arrangement. The final section captures the key lessons from the analysis.

Box 1: Contracts, Partnerships, and Other Key Terms

This report uses "contract" in two ways, depending on context. A contract in the abstract is simply an agreement. So, contract-based partnerships are partnerships built upon an underlying agreement. The basic agreement may be written down somewhere, or not.

A contract in the concrete sense is a document whose main purpose is to set out the terms of an agreement. As the reader will discover, this report does not confine itself to legally enforceable agreements. In other words, the report does not use "contract" in a strictly legal sense.

Sometimes people capture their agreements in a document whose main purpose is something other than recording the agreement. People have captured elements of community-based partnerships in legislation, in property records, in the bylaws of organizations, in forest management plans, and in other places. It would be a stretch of language to call all of these contracts. So, this report looks beyond written contracts, to consider other kinds of documents that reflect agreements.

This report uses "partnership" in the broad sense of two or more people or groups acting together. There is also a legal sense of partnership, as a particular way of organizing a business enterprise. This paper does not use this limited, technical sense.

In this study, "community" is used to refer to a collective of individual households, ethnically, geographically and/or politically defined communities, or individual small-holder households.

Similarly, "collaborative arrangements" is used as a catchall term for contract-based partnerships and benefit sharing arrangements.

Source: Authors

1 Approach

The study is unique in that it examines a broad range of partnerships and benefit-sharing arrangements. Examples include bilateral and multilateral collaborative arrangements involving communities and private entities, the state, and nongovernmental organizations. Unlike other studies that examine a particular category of collaborative arrangements (e.g., payments for environmental services), this study includes arrangements for production of timber, nontimber forest products, and environmental services. The study also is unique because of its emphasis on process, and use of an analytical framework that builds on work outside the forest sector.

The study uses a "mini" case-study approach to collect information on different types of collaborative arrangements in the forest sector and extractive industries,[3] and identify process-related factors that are important for making and keeping collaborative arrangements. The analysis of this information is used to assess any relationship among these factors and the context in which the arrangements are being established. The analysis of primary and secondary data on specific cases is used to illustrate

1. key process elements for reaching such arrangements;

3 Benefit-sharing arrangements in extractive industries can offer interesting insights for such arrangements in the forest sector. This is especially true for lessons regarding mechanisms to facilitate cash transfers (use of trust funds at the national versus community level, direct versus indirect cash transfers, etc.). Insights regarding the process dimension of these arrangements are also valuable. With regard to the latter, however, it is important to note that there are some crucial differences between benefit-sharing arrangements in extractive industries and those in forestry. In both forest and extractive industry cases, at a minimum, fundamental tenure issues need to be clarified, monetary and nonmonetary compensation needs to be provided for livelihood benefits foregone from access to land/natural resources, any potential environmental impact needs to be mitigated, and agreed-upon social infrastructural investments need to be made. A distinction between the two sectors occurs when, in extractive industries, the rights to a stream of benefits from resource revenues are given by territorial claims to the land from which the resource is extracted, and much of the legal grounding concerns whether or not rights to sub-surface resources have been specified in law. The latter set of arrangements, however, offer limited insights on how to recognize, through the benefit-sharing arrangement, the role of communities as stewards and managers (i.e., engage affected communities in managing the resource). In forestry, communities may have customary claims over the resource itself, and depend to a greater or lesser extent on forest land and forest products for their livelihood. Communities are likely to insist that these claims be acknowledged when defining affected communities, and determining suitable compensation and granting access and use rights to the concession area (based on modifications of Robin Mearns, personal communication, June 17, 2009).

2. distinguishing elements of the collaborative arrangements; and
3. linkages between the context in which effective/well-developed[4] collaborative arrangements and characteristics of the process are undertaken to develop the arrangement.

Key process elements are identified using factors found in negotiation and dispute resolution literature as a starting point. Where contracts or memoranda of understanding were available, these documents are also examined to identify distinguishing characteristics of the arrangement.

METHODOLOGY FOR DATA COLLECTION

Primary data for this study were collected in two ways—through online surveys (survey) and telephone interviews. The survey was designed to screen potential cases for in-depth interviews and to elicit some general information from the respondents on the value of twelve "what is important" factors. The survey was distributed to electronic lists that catered to persons working on collaborative arrangements (e.g., the Katoomba Group and FAO's Market Analysis and Development Network) as well as to recommended individuals.

The e-survey presented the twelve "what is important" factors and invited respondents to identify which factors they considered most important, which they considered unimportant, and which they thought were missing (the "what is important" question). Survey respondents could answer or skip questions, as they liked, so not every respondent answered every question. Respondents could select multiple factors as important or unimportant. The final question in the electronic survey asked respondents if they would be interested in providing additional information regarding their specific case. There were two versions of the same survey, one for people involved with forest projects and a second version for other natural resource projects (such as mineral extraction). Each of these surveys was available in three languages—English, Spanish, and French (see Annex I for the English forestry version of the survey). In addition to the survey, the study team administered the "what is important" questions to a small set of resource persons.[5]

Cases identified through the survey and expert opinion were contacted via e-mail with information on the study and a request for a telephone interview. The telephone interviews were conducted using an interview protocol (see Annex II). The objective of the interview was to elicit detailed information on specific collaborative arrangements. If an interviewee had not taken the e-survey, then in addition to asking questions from the protocol, the respondent was invited to answer the "what is important" question.

The information elicited through the survey and interviews forms the basis of the analysis. The information obtained from the interviews regarding the effectiveness of the collaborative arrangement was triangulated, where possible, using media reports or by obtaining the perspective of a nongovernmental organization that worked in the same area or the same project.

Secondary data was collected through reports, published studies, unpublished documents, and materials shared by the interviewees.

SHORTCOMINGS OF DATA COLLECTION METHODS

The sample of cases used in this study is not random and has a self-selection bias. This bias is toward respondents who want to share a success story. Also, the approach used resulted in only one interview of a community member who was involved in collaborative arrangements.[6] A third shortcoming of the methods used is that the study did not assess the effectiveness of the collaborative arrangement through site visits, but rather obtained subjective information on how satisfied the parties were and the perceived sustainability of the collaborative arrangement. This subjective information, however, was triangulated where

4 Subjective information is used to determine if an arrangement is well developed/effective. This information is triangulated where possible (triangulation is discussed in greater detail in this section).

5 A resource person is an expert on the issues covered in this study for particular types of arrangements, for example, PES arrangements.

6 A follow-up to this study will aim to elicit information from community members on the process dimensions discussed in this study. This information will be used to update this study.

other articles and media reports were available. Another shortcoming is the regional representation of the cases (there are no cases from South Asia, the Middle East and North Africa, or Europe and Central Asia). To compensate for this, the study did a comprehensive literature review to complement the findings from the data analysis. With this and other measures, the findings of the study are valid for different types of arrangements in World Bank client countries.

It should be noted that the study inherently focuses on legal and formal arrangements. The arrangements examined somehow have been institutionalized or captured in a document. The study therefore does not include informal partnerships or those in which illegal activities are being carried out.

2 Principles for Collaborative Arrangements and "What Is Important" Factors

Collaborative arrangements have been the focus of forestry projects and analytic work for more than three decades. Studies on community–company partnerships, community institutions, joint forest management, payments for environmental services, and forest concessions all offer interesting insights into how to set up and maintain collaborative arrangements. This section extracts key principles and elements for developing collaborative arrangements from existing work in the forest sector and extractive industries. This section also positions the "what is important" factors that frame this study with regard to these principles and elements.

OVERVIEW OF CONSIDERATIONS FOR PARTNERSHIP ARRANGEMENTS

The most extensively documented contract-based partnerships in the forest sector are company–community partnerships. For the private sector the underlying motivation is often access to land, labor, and continuous supply of forest products and services (e.g., carbon), as well as corporate social responsibility. For communities or individual households involved in these arrangements, an incentive is the increased access to a market, guaranteed price, and, in some cases, upfront payment. Other than outgrower schemes in the pulp sector, company–community partnerships in forestry remain the exception rather than the norm. Some reasons for this are weak community tenure, emphasis on short-term profit-making activities over long-term alliances, economies of scale over multiple small deals, transaction costs for the company when they need to interact with large number of scattered individuals or groups, and lack of supportive government policies (Mayers and Vermeulen 2002).

In the case of partnerships for forest goods, work on community–company partnerships indicates that the structure and strength of the arrangement is influenced by

- negotiated terms, rather than terms that are set unilaterally;
- issues being debated in a fair and open manner, as this reduces the chance for conflict and future litigation;
- recognition that there will be growing pains at the beginning of a collaborative arrangement;
- an equitable and workable governance structure that would allow future development and response to unexpected trends and events; and

- a legally valid agreement but not overcomplicated contract.

The following key principles are important to keep the community–company partnership effective (Mayers and Vermeulen 2002; Nawir, Santoso, and Mudhofar 2003 as cited in Nawir and ComForLink 2007):

- security of contribution from both sides;
- shared understanding of the costs, risks, prospects and opportunities;
- mechanisms for sharing decision making and information;
- a work plan that clearly indicates each side's rights, responsibilities, and rewards;
- flexibility and space for negotiation;
- systems of accountability to the community (especially regarding benefit sharing), local government, and, more widely, civil society;
- procedure for conflict resolution;
- clear roles for third parties, extension, and technical support.

Commercial feasibility in the long term while meeting both parties' economic and social objectives; secure markets for products; and strong commitment among the parties, at least for the duration of the contract are also important (Nawir, Santoso, and Mudhofar 2003 as cited in Nawir and ComForLink 2007).

Community–company partnerships can form around PES.[7] Most of the principles and elements listed above apply to PES arrangements. In addition, when working with partnerships for environmental services consideration needs to be given to

- clearly identifying the user of the service;[8]
- addressing hidden information to avoid the asymmetry of information resulting in acceptance of contracts by sellers that make them worse off (i.e. payments that are less than the sellers' opportunity costs) (Ferraro 2008);
- facilitating perceived fairness (Asquith and Wunder 2008);
- keeping costs of monitoring of compliance low (Ferraro 2008);
- engaging regional and local intermediaries with better information about field conditions to help with identify and report on characteristics of environmental service suppliers that reflect their opportunity costs (Ferraro 2008);
- customizing payment modalities; and
- ensuring there is clear additionality.

Joint and participatory forest management arrangements have been extensively studied (e.g., Carter and Gronow 2005; Nelson 2006) to better understand their characteristics and what makes them work. The main stakeholders in such arrangements include local forest users and state forest departments. Often other parties such as local governments, civic groups and nongovernmental organizations, and the private sector are also involved. The performance of community–government partnerships has been mixed.[9]

This study does not present an overview of the rigorous and insightful work done on Community-Based Forest Management (CBFM). In this study we simply note that CBFM is complex, can be costly, and that there are many stakeholders and vested interests that may support or oppose CBFM activities (as illustrated by Clay, Alcorn, and Butler 2000; Borrini-Feyerabend et al. 2004). There is notable overlap between elements of well-functioning community company partnerships and CBFM. In addition, it is important to recognize the following points (World Bank 2008):

- Successful CBFM is a slow process, and needs to be based on informed participation, capacity building, and trust.
- Without addressing overt as well as hidden power relations and vested interests through

7 PES are voluntary, contingent transactions around a well-defined environmental service (or a service-producing land use) between at least one buyer and one seller.

8 If the environmental service is a private good or a club good (i.e., offers multiple services from the same management regime) and it is possible to identify the users. As the number of environmental service buyers increases, transaction costs and incentives for free-riding could increase. If, in addition to the above, the service is a public good such as biodiversity, it can be hard to clearly define who the users might be. In such situations, government involvement is often needed to maintain the environmental service (Engel, Pagiola, and Wunder 2008).

9 There are cases where through CBFM partnerships local people have gained a strong and legally backed voice in forest management. In some cases communities have also gained recognition of their use and access rights (e.g., community forestry arrangements in Nepal). An additional benefit of such partnerships is that they can lead to better forest management (e.g., in Mexico, deforestation rates in community forestry are lower than in adjacent protected areas). In contrast, studies have also found that due to entrenched power structures within both government institutions and communities, such partnerships do not readily promote social justice and sustainable livelihoods. Furthermore, the financial viability of these partnerships depends on local circumstances.

clear roles and responsibilities, availability of information, transparent and equitable decision-making processes and monitoring, indigenous peoples and other forest-dependent communities may be worse off as a result of project activities (for example, access to natural resources in their areas may have been opened up to other stakeholders, but they do not share in the benefits).

Analysis of community institutions and partnerships among individual households, including cooperatives, collectives, and associations, also offer interesting considerations for broader partnership arrangements. Some design principles evident in long-enduring common-pool resource institutions include the following (Ostrom 1999; Agrawal and Chhatre 2006):

- The arrangements are sensitive to the biophysical characteristic of the resource and community characteristics.
- Distribution of benefits stemming from the rules of the institution is proportionate to the cost of abiding by the rules.
- The rules are practical, related to local conditions, and do not diminish trust, reciprocity, or conservation-oriented activities.
- Affected parties participate in the modification of rules.
- Monitoring measures are in place to hold members accountable.
- There are graduated sanctions for violations of the rules.
- There are access to and use of low-cost and locally sensitive conflict resolution mechanisms.
- The government recognizes that local users can device their own institutions.
- When the resource base is large, a nested approach is used, with multiple layers of institutions.

OVERVIEW OF CONSIDERATIONS FOR BENEFIT-SHARING ARRANGEMENTS

For purposes of this study, benefit-sharing arrangements include those that aim to compensate communities for changes in their ownership, access, and use of resources as well as benefit transfer arrangements that aim to change household behavior. These arrangements can be contract-based or set up in terms of social agreements, and so on.

Some countries have regulations (often associated with concession laws) detailing the requirements for sharing of benefits between private entities and affected communities. These regulations define who needs to be compensated as well as the mechanism by which they need to be compensated (e.g., through county-level funds or community funds managed at the national level). There are also benefit-sharing arrangements between government and communities. In such cases, the law may set the level of benefits (as in countries that practice public-lands revenue sharing with local governments, for example, the United States, Kosovo, and Liberia), may grant the community harvest and use rights (for example, in Nepal), or may prescribe the process for allocating benefits through agreements or management plans (as in the joint management programs in Cambodia and elsewhere [Christy et al. 2007]). Benefit-sharing arrangements are also found with carbon financing schemes, including the Clean Development Mechanism.

As indicated earlier, in the extractive sectors such as oil, gas, and mining, there are valuable international experiences on collecting and distributing revenues, mostly through the creation of funds.[10] In addition, extractive industries offer insights into key principles in terms of process for determining the appropriate benefit-sharing arrangement. These insights include (IFC 2000)

- effective and culturally appropriate community consultation with the aim of building trust and identifying community needs;
- being proactive in initiating contact with affected stakeholders. Making engagement with stakeholders part of your core business strategy enables a proactive cultivation of relationships that can serve as "capital" during challenging times;

10 While this is not the focus of this study, in developing countries where benefit sharing from the forest sector is of concern, we are often operating in second-best situations. (Second-best situations are those in which the central government (1) does not have clear title and authority to engage in resource development, (2) does not have necessary capacity and effectiveness in providing public goods and services, and (3) is not able to regulate and enforce environmental compliance without conflict of interest.) The good practices for resource revenue management in second-best situations, as identified from international experience in extractive industries, are therefore pertinent for forestry. Some insights into collecting and distributing revenues are shared in Annex III.

- building and maintaining trust between the company, community members, and other stakeholders through consultation and participation, good faith, and transparency;
- managing communities' expectations by clearly defining roles and responsibilities of all parties involved;
- developing appropriate capacity (through third-party engagement) and mobilizing core competencies to promote community development;
- forging strategic partnerships;
- setting measurable goals and report on progress in a transparent manner;
- taking a long-term view and plan for the arrangement to have an impact that continues long after the company's involvement; and
- tailoring the process to fit the project.

While all of the elements mentioned above are central for effective collaborative arrangements, communication, participation, trust, transparency, practicality, verifiability, mechanisms for addressing conflict, full bargaining, mutual respect, and common expectations are repeatedly identified as important. The importance of some of these elements (e.g., participation, communication, trust, and mechanisms for addressing conflict) is self-evident in the overview of principles and factors presented above, while for others it is more nuanced. For example, practicality is reflected in points such as securing the contribution of both sides, customizing payment modalities, building capacity as needed, and being sensitive to biophysical dimensions and the characteristics of the community. The importance of verifiability is captured in the emphasis on monitoring. Full bargaining, mutual respect, and common expectations emerge from the call for equitable decision making, clear rules, government recognition, perceived fairness, and mechanism for shared decision making.

"WHAT IS IMPORTANT" FACTORS

Before beginning case studies, the authors reviewed literature on principles for effective collaborative arrangements (see discussion above), consulted with experts, and studied the literature in the fields of negotiation and dispute resolution to develop a preliminary list of twelve important factors in making community forestry arrangements. This list of twelve factors was not viewed as comprehensive but one that captured many of the key principles identified in the literature as well as by experts. The list was to serve as a starting point to elicit information from key informants on what they viewed as key factors that influence the process of making and keeping an effective collaborative arrangement. The discussion below introduces these factors.

Although many of these points come from fields concerned with agreement-making, these insights also are relevant to agreement-keeping. In a community forestry partnership, the sides may make a basic deal, but then need to engage again and again for many years as the partnership works toward its goal. Some discussions and negotiations may be planned, such as an annual review of prices to be paid for forest products. Some may arise unexpectedly, such as a need to respond to a fire or accident. Many are minor and informal. Some may be more formal, by design or by lack of design. In any case, the partners must communicate and come to understandings many times over the years to make the project succeed.

The security of the partners' rights was critical to partnerships (see Lindsay 1999). The land tenure rights must be reasonably clear. The agreement must follow local law. The whole arrangement must be **(1) legally valid.**

A widely known model from the negotiation literature emphasized the importance of the parties discussing their interests and seeking mutually beneficial outcomes (Fisher and Ury 1991). Negotiations almost always have both competitive and collaborative aspects. Each side has selfish motives, but the parties can achieve more by cooperating than either could by acting alone. That is the reason a partnership makes sense.

The challenge is to identify the opportunities for mutual advancement. That requires discussion and engagement: The agreement must be **(2) fully bargained.** The sides have to identify the issues at hand and their interests in each issue. Only after the issues and interests are known can the sides effectively find the best opportunities for collaboration.

To the transformative school of conflict resolution, the relationship between the parties is more important in the long run than the terms of any specific agreement they might make (see Bush and Folger 2005). The partners must have **(3) mutual**

respect: they must feel respected and must in turn respect the other partners. The partners must treat each other as equals.

The negotiation and conflict resolution literature also has much to say about achieving **common expectations.** Negotiation is an exercise in managing expectations (Miller and Colosi 1989, pp. 38–40). If Side *A* believes it deserves more than Side *B* has offered so far, *A* will not agree to a deal. If *B* can change *A's* expectations, *B* may be able to get *A* to accept less.

The narrative school of conflict resolution sees agreements partly in terms of common expectations. In a healthy partnership, with **(4) common expectations about the project**, the two sides tell compatible stories about what will happen under the arrangement (Winslade 2006).

Partners must also have **(5) common expectations about what it means to keep agreements** within their cultures. The two sets of expectations overlap. For example, *A* might see deadlines as essential to the project, while *B* sees them as inherently flexible. If the two sides do not arrive at a common understanding of what it means to meet a deadline or, for that matter, to keep to the terms of an agreement, there will be problems.

(6) Self-determination is a core value of many schools of dispute resolution. Each participant should see the agreement as its own choice, and as a way to achieve some of its own goals (see, e.g., Bannick 2007). The participants should "own" the agreement, and feel accountable for the partnership's success or failure.

The negotiation literature, and the literature on community involvement, both stress the importance of **(7) trust** (see, e.g., Miller and Colosi 1989, p. 5; IFC 2000, p. vii). Agreements are based on promises. If one party does not trust the other to keep promises, the inducement to enter the agreement is significantly lower. If something goes wrong during the course of the agreement and there is no trust between the parties, small problems become large problems.

A study of the successes of agreements resolving environmental disputes identified the importance of **(8) practicality** (Orr, Emerson, and Keyes 2008). The participants must have the capacity to carry out the arrangement. The agreement may require technical knowledge, capital, equipment, infrastructure, or simply labor and time. If the underlying project is impractical, the partnership will fail.

Orr, Emerson, and Keyes (2008) also note the importance of **(9) verifiability**. In a list of elements of a good agreement, they include that the agreement "contains a mechanism for assuring that the participants will know when the agreement is implemented, contains clear and measurable standards to be achieved, [and] contains provisions for monitoring if standards or objectives are achieved."

(10) Communication is important. Problems eventually arise in any partnership. The sides need easy-to-use channels of communication to deal with the expected and the unexpected.

Addressing **(11) past history** is also important. If the parties have clashed in the past, with lingering anger or resentment, they are unlikely to be able to create a constructive partnership.

Finally, the project should offer **(12) incentives**. This requires that the parties who have control over the resource are partners to the arrangement, and that the parties actually gain from a successful arrangement.

These twelve factors are not independent principles. In fact, they overlap and often reinforce one another. For example, mutual respect helps build trust. Communication is important to full bargaining, and is also a key contributor to trust. The factors seldom conflict, although it is possible to imagine situations where overemphasis on legal validity could begin to weaken trust, or overly complex verification mechanisms could threaten practicality.

3 Analysis

The analytical approach adopted has four components:

- Typology for the collaborative arrangements examined in this study.
- Analysis of the data collected through the survey and interviews against "what is important" factors. These factors are considered to be important for agreement-making and also agreement-keeping.
- Contract analysis for a subsample of cases obtained against key aspects of contract development.
- Linkages between context and the "what is important" factors that respondents choose. The objective of the latter is to ascertain whether there are some factors that are viewed as important in certain contexts.

In this section we present the analysis.

TYPOLOGY OF COLLABORATIVE ARRANGEMENTS

The collaborative arrangements examined in this study can be characterized in different ways (according to the parties involved, resource base, objective, etc.). Earlier work on contractual arrangements has indicated the importance of property rights and risk distribution in influencing negotiations; transaction costs; and outcome of the arrangement. Reflecting on these factors, this study uses a classification of the collaborative partnership arrangements examined that is based on property rights, risk exposure to communities, and market orientation[11] (A. L. Simula 2008). Market orientation (i.e., for profit or not for profit) is included as it shapes the objective of the arrangement:

- *Market-driven community arrangements*—this includes company-related outgrower, tree farming, and carbon credit schemes. These occur on private land, have a profit orientation, and offer a sharing of production and market risk between the community and the private entity.
- *Supply-driven community arrangements*—this includes joint forest management agreements between state and community, or

11 It should be noted that these collaborative arrangement categories are not mutually exclusive, there is some overlap.

state-driven arrangements for generating environmental services on public lands. These arrangements occur on state land and usually offer low risks for the community.

- *Benefit-sharing arrangements*—this includes private sector and communities and is an obligation associated with obtaining concessions and short-term deals with timber-selling deals or other short-term cooperation. These arrangements occur on public lands, and the companies' activities are for profit and present low risks to communities.
- *Public–private community partnerships*—this includes agreements between the state, private entities, and communities; leases on communal lands; and CBFM. These arrangements occur on land where communities have long-term rights; they are not necessarily for profit and pose low risks to communities.

Thirty-six in-depth interviews were conducted for this study. Of these, twenty-nine interviews form the basis of the detailed analysis of twenty-seven cases,[12] and two BioCarbon Fund cases were reviewed based on available Bank project documentation. The total number of cases, therefore, is twenty-nine. Using the aforementioned typology, the twenty-nine cases can be classified in the following manner:

- fourteen market-driven community arrangements;
- seven public-private and community partnerships;
- five benefit-sharing arrangements (four in mining and one in forestry);
- three supply-driven community arrangements.

The regional breakdown of the cases covered in the interviews is

- fourteen interviews on African cases;
- thirteen interviews on Latin American cases;
- one interview on a case in North America;
- one interview on a case in the East Asia Pacific region.

Of these cases, eight were on payments for environmental services.

Annex IV presents a summary table of the cases examined in detail and a brief description of a subset of these cases to illustrate the types of arrangements that were examined in detail. Respecting the confidentiality requests of some of the respondents, information on location is presented in a somewhat general manner. Specific names of respondents or companies are not provided in the report unless such usage was approved by the respondent.

The Factors Reconsidered

The following discussion considers the general survey and interview responses, discusses the factors one by one in light of the case interviews, and then considers some additional factors suggested by respondents.

The electronic survey received 120 "hits"; however, not all resulted in completed surveys. Table 1 presents a breakdown of the respondents' background (the question eliciting this information allowed respondents to choose more than one option, resulting in a response summary that exceeds 100 percent).

Eighty-nine respondents selected at least one factor as most important, and seventy-six selected at least one factor as unimportant. The responses are shown in Figure 1 as a percentage of the number responding to the particular question—in other words, the "important" responses are a percentage of $N = 89$ and the unimportant a percentage of $N = 76$.

These factors had all been identified as important, either in the literature or by experts, so it is not surprising that all factors received votes. Most were selected by 50 to 70 percent of the respondents. The

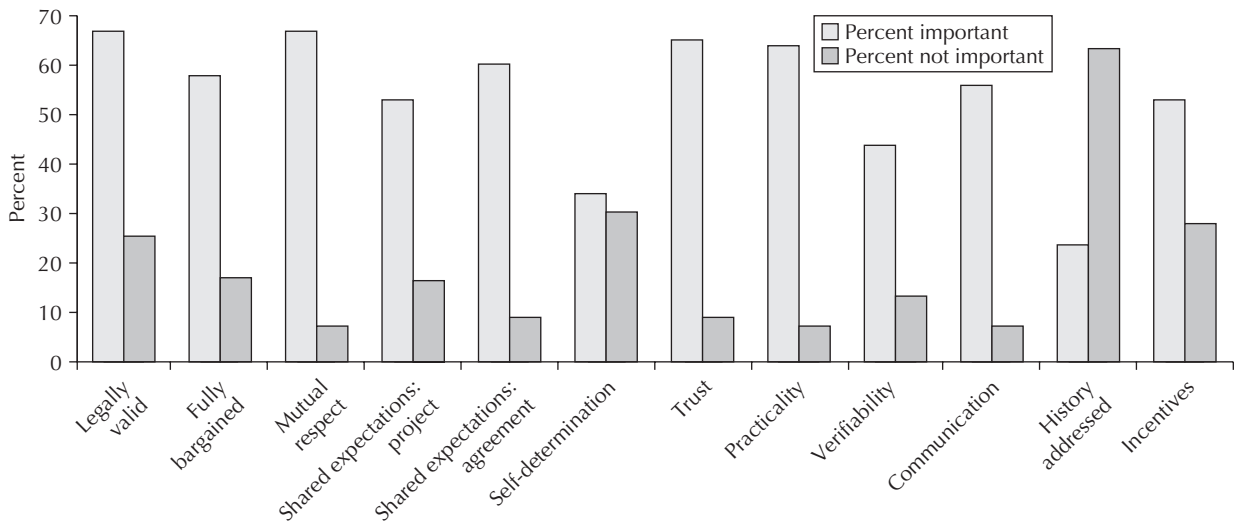
Table 1: Characteristics of Survey Respondents

Respondent Type	Response Percent
Party to an arrangement	44.8%
Helped design or negotiate an arrangement	43.8%
Advised the parties in the arrangement	32.3%
Researcher	17.7%
Development agent of a local or national group—government or nongovernmental organization (NGO)	47.9%
Representative of an international development organization or NGO	27.1%
Other (please specify)	14.6%

Source: Authors

12 For two cases we had two respondents for each of the cases.

Figure 1: Survey Response Summary



factors that respondents ticked less often (self-determination, verifiability, and history addressed) may still be highly important in some contexts or to some parties. This point is covered further in the discussion of individual factors.

The interviewers captured "what is important" responses from twenty-two of the case study interviews. Figure 2 summarizes these results.[13] Both survey respondents and interview respondents gave high marks (greater than 50 percent) to four factors, including Mutual Respect, Trust, Practicality, and Communication. These factors also received among the lowest "not important" score. Both sets of respondents gave nearly as high an endorsement of a second tier of factors, including Legally Valid, Fully Bargained, Shared Expectations Concerning Agreements, Verifiability, and Incentives. These second-tier factors were selected more often as "not important" than the first four aforementioned factors. The interview respondents were not as negative about History Addressed as the survey respondents, but negatives still exceeded positives, suggesting that this factor is only important in particular projects.

The notable deviation in the responses between the survey and interview respondents concerns the factor Shared Expectations Concerning the Project. This is probably due to a systemic error in administering the interviews and surveys. In some interview and survey versions, the description of these factors makes the Project factor refer to the particular agreement at hand, while the Agreement factor refers to general cultural attitudes toward making agreements, honoring deadlines, and so forth. In others the Project factor seems to refer to the eventual outcome of the project while the Agreement factor refers to the parties' understanding of the specific agreement at hand. Most survey respondents saw the first version, and the two factors got close to equal marks. More of the interview respondents saw the second version, and they indicated that understanding of the agreement was more important than expectations about project outcomes.

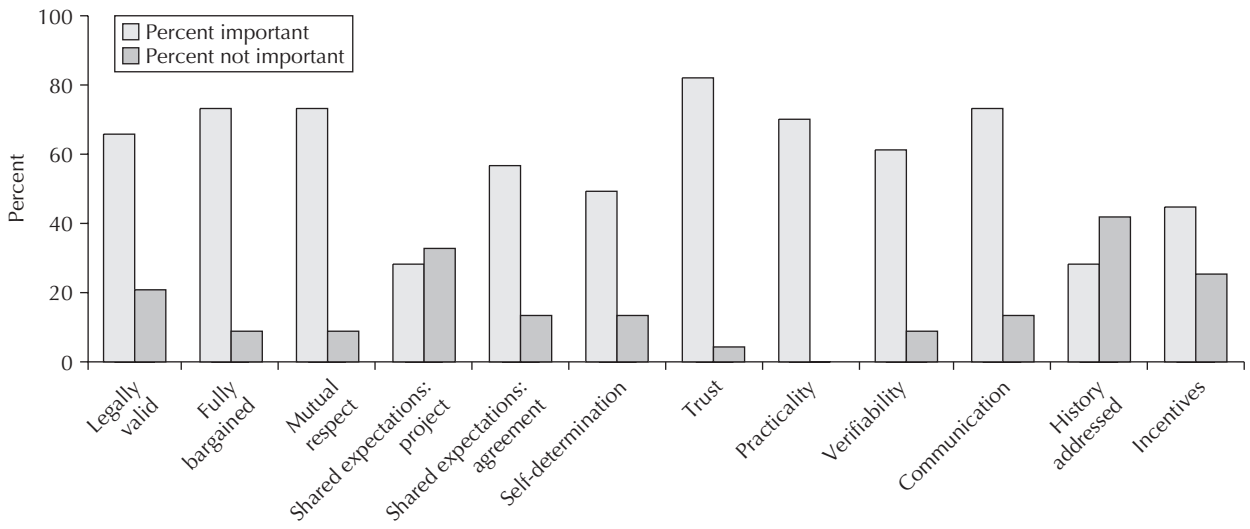
The surveys were not designed to produce statistically robust, quantitative results. The survey takers were self-selected, and the total sample size of about one hundred respondents is relatively small. To avoid a false sense of the accuracy or statistical significance of the survey, the following results are offered in general terms. Votes are given to the nearest 10 percent (one significant figure).

The Factors, One by One

A. Legally Valid: ***It's important that the promises and duties of all sides in the project be written out somewhere—in a contract, a charter, a regulation,***

13 Note that Figure 1 and Figure 2 are not on the same scale: the top of the graph in Figure 1 represents a 70 percent response, while the top of the graph in Figure 2 represents a 90 percent response. Also the responses in Figure 2 do not include the "what is important" responses from the resource persons.

Figure 2: Interview Response Summary



or some other formal, comprehensive, and legally valid and enforceable document.

About 70 percent of survey and interview respondents ticked this as an important factor. About 20 percent ticked it as not important.

Having rights defined and backed up by law is a way to reduce the moral hazards inherent in the partnership. It becomes more difficult for a party to escape its obligations if there are avenues for third-party enforcement.

Legal validity is not simply a matter of drawing up a contract. First, the underlying rights to the project land must be legally secure. In countries with good land tenure systems, this may be a straightforward matter of checking the land records, but in many countries this is not a simple matter. To verify ownership, the parties may have to point to records of paying land taxes or may have to get a declaration from the local community leaders. If there are claims of customary rights to the land, identifying what these are and who might claim these can be difficult.

In interview cases from Tanzania (see Annex IV for a brief description of case 2) and South Africa (see Annex IV for a brief description of cases 3 and 4), the community first had to obtain rights to the land or to water use. This complicated the establishment of the partnership and often added delays. In one case from Lao PDR (see Annex IV for a brief description of case 7), the country was reorganizing its land administration, an additional factor to which the project had to adjust. In Tanzania, the project was only possible because of recent legal reforms that authorized local control of public forests.

In a case from Uruguay and one from Bolivia (see Annex IV for a brief description of cases 8 and 18 respectively), the parties took the step of recording the project contracts in the land records. The contracts were structured to make the obligations attach to the land, no matter who owned it—by recording the contracts, the parties gave potential buyers notice of these obligations, ensuring that any buyer would be legally bound. In a case from Ecuador (see Annex IV for a brief description of case 21), the parties decided that it was not worthwhile to place the contracts in the land records, because the law would not allow the partner to enforce a claim against community land.

The cases showed that contracts were not the only mechanism for establishing rules governing the partnership. In the case from Tanzania (see Annex IV for a brief description of case 2), although the partner was a regional nongovernmental organization (NGO), the basic land management promises were captured in the management plan (effectively, an agreement between the community and the government) and the certification standards of the Forest Stewardship Council (FSC) (a relationship between the community and an outside NGO and auditors). In a case from Nigeria (see

Annex IV for a brief description of case 6), the basic agreement will be in the bylaws of the legal body set up to manage the land.

The cases showed that to ensure that the rights of parties are fully documented, there may need to be more than a single contract involved in a partnership, and there may need to be contracts with others besides the main partners. In a case from Ghana (see Annex IV for a brief description of case 1), the partners had three agreements. In the World Bank's BioCarbon Fund projects, there are agreements between the bank and a regional NGO, and agreements between the regional NGO and individual landowners. In another South African case (see Annex IV for a brief description of case 3), there was an agreement between the community and the business partner and a separate agreement with the community, the business partner, and a government lender. In a USA case (see Annex IV for a brief description of case 5), there were separate contracts and sometimes subcontracts with service providers for specific stewardship activities.

Finally, the cases showed that contracts have roles to play even if they are not legally enforceable. In South Africa, probably typical to outgrower schemes, a company said it would just be too costly to go to court to enforce a contract against a single landowner (see Annex IV for a brief description of case 4). In a case from Ghana (see Annex IV for a brief description of case 1), the parties negotiated detailed contracts, with lawyers counseling both sides in the negotiation, but with the main contract specifically stating that the agreement is not enforceable in court. Still, that agreement is valuable.

The process of hashing out the agreement in the Ghana case forced the two sides to discuss the project, to consider the possible risks and problems, to understand each other's positions and interests, and to come to a genuine agreement on terms. In other words, the process of writing the agreement helped promote some of the other important factors, such as full bargaining, arriving at mutual expectations, practicality, and communication. Creating a nonenforceable written agreement also allowed the sides to explore details that would have been difficult to discuss and capture in an oral understanding. In this case as in a number of others, the parties created detailed procedures to handle grievances that might arise during the project.

The sides in this case signed their agreement in a formal ceremony witnessed by a few thousand members of the community and important national officials. This created social and political pressure to honor the agreement, even absent legal pressure to do so. Having an agreement that is transparent or widely published serves much the same purpose (Barr, personal communication, April 8, 2009).

Finally, having a written agreement will serve the sides when conflicts arise. They can refer back to the agreement and be much clearer on exactly what they originally promised. Almost all the cases said that they had put their entire agreement in writing in one form or another: in a contract, a management plan, or other document. Notably, in one case in Cameroon (see Annex IV for a brief description of case 11), the contract did not include the "commercial" components of the agreement; in that case, the sides have had disagreements over whether the business is paying enough royalties to the community.

On the other end of the balance, negotiating a legally enforceable agreement may delay the project and add to its cost (Wunder, personal communication, April 8, 2009). Also, some partners may be put off by the formality or complexity of legal agreements and may think that a party that requires such formality must be untrusting, untrustworthy, or just odd.

B. Fully Bargained: ***It's important that the sides really bargain with each other, that they talk enough to understand each other's needs, and that they reach agreements where both sides win.***

About 50 percent of survey respondents and 80 percent of interview respondents identified this as an important factor. About 20 percent and 10 percent respectively said it was not.

A key role of bargaining is to improve the efficiency of the agreement. Properly carried out, bargaining allows the sides to identify opportunities to increase the overall value of the project. Where information is not shared, parties may engage in adverse selection, opting for a less efficient outcome because the more efficient alternative was undiscovered.

Bargaining can also help reduce asymmetries in information. It allows the sides to question one another and educate each other. Often participation in bargaining will make a side realize that it needs to understand the proposed project better or to have outside expert advice. In Ghana (see Annex IV for a brief description of case 1), the company partner gave the community funds to retain its own experts

to facilitate full bargaining, in the process helping to create a level playing field and build trust.

The role of bargaining in creating written contracts may vary with the scale of the case. Specifically, bargaining plays out in different ways in cases involving a single partnership compared with cases involving separate agreements with multiple partners (Wunder, personal communication, April 8, 2009). In the cases with a single community and land holding, the situation commonly involved long and detailed discussions of the project with the community, sometimes over months or years.

In the cases with multiple communities or landowners, the use of standardized contracts was more common. It would be impractical for a company to oversee multiple outgrower contracts unless they all have the same basic provisions (Schmidt-Liermann, personal communication, May 5, 2009). With a contract template, the scope of negotiation may be limited to a few variables, such as price.

Even when using standard contracts, the drafting party can engage in careful study and consultation before creating the model. In a case from Colombia (see Annex IV for a brief description of case 19), the NGO consulted with the local association of cattle ranchers, because the projects would involve grazing and grazing lands. In Lao PDR (see Annex IV for a brief description of case 7), the company discussed the project with multiple villages and conducted social and environmental studies before proceeding. In a South African case (see Annex IV for a brief description for case 4), the company conducted consultations on the standardized contract with potential participants. In several cases the "outside" partner had the advice of people who had been working in the area for many years and had a good sense of the local context.

Although bargaining can increase efficiency, it can also increase transaction costs. It takes staff time, and it may delay the start of the project and the beginning of profitable activities. Where support of multiple stakeholders is necessary for success, bargaining needs to be inclusive (Cadman, personal communication, 2009). In some of the interview cases, third parties provided financial support, licenses, or ancillary services. These third parties had to be part of the negotiations. In some of the cases, the parties had to discuss their plans with neighboring communities to avoid disputes over land boundaries and use. In cases where there was a question whether the leaders truly reflected the whole community, partners found it wise to reach out to groups within the community.

The literature stresses the importance of actually asking people about their interests and not presuming that you already know (e.g., Fisher and Ury 1991). People will often bargain by stating *what* they want (their position), and it is easy for one side to make assumptions about *why* the other side has taken a particular position. These assumptions may not reflect the true interests of the other side. For example, a company might assume that a community wants access to the forest for fuel or timber, but the real interests may be much broader. In Cameroon (see Annex IV for a brief description of case 13), conflicts arose over harvest in areas of cultural and religious value to the community. More thorough discussions with the community might have brought those interests to light and perhaps produced an accommodation.

C. Mutual Respect: ***It's important that the sides can deal with each other respectfully, and that no side is considered inferior to another or under the control of another.***

About 70 percent of survey respondents and 80 percent of interview respondents said that this was important. About 10 percent from both sets said it was not.

The respect that the sides have for each other often affects the respect that the sides have for the underlying agreement. Further, where the sides respect one another, they are more likely to listen to each other seriously. This helps both in making agreements and in dealing with problems that arise later.

This factor has an element of social relations and an element of practical power. The social relations element often reflects past dealings. For example, where governments have taken control of forests away from traditional users, respect between the government and local communities may be low. The government may view the local communities as uneducated in forest matters and disrespectful of the law, and may resist giving local people control of the forest. In Tanzania (see Annex IV for a brief description of case 14), this was a problem even though the government was not a formal partner to the project but merely needed to give approval. In turn, the community may view government officials as uncooperative and self-interested, and this disrespect may spill over to cover the laws that

officials enforce. This can be a problem if compliance with local forest law is crucial to the project, as it is in projects involving certification.

Some of the cases noted the need to respect local customs in dealing with communities. In Ghana, DRC, and South Africa (see Annex IV for a brief descriptions of cases 1, 28, and 4 respectively) noted the need to show proper deference to the local chiefs. In Lao PDR (see Annex IV for a brief description of case 7), the outside partner needed to supply ritual food for important meetings.

The practical power element of this factor affects the ability of the sides to deal on an equal footing. Sometimes power is inherent in the starting positions of the parties, as when one side owns the land. There is not much to do about that, unless one side is willing to bargain away its powers. However, sometimes power flows from knowledge, skills, or information. Asymmetries in these areas, as seen in the cases, can be addressed through appropriate information exchange, capacity building, or third-party engagement in an advisory capacity.

It's important that when agreements are reached, all sides have similar expectations about what the project will require and what the outcome will be. That applies to—

D. Shared Expectations about the Project: ***What it will require from each side.***

About 50 percent of survey respondents and 30 percent of interview respondents marked this factor as important. About 20 percent and 30 percent respectively marked it as unimportant.

The interviews identified a few areas where expectations of one party were unrealistic or did not match the other party's expectations. In some cases these situations led to dissatisfaction or even conflict.

One area was the expected benefit from the project. Where one side had an unreasonable expectation of a large benefit or a rapid benefit, interview subjects cited this as contributing to lower satisfaction.[14] In Ghana (see Annex IV for a brief description of case 1), some people in the community had unrealistic expectations about the money the company would pay for relocation or as compensation for damages to crops from project activities.

In Tanzania (see Annex IV for a brief description of case 2), the communities had too low an expectation of the income they could get from sale of their wood if it were certified. Once the NGO educated the communities about the potential value of certified wood, the enthusiasm of the communities increased.

Some of the business partners had unrealistic expectations about timing, delays, and cooperation of third parties.[15] Participants in a case in South Africa (see Annex IV for a brief description of case 3) have been surprised at costly delays in obtaining outside credit for the project. In a case from Ecuador (see Annex IV for a brief description of case 20), both sides have been surprised by the slowness of the pace, with the community still unable to supply the expected volumes of wood.

In a successful partnership, the sides must have a common understanding about risks (Loumann, personal communication, 16 April, 2009). Projects may be subject to risks from natural events, from changing laws, from conflicts, from accidents, and from other causes. In Colombia (see Annex IV for a brief description of case 19), the parties discovered the project was vulnerable to sharply shifting currency exchange rates. Partners should talk about foreseeable risks before the project starts, to understand what each side's responsibilities would be in case of the event. Also, partners should design the project to minimize the losses from risks. For example, a company could make arrangements with many communities, so that it can weather the failure of projects in one or two communities.

Sometimes partners are unaware that the project will lead to cultural changes (Loumann, personal communication, April 16, 2009). A project's tight work schedule may interfere with a community's traditional cultural or economic activities. Landowners' indifference to deadlines may force a company to reconsider its own carefully scheduled production plans.

A possible source of mismatched expectations is a side's prior experiences in similar projects. In Bolivia (see Annex IV for a brief description of case 18), a company created a direct partnership with a

14 Some information was obtained on a case from Kenya that did not fit into the typology used for this study. This information, while not for a partnership or benefit-sharing arrangement, provides interesting insights on this point because it involved one of the parties having unrealistic expectations about the cost of buying the wood resulting from the partnership.

15 Some information was obtained on a case from Indonesia that did fit into the study's typology, and the intent was originally to involve thousands of acres of government land. In the end, with delays in government approval, the project involved a much smaller area of private land.

community that had previously worked through an NGO. The company complained that the community had come to expect services and support from its partner that were beyond the norm in business dealings—in effect, the community had become dependent on the NGO and expected the company to play the same supportive role.

E. Shared Understandings about Agreements: ***A shared sense of what it means to make and keep an agreement, or at least an understanding and acceptance of the cultural lens through which the other party will view the agreement.***

About 60 percent of survey and interview respondents said that this was important. About 10 percent from both sets said it was unimportant.

The making and keeping of promises may be a universal in human culture, but the understanding of what parts of an agreement are central is far from universal. This is true even within developed countries. For example, if the contract does not indicate that the deadlines are crucial ("Time is of the essence" or words to that effect), a court might read deadlines as including implicit grace periods or as not being elements whose breach would justify ending the contract.

This factor is less important if all sides are used to dealing in a market economy (Wunder, personal communication, 2009). Then there is a common set of expectations to draw upon.

In Lao PDR (see Annex IV for a brief description of case 7), a case involving a community practicing shifting cultivation, the business partner concluded that the community simply could not understand what it meant to enter into a seven-year tree-growing project because they had never been involved in a project with such a long timeframe. Only time could bring their expectations in line with reality.

F. Self-Determination: ***It's important that all sides enter the project freely, with an eye toward achieving their own goals, whatever they may be.***

Only about 30 percent of the survey respondents and 50 percent of interview respondents considered this an important factor. About 30 percent and 10 percent respectively considered it unimportant.

In the conflict resolution literature, self-determination is widely considered a "core value" of good practice, so it is interesting to see its relatively low ranking among the surveys. It could be that self-determination is more of a concern for advisors and neutrals than for the parties. In particular, advisors and neutrals should not take on the role of decision makers. If the party does not make its own decision, the party will not "own" the decision or feel accountable for its success.

Some people were familiar with cases where people had little choice about participating in projects, with poor results. In problematic cases in China and Vietnam, the government brought strong pressure on the people to participate, and the results were not good (Wunder, personal communication, 2009). Of course, in these cases there would also have been a failure of bargaining and perhaps also of incentives.

In the answer to the question of "what is missing" from the list of important factors, a few people suggested factors tied to self-determination at the community level. One person said it is important to empower local communities. Another said it is important to have the endorsement of local assemblies. This suggests that some respondents had a different interpretation of the term "self-determination" than the survey designers.

One interview subject said that "self-determination" is an overly idealistic goal in the forestry context, given the constraints of forest management. The survey designers did not intend self-determination to mean that parties can have anything that they want. It only means that parties can make their own choices, within the constraints at hand.

G. Trust: ***It is important that the sides trust one another.***

About 70 percent of survey respondents and 80 percent of interview respondents selected this factor as important. About 10 percent of survey respondents selected it as unimportant.

Because the interview protocol specifically asks about the level of trust in partnerships, trust was often discussed. Some experts saw trust as being more or less synonymous with having a good working relationship. In that sense, they saw trust as more important than the other factors, more important even than having a written agreement. One interview subject in Bolivia (see Annex IV for a brief description of case 18) said that trust was the basic component of the partnership and a basic reason for satisfaction. If a party distrusts its partner, it will often suspect that it is not getting fair benefits from the arrangement. An

interview subject from South Africa (see Annex IV for a brief description of case 4) said that the first year of the agreement was formal and ran according to the contract; once the parties got over that first year and saw that each was reliable, the remaining years of the partnership ran on trust.

A number of people mentioned that trust was growing as their projects continued. One person said that trust "evolves." Indeed, as discussed further in the next section of this study, trust is more an outcome of good practices than an input (Cadman, personal communication, 2009). In the few projects where one or both parties were failing to meet their commitments, the respondents reported that trust was diminishing.

Transparency contributes to trust. One business respondent said it was careful to handle any monetary transactions through bank transfers rather than cash, to create a verifiable record to show if questions later arose about allocation of income from the project.

When the authors asked people what factors were missing from the list, some of the suggestions were linked to trust. For example, two survey respondents mentioned professionalism, and part of professionalism is being trustworthy. A few mentioned the importance of persistence, a "permanent commitment with relationship," or "100 percent commitment." This too can help build trust, as the other parties come to see the persistent party as reliable and dedicated.

H. Practicality: *It's important that the project agreements are practical, considering the context and the capacity of the participants.*

On the survey, Practicality had scores nearly identical to Trust. Practicality received one fewer vote than Trust as an important factor, and the same number of votes as an unimportant factor. Seventy percent of survey respondents selected it as an important factor, while none of them viewed it as not important.

The interview protocol suggested several specific areas where practical problems might arise, including legal issues and knowledge, technical knowledge, financial matters, cultural understanding, tools and equipment, infrastructure, and capital. The following list describes some of the problems that arose:

- *Insecure or insufficient budgets.* This was a problem in the case from DRC (see Annex IV for a brief description of case 26), where changing market conditions had reduced project income. A partnership in USA (see Annex IV for a brief description of case 5) was slowed when the government partner had a limited budget for environmental assessment and planning.
- *Managerial and financial capacity.* Several interview subjects noted the need to improve the business skills of their community or small landowner partners.
- *Time.* As mentioned earlier under Shared Expectations, delays are common. The schedules of projects are often impractically tight.
- *Technical capacity.* A partnership in Bolivia (see Annex IV for a brief description of case 10) failed because the community lacked the technical capacity to run a sawmill. Communities in a partnership in Tanzania (see Annex IV for a brief description of case 14) had no forestry expertise and had to be taught basic concepts of forest inventorying and recordkeeping.
- *Tools and infrastructure.* In some isolated areas, just moving the logs to market is a problem, or traveling to the site to inspect it. Many areas had limited communication options. In a South African case (see Annex IV for a brief description of case 4), some rotations had to be shortened because the landowners lacked the tools to move large logs.
- *Capital.* Initial costs are often an issue for the community. There may be costs associated with licensing, equipment purchase, labor, transportation, and so forth that arise before the projects generates any income. In a South African project (see Annex IV for a brief description of case 3), a basic problem was that the government granted the community rights to land without any initial provisions for working capital.

Not all practical issues will be apparent at the beginning of a project; parties should think about structuring their agreement to address practical issues as the project unfolds. For example, the project could be designed around a long-term central agreement supported by short-term operational agreements frequently negotiated and adjusted to deal with new issues (Loumann, personal communication, 2009).

I. Verifiability: *It's important that compliance with the agreements is easy to verify.*

About 40 percent of survey respondents and 60 percent of survey respondents selected verification

as an important issue. About 10 percent from both sets marked it unimportant.

The need for verification seems to depend on the project and the parties. For some communities and landowners, their benefits are specific and relatively easy to verify: They get access to land or they do not; they get paid or they do not; the road gets built or it does not. There is no need to specify particular verification measures or procedures.

For some business or government partners, the desired outcomes are more subtle: restoration of degraded forest, conservation of environmental services, distribution of training and job opportunities to marginalized community members. These may take some effort to verify, and the parties may need to cover verification in their agreement. Some of the contracts for environmental services have provisions for periodic site inspections, for example.

Some respondents suggested that it is helpful to have a third party involved in the arrangement to serve as a facilitator if conflicts arose and in some circumstances, a verifier. In the case from Ghana (see Annex IV for a brief description of case 1), parties hired a professor from a local university to serve as a facilitator.[16]

J. Communication: ***It's important that the parties can communicate with each other readily and easily throughout the project, without physical, behavioral, or cultural barriers.***

About 60 percent of survey respondents and 80 percent of interview respondents indicated that communication was important. About 10 percent from both sets said it was unimportant.

Open channels of communications let the parties talk easily if questions or problems arise. Some outside partners achieved this by stationing a representative in the community. For example, in a case from Tanzania (see Annex IV for a brief description of case 17), the supporting NGO established a network of locally based advisors. Partners in several projects scheduled regular meetings.

Communication must flow in both directions and must not be restricted to particular kinds of information. For example, having one side file regular reports on species and volumes harvested is no substitute for having open dialogue. Like trust, communication is not an end in itself but something that serves other purposes (Loumann, personal communication, April 16, 2009).

One idea that emerged from the interviews is that communication is not as simple as two parties talking. Usually, the sides talk through representatives. Does the representative have the authority to speak for the side, or can the representative only listen and dispense technical information? In a USA project (see Annex IV for a brief description of case 5), the local community experienced a major, trust-weakening disappointment when the central government overruled a spending decision endorsed by the local office of the government. In the same vein, in Cameroon (see Annex IV for a brief description of case 13), positions shifted when leadership changed in either the community or the company, meaning that the representatives at the table suddenly found themselves out of step with their leadership. Is the local representative actually carrying information back to the group? In Tanzania (see Annex IV for a brief description of case 2), the outside partner required village representatives to produce minutes of community meetings to demonstrate that they were acting as a real two-way conduit of information. In Bolivia (see Annex IV for a brief description of case 18), the company reserved the option of raising issues with the community representatives or with a full meeting of the community. Is the representative reaching the whole community? In Lao PDR (see Annex IV for a brief description of case 7), the outside partner used female employees to create a separate line of communication to women, rather than depend on the all-male community leadership to represent women's views.

Communication raises different challenges in a project with basically two parties compared with a project involving a large number of individual participants, such as a broad-based payment for environmental services scheme (Wunder, personal communication, 2009). In the two-party situation, the parties can easily talk every week or even every day. In a large carbon sequestration scheme, it would be hard to check with every landowner every week. Such communication might impose unacceptable transaction costs. Still, projects can take steps to make communication easier. Some partnerships with multiple landowners stationed

16 In two cases that did not fit the typology used in this study, interesting third parties were involved; a government museum played a facilitation role for the case from Kenya, and in the case from Indonesia, an NGO partner was able to facilitate certification for community members and sometimes to vouch for them in contracts with third parties.

foresters in the community to be the eyes and ears of the outside partner. The case from South Africa (see Annex IV for a brief description of case 3) provided participants with access to email. The case in Tanzania (see Annex IV for a brief description of case 2) established a practice of ringing back. The participants could call the outside partner's phone and let the line ring once or twice to capture the number, then hang up to save charges. The partner would then call the participant back.

K. History Addressed: ***It is important that project agreements address any past conflicts between the participants, and try to resolve them.***

This factor was the least favored among survey respondents. Only about 20 percent of survey respondents and 30 percent of interview respondents said that it was important, while about 60 percent and 40 percent respectively said it was not. This may reflect the fact that in most of the case studies, the parties had no prior history of dealings.

The case studies and interviews with experts identified two kinds of historical conflicts other than past conflicts between the participants that sides should consider. One is conflict over land. More specifically, if the community's history involves loss of ancestral land, addressing it may be crucial (Cadman, personal communication, 2009). As Machiavelli wrote,

> "[A]void seizing the property of others; for men forget more quickly the death of their father than the loss of their patrimony." Niccolò Machiavelli, *The Prince*, Ch. XVII (Peter Bodanella and Mark Musa, trans., Oxford University Press 1984).

In a case from Tanzania (see Annex IV for a brief description of case 2), the outside partner had to settle a land dispute between two participating communities before the project could proceed. In the case from Nigeria (see Annex IV for a brief description of case 6), according to the supporting NGO, the greatest project benefit perceived by the community was extinguishing the competing land claims of the community's neighbors.

The other kind of historical conflict worth considering is a conflict that one side has experienced in a similar arrangement with a prior partner. In Cameroon (see Annex IV for a brief description of case 11), the community's prior partnership had failed due to corrupt practices by the community leadership. The new outside partner did not discuss this with the community and then found itself dealing with the same behavior and resulting conflicts. In a case from Ecuador (see Annex IV for a brief description of case 27), the community had been involved in a previous reforestation partnership that had broken apart after a technical failure to establish tree cover. The new partner discussed the situation with community members and came to an acceptable understanding with most of them about starting a new project; however, some in the community opted not to join in.

L. Incentives: ***It is important that project agreements involve the right parties and shape incentives so that the rewards for success flow to the people with the power to make the project successful.***

About 50 percent of survey and interview respondents said that this factor was important, while about 30 percent from both sets said it was unimportant.

From the interviews, it seems that people interpreted this factor in different ways. The survey designers intended it to refer to appropriate benefit-sharing. That is, the project should benefit current users of the land, so that they support the project and do not try to use the land in inconsistent ways. People in the interviews seemed to generally support this idea. Some mentioned the need to include all groups using the forest in project design. However, some people read this factor to mean that the project should reward the people in power.

The case studies showed that putting benefits in the hands of community leaders is not the same as putting benefits in the hands of those in the community who are important to the partnership. The case from Ecuador (see Annex IV for a brief description of case 27) abandoned cash payments to laborers after it determined the payments were contributing to alcoholism and not benefiting families. Instead, the participants began paying workers with coupons exchangeable for "primary goods" in the local market. One respondent in the case from Cameroon (see Annex IV for a brief description of case 11) noted that payments to community leaders did not get fairly distributed to the community. Another respondent said it was company practice never to share benefits with communities in the form of cash.

There is a weak relationship between factors identified as important and not important according to type of collaborative arrangement. In the case of public-private timber-selling deals (i.e., benefit-sharing arrangements), the small sample of respondents found that shared expectations from the project, communication, and trust were important. The selection of these factors makes sense given that a purpose of benefit-sharing arrangements is to compensate communities for any negative impacts and share a portion of the revenue. For public–private–community partnerships, most of the respondents in this category indicated mutual respect, practicality, and verifiability as important factors. The different starting points of the parties in the agreement (i.e., capacity, knowledge of market information, reliance on natural resource), and the fact that most of the public–private–community partnerships cases examined for this study were FSC certified partially explains the common factors.

There were no universally common factors for supply-driven community arrangements involving governments.

Additional Factors

The survey asked people to name any important factors that were missing from the above list. Box 2 contains a list of these factors, edited to place similar factors together.[17]

Some of these factors are clearly related to the original list and arguably overlap the existing twelve. For example, "inclusiveness" has elements of communication, full bargaining, and incentives. But the "Missing" list does contain some new ideas and some new emphases. What is interesting is how many of the additional factors are related to practicality, mutual respect, and trust—three of the universal factors identified in this study.

Because the original factors were heavily influenced by the literature of negotiation and conflict resolution, they may apply more clearly to agreement-making than to agreement-keeping. The offering of factors such as persistence, flexibility, and accountability might be a response to an agreement-making bias in the original list. However, as discussed later in this study, agreement-making and agreement-keeping blend in practice, and most factors apply to both processes

Some survey respondents called for transparency, accountability, and, when change is needed, flexibility. Projects should include monitoring and follow-through. Some survey respondents emphasized having sufficient technical knowledge and general support available to the parties. This seems closely allied to the idea of practicality.

Other survey respondents called for participatory decision making and inclusiveness. These factors are related to full bargaining and the associated exploration of interests. They are also related to communication and to getting the incentives right, and, in economic terms, to the capturing of externalities. For example, in at least two cases, the outside partner made a point of discussing the project with neighboring communities, to make sure that no part of the project would raise issues with them. In one African community, where cattle are culturally important, even though the outside company was making outgrower contracts with individual landowners, it made a point to address community leaders' concerns that the project was reducing the overall land available for grazing.

Some parties suggested that involving a neutral third party was helpful. A respondent from Cameroon (see Annex IV for a brief description of case 13), involved in several agreements, said that the ones subject to third-party certification seemed to produce the most satisfaction, although the respondent did not say whether this was because the certifying conditions included independent audits and verification or because the certification standards clarified expectations, required protection of local rights, imposed dispute resolution mechanisms, and led to higher income.

Respondents occasionally brought up the need to have supportive forest governance. A case from Tanzania (see Annex IV for a brief description of case 14) cited the problem of local forest officials opposing community control of resources. In a South African case (see Annex IV for a brief description of case 3), the government gave the community access to land, but the government did not plan to provide the community with the technical or financial capacity to manage the land. A few respondents mentioned corruption as a complicating factor. In another South African case (see Annex IV for a brief description of case 4), landowners were harvesting their trees early to reduce the threat of timber theft.

17 The list of additional factors includes factors identified by the resource persons interviewed for this study.

Box 2: Missing But Important Factors from Survey Respondents

- Supportive and transparent forest governance (related to Legal Validity and Practicality)
- Recognition of community ownership and entitlements (related to Legal Validity, Mutual Respect, and Common Expectations)
- Respect for indigenous culture, traditions, and beliefs (related to Mutual Respect)
- Appreciation of indigenous knowledge (related to Mutual Respect)
- Acknowledgement of power dynamics (related to Mutual Respect and Incentives)
- Economic benefits for all parties (related to Incentives)
- Equitable benefit sharing (related to Incentives)
- Economically sustainable outcomes (related to Incentives and Practicality)
- Environmentally sustainable outcomes, causing changes in forest management (an element of Practicality, and also Incentives for the sides valuing sustainability)
- Strategic support and guidance for communities and landowners (related to Practicality)
- Mentorship of communities and landowners (related to Practicality)
- High level of expertise (related to Practicality)
- Flexibility, with adjustment based on experience (related to Practicality)
- Adequate funding (related to Practicality)
- Appropriate levels of political intervention and support (related to Practicality)
- One hundred percent commitment, support, and guidance (related to Practicality and Trust)
- Professionalism (related to Practicality and Trust)
- Permanent commitment, full engagement (related to Trust)
- Follow-through on attainment or nonattainment of goals (related to Trust)
- All participants acting with goodwill and good faith (related to Trust)
- Transparent benefit distribution (related to Trust and Verification)
- Accountability and transparency, for participants and observers (related to Verification and Trust)
- Deliberative and democratic decision making and dispute resolution (related to Communication, Trust, Incentives, and others)
- A neutral third party to act as verifier and mediator (related to Communication, Verification, Participatory systems): inclusive, equal, and empowering (related to Self-Determination, Communication, Mutual Respect, and others)

Source: Authors

KEY POINTS IN A WRITTEN CONTRACT

The cases examined as part of this study reveal that written contracts play a range of roles in a collaborative arrangement. They can be symbolic and used to launch a deal, or they can be a point of departure (with very little detail included in the contract and most elements agreed upon later to maintain flexibility), or they can be the reference and legal document for solidifying a partnership. The objective, structure, and content of a contract clearly will vary depending on the context (including the purpose of the arrangement and parties involved).

In most situations, the written document is a tool and not an end in itself. Entering a written contract can lead the sides to explore roles and risks in detail; it produces a reference point for further discussion, and its execution impresses upon the parties that they are making a true commitment. It can also be a means of informing potential outside investors and others about the agreement; if the contract can be recorded in the official property records, it may be a means of binding future owners of the land (Asquith and Wunder 2008). The contract drafting literature declares that the best contract document is one that is negotiated, signed, filed away, and never referenced again, because the sides have come to a genuine meeting of the minds around a practical plan of action (Siviglia 2007; Stark 2007).

To better understand how partners have used and structured contracts in the various cases

examined by this study, the contracts available were analyzed against what were considered to be key aspects of a contract. Some of the key aspects (from Rosenbaum forthcoming) are listed below. These factors are sorted here into three groups. Factors I(A) and I(B) deal with the nature of the contract itself: its validity, wording, and scope. Factors II(A) and II(B) deal with the structure of the arrangement as reflected in the contract and relate to agreement-keeping and dispute resolution. Factor III deals with a set of issues of interest to lawyers: partly to do with the wording of the contract and partly to do with the structure of the agreement, these are technical issues that could become sticking points before a court.

I(A). If the partners want to be able to enforce the contract in court, the contract should be legally valid.

To achieve that, the partners should consider the following:

- *Local law:* Contracts must be consistent with local law and public policies, or courts will refuse to enforce them. Projects that involve transfers of property ownership or rights need to be analyzed from the perspective of property law.
- *Intent to be bound:* Contracts need to show, directly or by implication, that the parties intend to be legally bound by their agreement. Often, just the formality of the contract and the use of phrases like "The two sides agree" or "Side A promises that" imply the necessary intent.

I(B). The partners should create a contract that is clear and understandable, and reasonably complete in capturing the agreement.

Making an understandable and complete written contract is one way to bring the sides to have similar expectations about the project. To do that, the partners should pay attention to the following:

- *Accuracy:* The contract must actually capture the agreement that the parties have in mind. In general, a court will assume that a written contract is accurate and will be reluctant to look much beyond the document to understand the agreement.
- *Precision and lack of ambiguity:* The contract must be specific in its meaning. It must not be subject to multiple, inconsistent interpretations. This is often difficult to achieve.
- *Plain language:* Sometimes legal language gives contracts a formality that impresses on the parties the seriousness of their commitment. Some legal concepts can only be clearly expressed through legal terms. On the whole, though, plain language is preferable. If a contract's language is too complex for one of the parties to understand, a judge might question whether it truly reflects the intent of that party.
- *Depth and detail.* The depth and detail will depend to some degree on the complexity of the agreement, the sophistication of the parties, and the cultural setting. There is no universal level of detail that is appropriate. It is a matter of balance. If writing the details requires the parties to consider risks and contingencies, and if the details give the parties good direction, that is good. If producing the detail is time-consuming and costly, or if the detail does not reflect the true agreement of the parties, that can be bad.
- *Completeness:* Ideally, the parties should place their entire agreement in writing, in a single contract or a set of related contracts. If there are side agreements, the contract should make that clear; otherwise, a court might presume that the written agreement reflects the complete understanding of the parties.

II(A). In the contract, the parties should address some of the key factors of agreement-keeping.

To do that, the partners should consider the following topics:

- *Expectations of what it means to make an agreement:* The contract can discuss what will happen if the sides do not live up to their obligations.
  - Outcomes of enforcement (remedies): Courts apply a limited set of remedies to contract disputes. Contracts are not legislation and cannot require parties that breach the contract to pay fines or go to jail. However, a contract can give the court some guidance on what remedies to apply, such as rescission or award of damages. In some cases, the most practical remedy for the sides may be to just dissolve the partnership and walk away from the project, as if the agreement never existed (rescission). In some cases, the parties may want to assign monetary values to certain possible

failures to honor the contract that would otherwise be difficult to price (liquidated damages).

- *Practicality:* Implementation should be within the capacity of the parties, or the contract should include means of strengthening capacities. Consider the following factors:
  - the government or business's capacity to oversee the work of the community or individuals
  - the community or individuals' capacity to manage the forest and the organizational aspects of the project
  - the availability of necessary capital and the means to manage it
  - the availability of technical skills
  - the availability of infrastructure and equipment
  - the timetable of the project
- *Verification:* If compliance is not inherently obvious, or if compliance needs to be documented or recorded, the contract should provide for that.
  - The contract can include intermediate milestones that will indicate that the sides are making good progress.
  - The contract can specify or have one side provide technical means to measure progress.
  - The contract can specify recordkeeping requirements, such as for financial accounts and receipts. It may need to provide for audits.
  - The contract can require the project to be transparent to outside observers.
- *Communication:* The contract should encourage or require ongoing communication between the sides.
  - The contract can identify means for routine and emergency communication between the sides.
  - The contract can identify who may speak for each side, and who should receive important communications. By naming the proper persons or by establishing institutions and procedures, a contract can make it more likely that the representatives for both sides will actually function effectively as the ears and voice of their sides.
  - The contract can address communication infrastructure, and ensure that the communication requirements of the project fit the capacity of the infrastructure.
  - The contract can call for regular project meetings.
- *Incentives:* The project should include the right parties and create the right incentives.
  - The people who can ensure success should be part of the project.
  - Those people should have sufficient reasons to work for the project's success.
  - The rights and benefits that the project grants should be reliable.

II(B). The parties should consider ways to handle disputes besides going to court.

To do that, the contract can deal with points like the following:

- The contract can include agreed-upon ways for the parties to bring up problems with each other.
- The contract can identify what would be a "material breach"—a problem so significant that it could lead to terminating the partnership or seeking payment of damages.
- The contract can explain what happens if overwhelming circumstances (force majeure) make compliance with the agreement impossible.
- The contract can include ways to seek outside help to resolve disputes short of going to court, such as mediation or arbitration.
- The contract can call for traditional dispute resolution practices short of going to court.

III. The parties should pay attention to details that have been known to lead to disagreements and court suits.

For example, the partners might consider the following topics:

- *How the parties are named:* The contract must clearly identify who are the parties entering the agreement. If any of the parties are legal "persons" (e.g., a government, a corporation, or an NGO), the party must have a recognized existence under local law and the individual signing the agreement must have authority to enter the contract on behalf of the party. In a case where the participant is in effect a family, the contract may want to name the family members or indicate that upon the death of the

participant, a spouse or child may elect to take on the participant's obligations and receive the benefits.

- *How the land is described:* The contract must precisely identify the land involved. This may be done through words or through maps, although words that refer to established land surveys are often more precise. In some cases, contracts use both words and maps. In those cases or in any case where the contract refers to two or more descriptions of the land, the contract should say which one to follow if the two turn out to conflict.
- *How the contract affects outsiders:* Contracts normally only set requirements for the people who make the contracts and the people closely connected with them, for example, as employees. Except in limited ways, contracts cannot create obligations for strangers to the project. Any partnership that needs support or cooperation from an outsider may need to make the outsider a party to the main agreement or a side agreement. If the contract creates named benefits or rights for outsiders, the partners may want to consider whether the contract and local law empower the outsiders to go to court to demand those benefits, and whether that is appropriate. If the partnership involves a piece of land that might change ownership during the partnership term, the partners may want to structure the contract so that the obligations "run with the land" and bind the new owner.
- *Project activities and compliance with law:* The parties may want to include promises to comply with local law in their use of the land. For example, a forest products company may want to have its outgrowers promise to comply with environmental, labor, and safety laws.
- *Return of land:* If the contract gives one side possession of land for a limited term, the parties may want to consider what condition the land must be in when the term ends, who owns fixed improvements on the land, and other issues involved in handing the land back.
- *Liability:* Contracts should be reviewed for their effect on the parties' liability for each others' actions. A contract could implicitly make the parties responsible for each other's actions, or it could require one party to indemnify another.

The items in this checklist are not mandatory. A strong partnership could exist based on a simple document. Looking at a written contract, one cannot be certain about the strength of the partnership behind it. That said, it is possible to look at contracts and see strong and weak points. As an example, the following discussion applies the checklist to several of the sample agreements obtained from the interview subjects.

A Benefit-Sharing Arrangement—Social Responsibility Agreement Used in Mining Case

This Social Responsibility Agreement is an agreement between a private company involved in the extractive industry and local communities in Ghana (see Annex IV for a brief description of case 1). It specifically concerns the relations between the company and the community around the company's mine. The agreement's focus is on communication, handling of grievances, transparency, and community participation in monitoring company activities.

- *Enforceability:* The partners do not want the courts to enforce the agreement. The agreement says this explicitly. However, the partners went to some lengths to make sure that the agreement served other functions of a written contract. The agreement stands as a point of reference for their mutual understandings. They signed the agreement in a public ceremony. It would be highly embarrassing for either side to back away from the agreement without good cause. However, it is not enforceable in court, by design.
- *Clarity:* The partners hired lawyers to capture the details of the agreement with reasonable clarity and great detail. The lawyers used legal language. It is impossible to say by looking at the text of the agreement whether this was simply the natural way for them to write or whether using this formal language was a conscious choice, to impress upon the parties the formality of their commitments. The drafting appears professional and precise.
- *Agreement-keeping:* The focus of the agreement is on communication, transparency, and cooperation. There is little in the agreement that requires technical skill, investment, or other common practical prerequisites of natural resource projects. Verification is not a significant

issue; compliance with the agreement will be obvious from the public behavior of the partners. The agreement goes into detail about communication, establishing a forum to facilitate formal discussions of community-company relations and for resolving complaints. It recognizes the special roles of various parts of the community and company. It includes specific provisions on conflict management, communication management, participatory monitoring, land access and compensation, closure and reclamation management, and local employment. It does not directly address incentives, but it does call for establishment of a foundation to benefit the community, and it calls for the community to deal with the company and its operations in a peaceful manner.

- *Handling disputes:* As noted in the previous paragraph, the agreement has specific provisions on how the parties may raise concerns with one another and how to resolve disputes without going to court.
- *Common legal problems:* The agreement clearly names the company, and it sets out the composition of the community in a separate schedule. The land involved is actually described in a separate agreement—the mining lease between the company and the government. The social agreement makes reference to that lease agreement. The contract does not deal with outsiders, compliance with law, return of the land (except indirectly, in mention of restoration activities), or liability (except indirectly, in mention of land access and compensation). However, these are not central to the cooperative arrangement that is the subject of the agreement.

In summary: The agreement is a specialized Corporate Social Responsibility (CSR) agreement and would not be a model for an agreement dealing with forest management, rights to land, or benefit sharing. However, it gets particular marks for attention to communication and dispute resolution.

A Contract for Market-Driven Community Approach Involving Payment for Environmental Services

This is a standardized contract between an NGO and an individual landowner for payment for environmental services created by changing land uses on the landowner's farm.

- *Enforceability:* The contract indicates the partners' intent to be bound, in its general tone and more specifically in the introductory paragraph and in its final paragraph above the signatures.
- *Clarity:* The contract appears as a translated version, so it is difficult to judge clarity. Compared to the social agreement, this contract is shorter and far less detailed, which seems appropriate to the context. Despite its brevity, it appears to be a reasonably complete overview of the partnership.

The details of the farmer's obligations, however, cannot be understood without reference to the farm plan, and to the NGO's project manual. This incorporation by reference is an acceptable practice, although if the plan or manual is ever amended, it will raise questions of whether the parties wish the contract obligations to follow the amended version or the original version.

- *Agreement-keeping:* The contract provides for technical assistance and training to the farmer. It provides for site inspection and monitoring, and includes yearly milestones. It requires the farmer to report changes and contingencies affecting land use, such as fires. It provides for annual cash payments to the farmer if the contract obligations are kept.
- *Dispute resolution:* The contract provides for release of the farmer from obligations due to force majeure or adoption of inconsistent national laws. In paragraphs Seven and Ten, the contract discusses possible termination upon sale of the land or farmer noncompliance. However, there are no other specific provisions for dealing with other grievances or alleged breaches of the contract.
- *Common legal problems:* The parties are clearly named. The land is described three times: once by reference to its registration in official records, once by listing of the properties that border it, and once by aerial photo-map. This is only a problem if one of the methods happens to conflict with another. The contract contains one provision affecting outsiders. It grants some privileges to the international organizations that are financing the project. This kind of creation of benefits for third parties is usually lawful;

however, the ability of the third parties to enforce those provisions may depend on local law. The contract explicitly requires the farmer to comply with environmental laws, laws regarding illicit crops, and laws protecting the public order. This seems a wise precaution to allow the NGO partner to disassociate itself from illegal activity. Since no land changes hands, the contract does not discuss the state of the land at the time of transfer. The contract does not mention liability and, depending on local law, might raise a concern that the farmer is acting as the agent of the NGO, making the NGO liable for damages due to the farmer's acts.

In summary: This is an example of a moderately simple contract. It is probably designed to be comprehensive enough to satisfy the demands of the donors, without being so complex as to discourage participation. Also, its simplicity allows it to be applied to many different landowners. It does not appear that the sums involved make formal enforcement practical; the transaction costs would be too high. The strength of this partnership will probably depend more upon social and cultural frameworks than on the legal framework.

A Second Market-Oriented Agreement for Payment for Environmental Services

This is a contract between a municipality, an association of landowners in the watershed of the municipal drinking water supply, and individual members of that association. The purpose is conservation of forest cover to improve water quality and quantity.

- *Enforceability:* The agreement shows the parties' intent to be bound. It talks about being "in force." It mentions the possibility of enforcement through legal proceedings.
- *Clarity:* Like the previous PES agreement, this agreement was reviewed in translation, so detailed remarks about clarity are not possible. The agreement starts with recitals about the background and objectives of the contract, which is a helpful way to orient the reader and contributes to being able to understand the partnership.

  The contract is vague about the amount of payments for environmental services, but this vagueness appears intentional. The government partner, a municipality, will reserve money for payment out of the water users' fee that it collects, and the municipality promises to consider increasing the payments if it obtains outside support for the program.

  Like the preceding contract, many of the detailed obligations of the landowner are incorporated by reference to a management plan. The agreement is silent about whether changes to the management plan change the landowners' obligations. In a few places, the details of the agreement seem to depend on municipal ordinances, and amending these also might also raise questions about the effect on the partnership.
- *Agreement-keeping:* Regarding expectations of what it means to make and keep the agreement, the contract indicates that landowners who violate the agreement will not be paid, and that the municipality must make payments without delay. It allows either side to withdraw from the agreement without penalty if justified by "special circumstances" (another vague term), but it requires the withdrawing side to give sixty days' notice.

  The agreement does not address common practical issues, but it does directly address verification. It sets up a process for the municipal department of environment and tourism to make quarterly reports on compliance.

  The agreement has no specific provisions regarding communication. However, it does make clear which subdivisions of the municipality will act on behalf of the municipality. The agreement does not specify where landowners should submit the paperwork required before payment, but presumably they will submit it to the department handling verification of the agreement.

  The payments for environmental services go to participating landowners and act as incentives for the success of the project. The agreement includes the landowners' association as a party, and includes a commitment that nonparticipating members of the association do nothing to threaten the forest.
- *Disputes:* The agreement requires the parties to try to settle differences amicably before invoking legal process. If one party wants to end the agreement unilaterally, the agreement requires sixty days' notice, which gives time for the other parties to explore the reasons for the withdrawal.

- *Common legal problems:* The agreement does not directly specify the land involved. The management plan probably describes the overall holding of the community. Before payment, the landowner must present a copy of the owner's land title and a sketch of the land indicating protection categories. It is not clear what happens if land changes ownership, or whether by signing the contract the landowner commits all the owner's land to the project or just whatever parts the owner wishes.

In summary: This is a fairly simple agreement, perhaps appropriate to the context. It seems to have some open terms. The landowners and municipality signing this clearly are creating a relationship, but this agreement does not set out every detail.

A Contract for Market-Driven Community Approach for Timber Production

This is basically a timber purchase agreement between a company and the forest committee of a community. The initial purchase is for a harvest in a single season; however, the agreement looks forward to further harvests in succeeding years.

- *Enforceability:* The contract document is designed to be notarized and recorded. It is to be signed in three "original" copies. It is clearly intended to create a binding, enforceable contract.
- *Clarity:* Again, this contract was reviewed in translation. The contract looks as if it was based on a commercial contract, with some additions to take into account the context of the community. It contains much detail specific to timber sales. On the other hand, it seems to depart from plain language, using some technical forestry and legal terms. The contract is reasonably complete; however, it anticipates that the parties will renegotiate prices and timber harvest volumes each year.
- *Agreement-keeping:* Regarding expectations of keeping an agreement, the contract provides for legal action and a penalty—payment of interest—if the buyer pays the community late.
- *Practicality:* The contract requires the buyer to supply the community with the services of a forest engineer, a GPS unit, and a computer. The buyer also promises to help the community strengthen its managerial and technical skills, and seek certification.
- *Verification:* The contract is quite specific on how to measure logs and calculate the resulting payment. It is also specific on when and how the buyer must make payments.
- *Communication*: The project names representatives of the parties *for the purpose of signing the contract.* It requires a representative of the buyer to be present when logs are scaled. The contract contemplates the sides cooperating on things like seeking certification, but it does not really set out the mechanisms for cooperation and communication.

  The contract calls for payments to go to a community bank account. There is no indication in the contract of consideration of who in the community will actually benefit from these funds.
- *Dispute resolution*: The contract has a list of eight causes that would justify immediate termination of the contract. It includes a provision for excusing noncompliance caused by force majeure or unforeseen risks. It has a clause stating that the parties will try to settle disputes amicably before resorting to court.
- *Common legal problems:* The contract names the parties specifically and names the land by reference to an existing forest management plan already approved by a specified resolution of government forestry officials.

  This contract does address compliance with incidental laws. The contract requires the community to follow government forest practice rules, and it requires the buyer to respect forestry regulations and community cultural and institutional rights. The buyer must also refrain from bribery.

A Market-Oriented Community Approach: Multiple Take-It-or-Leave-It Agreements

This is a set of agreements covering three kinds of partnerships. One model agreement allows a local rancher to graze cattle on company land. One is a model lease of land from a local owner so that the company can develop a forest plantation. The other two are leases of company land to small-scale dairy and wool cooperatives, as pilot

projects in the company's corporate social responsibility effort.

The lease contract and grazing agreements have a common tone and approach.

- *Enforcement:* Both agreements clearly show that the parties intend to be bound. The lease agreement states that it will be registered in the appropriate land records.
- *Clarity:* The agreements appear to be drafted in a legal style. There is no great effort to avoid legal terms. These look like commercial contracts, between parties used to entering into written business agreements.
- *Agreement-keeping:* The agreements address outcomes of failure to meet obligations and even set some liquidated damages. The agreements deal little with practicality, as if both sides are assumed to have the necessary capacities. With regard to verification, this can be done through access to the land, and the agreements seem to pay more attention to the company's rights of access than to the rights of the local landowner or rancher. The agreements have a provision dealing with formal written communications, but not with informal communications. As commercial lease contracts, the incentives involve access to land and payment for that access.
- *Disputes:* The contracts discuss delinquency (material breaches) and reasons for dissolving the contracts.
- *Common legal problems*: Here is where the contracts stand out from the contracts described from other cases. The lease and grazing contracts touch on subjects like return of the land at the end of the contract, liability and indemnity, compliance with laws, and transferability of rights. In other words, these contracts are much more concerned with legal problems than other contracts. Perhaps this is because the country where this agreement is implemented (Uruguay) has a serviceable judicial system, so clauses like these are likely to be given full meaning. Perhaps this reflects a corporate attitude favoring conservative drafting of commercial contracts. Perhaps this reflects the experience of a company that has signed many forest leases over the years and has no wish to repeat past problems.

The contracts to lease lands to small dairy and wool producers differ from the commercial contracts in several respects:

- The styles of the contracts are less legal and more narrative. They rely more on opening paragraphs (recitals) that explain the background and objectives of the arrangements.
- The contracts address practicality issues, such as supply of training and materials.
- The contracts address verification by setting up a monitoring commission. Because the monitoring commission includes representatives from each party, it also serves as an avenue of communication.
- The contracts deal far less or not at all with legally sophisticated topics like indemnity, transfer of rights, or hand-back of lands. There is no mention of liquidated damages. The discussion of breach, compared to the commercial contracts, is informal.

The reasons behind the differences are matters for speculation; the study did not ask the company to explain. The following are some possible explanations:

- *Plain language:* If the case ever did go to court, the court might not believe that the small producers understood and agreed to provisions expressed in legal terms. When dealing with legally unsophisticated partners, plain narrative language is safer to use than legal language.
- *Practicality of enforcement:* Going to court to enforce these small producer contracts might be counterproductive. The legal expense might outweigh any possible remedy awarded by the court or collectable from the small producers, and the loss of goodwill with the community would be huge. Because these agreements will never go to court, there is no reason to include legalistic details that pertain mostly to legal rights and court enforcement.
- *Trust:* If the agreement were full of complex legal language and detailed discussions of unlikely contingencies, that might lead the partners to think that the company did not trust them or that the company itself was devious and untrustworthy.

- *Lack of capacity:* Capacity simply is not an issue in the commercial contracts, but it is in the small producer contracts.

A Public–Private—Community Partnership Agreement

The following is a model agreement for purchase of Brazil nuts from individuals who hold permission to collect the nuts on public land. The company representative frankly explained in an interview that the company did not intend to rely on outside enforcement.

- *Enforcement:* The document is clearly an agreement, with both sides pledging to honor their obligations. A court would probably consider it binding, but the drafter did not include some of the small enforcement-related provisions seen in other contracts, such as noting that the parties were executing multiple copies of the document and that each copy was equally valid for enforcement purposes.
- *Clarity:* Considering that the Brazil nut collectors are literate but not highly educated, this is a fairly legalistic document. It gives no background or objectives for the transaction. The agreement is quite detailed about commercial aspects of the transaction, such as delivery and payment, and quite general about social aspects, such as technical assistance and workshops.
- *Agreement-keeping:* This is basically a sale agreement. The company advances some money or provisions to the collector, the collector promises to deliver nuts, and after receipt of the nuts the company pays for whatever is owed beyond the initial advances. The amount paid depends on the market price, the need for processing, the quality of nuts, the quantity of nuts, and so forth. There are not a lot of practical issues, although the contract does require the company to provide collectors with technical assistance as requested.

The collector has the right and duty to observe the processing and weighing, which helps to verify the amounts owed by the company. The collector must provide the company with documentation verifying that the collector holds a valid and active concession, and also must show the proper documents from the tax authorities.

- *Communication:* The contract does not say much about communication. It does require the collector to be present for certain transactions, such as weighing the delivered nuts.
- *Incentives:* The incentives to the producer are advances and possible training, with premium prices paid for certified organic nuts.
- *Disputes:* Except for requiring the collector to send the company a letter if the collector cannot supply the required amount of nuts, the contract is silent about disputes and noncompliance.
- *Common legal problems:* Other than carefully specifying the name and identity number of the collector, and indirectly requiring compliance with tax laws, the contract deals little with legal details.

In summary: It is certainly possible that the company and the collectors enjoy good relations, but this model contract does not contain much to encourage a close and cooperative relationship between the parties. It does lay out the obligations of the Brazil nut collectors, and it would serve as a good reference on those points in case of dispute.

An Agreement for Supply-Driven Community Arrangements

For this example there are two related documents, neither of which is titled an agreement but both of which act as agreements in the management of a forest. The first document is a model management plan, written by an NGO. The participating community can fill out the model plan and submit it to the government to get permission to manage and use the local forest. The second document is a group certification manual. The community must abide by the rules and procedures in the manual if it wishes to have its harvests certified.

- *Enforcement:* These documents are not expressly intended as contracts and are not subject to review and enforcement as contracts. If the community ignores its management plan, the government can take back control of the forest, according to the applicable forest laws. If the community ignores the certification manual, the community can be expelled from the certification group and loses the right to label its wood as certified. Still, some parts of the

"management plan" are written like a contract, with rights and obligations of the community, district government, and national government set out. It is unclear how the community could enforce the governments' obligations.

- *Clarity:* The documents are in fairly plain language, but they go into great detail. For example, the certification manual lists seventeen items that must be included in timber sales invoices and requires that invoices be issued in quadruplicate. The two documents together are sixty pages long, by far the longest of the documents reviewed for this study.
- *Agreement-keeping:* The documents address matters related to agreement-keeping. For example, the management plan calls for the government to give the community technical assistance. The certification manual is full of recordkeeping and other verification requirements, and the management plan requires reporting and auditing.
- *Disputes: The certification* manual contains a detailed procedure for handling disputes. In the case of failures to observe certification requirements, it breaks problems into minor, major, and urgent classes, with different timelines allowed for response. It sets up a grievance committee, including third parties, to hear complaints.
- *Common legal problems:* The documents are not contracts, so some of the common legal problems, such as indemnity issues, do not apply. However, the management plan clearly identifies the community and the land. The management plan also explains how community management will affect people outside the community who wish to use the forest, including people from nearby communities. Because the plan will have legal weight under the forest laws, it can bind these outside parties.

  Because compliance with law is a key requirement for certification, the certification manual goes into detail about compliance with laws, including labor and safety laws.

In summary: The arrangement here is held together by the requirements of the local forest law and of certification, not by the law of contracts. Still, the documents serve the arrangement in much the same way that a contract might, by clarifying the obligations of the sides and encouraging them to keep their obligations.

This section reveals the similarities and differences in contracts for a range of partnerships and benefit-sharing arrangements. The contracts show some differences that could be explained by their context.[18]

In the benefit-sharing arrangement, the contract emphasizes communication and conflict resolution. A possible explanation is that the parties were committing significant resources to the associated project (the company's capital and the community's land) over a long time, with the payoff depending on keeping that single relationship intact. Therefore, being able to resolve conflicts was mutually valuable. If this explanation is correct, conflict resolution should generally be more prominent in one-on-one arrangements than in one-with-many arrangements such as outgrower schemes, where the outside party can afford to have a small percentage of the individual arrangements fail. Another explanation is more one-sided: that in benefit sharing, conflict resolution is really the major objective for the outside party. As one benefit-sharing interview subject said, the company needs a social license to operate from the community, and conflict could destroy that social license. (In non-benefit-sharing cases, respondents sometimes gave other explanations for adopting conflict resolution or communication approaches, for example, because of a history of prior conflicts over the resource or because an outside certifier required it. One could also argue that the more uncertainty a project involves, the greater the need to address conflict resolution in the agreement.)

The commercially oriented contracts for market goods or land tended to have more detail concerning contingencies, prevention of loss, and allocation of risks than did the payment for environmental services arrangements. One explanation is that these contracts reflect the many years of experience people have had with commercial agreements related to tangible forest products, so the risks are better understood. But there are other factors that distinguish the situations. For example, in the PES contracts, there is often only one potential buyer of the service; the quality of the service (or the reduction of service from a contingent event) may be difficult to measure directly; and even if an impact can be measured, it may be difficult to

18 It should be noted that this study has a small sample size of contracts, limiting how widely the observations regarding differences can be generalized.

reduce the impact objectively to monetary terms. If the difference is just a matter of experience, there should be a tendency to see more detail on risks in future PES contracts.

DOES CONTEXT MATTER?

Context should influence the process for designing collaborative arrangements. National- and case-level context define, among other things, the functioning of markets, fiscal and financial incentives, degree of health and education, availability of energy and infrastructure, the institutional setup, the Natural Resources Management (NRM) policy framework, programs and strategies, government, civil society and community capacity, level of supporting services, legal provisions, quality of resource, tenure, and use rights. These in turn influence risk, transaction costs, and feasibility and durability of arrangements.

Using data from the interviews, this subsection examines any apparent relationship between context and individual "what is important" factors. The elements of context that are examined include: market access, community literacy, clarity of rights, level of community reliance on forest resources, scope of the partnership (e.g., outgrower vs. benefit sharing), scale of activity, and legal context. The following are some of the postulated relationships:[19]

- Legal validity is viewed as unimportant where courts are seen as weak because the contract could not be enforced.
- Verifiability is important when the arrangement involves a private entity having to contract numerous producers as this would keep transaction costs low.
- Self-determination is not a concern when the objective of the arrangement is benefit sharing (e.g., in mining concessions) because the focus is on compensation.
- History addressed is important most often in countries where there has been recent civil conflict.
- Fully bargained is important when the reliance of the community on the resource is high.
- Shared understanding of the project is important in benefit-sharing arrangements.
- Incentives are important when communities have a low reliance on the resource.
- Shared expectations of agreements or shared understanding of project is important in cases where legal validity is not viewed as important.
- The role of the respondent would influence the factors they viewed as important.

Four "what is important" factors emerge as nearly universally important independent of context or the type of collaborative arrangement. These four factors include trust, communication, practicality, and mutual respect. The impact of these factors on transparency, transaction costs, revealing "hidden information," and minimizing moral hazard offers a possible explanation for their relevance. The role of communication in information sharing and transparency is self-explanatory. Contract literature identifies high transaction costs and information that is not immediately evident as factors that result in inefficient and therefore not viable arrangements. Transaction costs can be lowered if the contract is practical and builds on what is feasible given the capacity of the parties, the context, and the resource base. If impractical, one or more of the parties involved may bear transaction costs in order to meet the contractual commitment (e.g., seen when community cannot produce the volume of timber originally agreed to in the contract). Mutual respect and trust are relationship-building factors. These assist in reducing free-riding or one party shirking on its responsibility as indicated in the contract.

A review of the remaining factors revealed that fully bargained was selected as important in cases where the respondent indicated that the communities were very reliant on the forest resource. Only in two cases was "fully bargained" identified as important when community reliance was low. The importance of fully bargained seems justified in situations of high reliance because the community wants a win situation, as the resource is central to their livelihoods.

Three respondents indicated that incentives were indicated as important when reliance on forests is low. In line with this, three additional respondents indicated that incentives were not important when reliance on forests was high. In contrast, one respondent indicated that incentives were not important when reliance on forests was low.

19 It should be noted that the sample size does not permit presentation of statistically robust relationships. Accordingly the study does not present correlations. Instead the analysis presented in this subsection aims to indicate possible relationships rather than identify universal relationships.

There is a weak relationship between the importance of the factor "history addressed" and whether there was a recent conflict in the country in which the arrangement was being implemented. In the responses received, this factor was perceived to be important in cases where there had been recent civil conflict as well as tensions between the state and community, and indicated as not important in case where there had not been a recent conflict.

A weak positive linkage exists between benefit-sharing arrangements and the importance of self-determination. An equally weak positive link exists between verifiability and structure of the arrangement—for example, in PES schemes, verifiability was important.

The linkage between context and importance of legal validity was not apparent in the responses obtained. There also was not a clear link between shared expectations or shared understanding and legal validity. Similarly, the role of the respondent in the collaborative arrangement did not, in this sample set, influence the factors that were chosen.

Another dimension of context that influences collaborative arrangements is the role of government. The cases examined for this study illustrate the fact that government can both facilitate and hinder making and keeping effective collaborative arrangements. In South Africa (see Annex IV for brief information on case 3) under the government Forestry Charter Program and Black Economic Empowerment program, forest industry members in 2007 agreed to ensure that a certain percentage of forestry land is in the hands of black individuals or groups. This fostered partnerships between private sector and black communities that had recently been restituted land. Similarly, in Uruguay (see Annex IV for a brief description of case 8), the existing rural development roundtable enabled the private company to join other members, including government agencies, the town government, and producer and trade associations to determine how to best assist the poor through its benefit-sharing program.

There are occasions when government procedures or limited capacity delay projects or hinder the formation of collaborative arrangements because of the different understandings between communities and government regarding ownership, land use, and other critical factors.

4 Implementing Process Elements of Collaborative Arrangements

One of the two main objectives of this study is to provide guidance on implementing process elements for making and keeping contract-based partnerships and benefit-sharing arrangements. This section shares how to apply the "what is important" factors.

THE FACTORS APPLIED

Some practical insights about the "what is important" list emerged from discussions with experts and practitioners.

Agreement-Making and Agreement-Keeping

Some of the literature on negotiation and conflict resolution focuses on agreement-making. To have a successful project, people must think, from the beginning, about agreement-keeping. Practicality, verification, and incentives must be reflected in the initial agreement.

In turn, agreement keepers must be good agreement makers. In keeping a long-term agreement, the sides must be prepared to come together, iron out conflicts, renegotiate, and revise their relationship to account for new information or changing conditions. Bargaining, mutual respect, common expectations, and other factors continue to be important throughout a project.

A key insight was that some of the factors, such as trust, describe outcomes (Cadman, personal communication, 2009). This draws on the distinction found in the literature of indicators dividing measured items into three classes: inputs, outputs, and outcomes. Inputs are specific actions taken to achieve a goal. Outputs are the direct result of the inputs. Outcomes are the broader and sometimes indirect result of the inputs.

Viewing the factors in terms of inputs, outputs, and outcomes forces identification of practical steps to achieve desired goals, Table 2 presents the factors in these terms. The "Inputs" column provides a practical list of tasks. The "Outputs" column provides a list for short-term verification of success. If a project is not achieving desired outputs, project managers should look for causes and remedies. The outcomes represent the larger goals that contribute to a successful project with managed levels of conflict.

Many of the actionable items in the "Inputs" column deal with negotiation, communication, persuasion, or fact-finding—all activities that require the participants to interact. Perhaps this is a bias due to

Table 2: Practical Steps to Achieving the Desired Goals of the "What Is Important" Factors

Factors	*Inputs*	*Outputs*	*Outcomes*

Legally valid	***a. Agreement***
	• *Create a document that*
	  ◦ *Accurately captures agreed-upon rights and duties*
	  ◦ *Is legally binding*
	• *Formally adopt the document*
	
	b. Underlying land rights
	• *Review and if necessary seek reform of underlying laws*
	• *Get written verification of land ownership and use rights*
	• *If appropriate, record partnership documents in official records*
		• *There are documents to refer back to if disagreements arise about the details of the agreement/land rights*
		• *The sides have created or transferred rights that are potentially enforceable under law*
			• *Putting the details in writing has made the sides pay more attention to the details*
			• *The parties can be more confident in making plans and commitments based on their rights*
			• *The parties have heightened expectations of rights being honored, and are therefore more likely to follow the agreement or take a long-term approach to land stewardship*
			• *If problems arise, the bargaining position of rights holders is stronger*

Fully bargained and interest-based	• *Spend time in identifying the issues and associated interests of the parties* • *Take an interest-based approach to negotiation (or creation of model contract) rather than a position-based approach*	• *Discovery of opportunities for cooperation and mutual advancement* • *Reduction of needless costs*	• *Greater economic efficiency* • *Higher mutual satisfaction of parties*
Mutual respect	• *Suspend judgment of other parties* • *Be willing to listen and empathize* • *Use courtesy in communications*	• *Improved understanding of other parties* • *Avoidance of small, unintended insults*	• *Better working relationship* • *Increased trust*
Shared expectations of outcome	• *Discuss project details, risks, and expectations* • *Mutually review credible outside information relating to constraints and realities of the project*	• *A common understanding of the project, including roles and risks*	• *Fewer surprises* • *Increased trust* • *Reduction in unproductive conflict*
Shared expectations of what it means to make an agreement	• *Discuss obligations* • *Discuss contingencies and penalties*	• *A common understanding of the binding nature of the partnership* • *A common sense of what to do if unexpected events affect the project*	• *Increased compliance with agreed-upon terms*
Self-Determination	• *Ensure that parties have sufficient independent knowledge or advice to understand options and consequences* • *Put decisions in the hands of the parties, not the advisors* • *Neutral parties, if involved, must stay truly neutral*	• *The parties themselves make the key decisions, constrained only by the practicalities of the situation.*	• *Ownership of choices (i.e., acceptance of a share of responsibility for outcomes)* • *Increased accountability*

Table 2: (*Continued*)

Factors	*Inputs*	*Outputs*	*Outcomes*
Trust	• *Use candor in discussions* • *Build a reputation of reliability/ persistence in keeping past promises* • *Keep key project transactions, especially those involving money, transparent to all affected people*	• *Increased credibility*	• *Parties are willing to put faith in others' promises of future performance.* • *Increased patience*
Practicality	*Carefully assess the following aspects of proposed actions:* • *Legal, technical, financial, and material needs and constraints* • *Risks* • *Environmental and social impacts*	• *Realistic overall project plan* • *Training, technology transfer, credit, and other assistance integrated into plans* • *Unwanted external impacts minimized or mitigated*	• *Reduced risk of unmet expectations and resulting conflicts*
Verifiability	• *Consult with donors, certifiers, and so on to identify specific needs for verification* • *As part of reaching agreement, discuss objectives, milestones, measures of success, recordkeeping, audits, etc. as appropriate*	• *Agreement terms include verification standards and practices* • *Parties practice recordkeeping, auditing, monitoring, and evaluation, as agreed upon*	• *Shared expectations on project goals* • *Earlier warning of problems* • *Increased accountability* • *Increased confidence in partnership*
Communication	• *Identify and try to overcome barriers to communication: cultural, physical, institutional, and so on* • *Try to agree upon (or create) practical channels of communication* • *Identify party representatives, set out their authority, and create an obligation for them to communicate with the people they represent*	• *Create procedures to deal with grievances during the term of the partnership* • *Regular and free flow of information among the parties* • *Frank discussion of problems* • *Regular flow of information between representatives and those they represent* • *Prompt and fair handling of grievances* • *Fewer misunderstandings*	• *Control of rumors* • *Enhanced trust* • *Earlier warning of problems* • *Better management of conflicts*
History addressed	• *Assess and mutually discuss past issues between the parties* • *Assess and discuss overarching conflicts with others, such as conflicts over land* • *Analyze previous failed partnerships with others, if any*	• *Provisions in agreement addressing past issues*	• *Sense of fairness enhanced* • *Support for project strengthened*

(*Table continued on following page.*)

Table 2: Practical Steps to Achieving the Desired Goals of the "What Is Important" Factors (*Continued*)

Factors	*Inputs*	*Outputs*	*Outcomes*
Incentives	• *Identify parties with formal and informal control over the resource, and parties presently using the resource* • *Engage the identified parties and discuss fair division of benefits* • *Analyze proposed means for distributing benefits to assure benefits will reach intended groups*	• *A plan for distribution of benefits that maintains or improves on present equities* • *A plan for resource use that advances most or all stakeholders*	• *Support for project strengthened*

Source: Authors

the field-oriented nature of the interview subjects, but more likely it reflects a truth: good partnerships are never created and sustained by one side working alone. However, a single side can make a great contribution to the partnership by actively engaging the others.

5 Further Lessons for Collaborative Arrangements

This study offers some valuable insights in terms of process, context, and practices for schemes requiring collaborative arrangements, including schemes such as the use of forests to address climate change (e.g., schemes for afforestation, reforestation, and restoration [ARR]), and REDD. The study also has relevant findings for efforts to develop and implement partnerships in areas such as feedstock production for pulp and paper and bioenergy, partnerships between communities and corporations (including agribusiness) involved in large-scale land acquisition, and schemes for community-based forest management for production of forest goods and services. In this section we share the main findings of this study.

The following are some of the main take-home messages from this study for collaborative arrangements:

- Contracts are not the only mechanism for recording rules governing the partnership. Some partnerships have put parts of their understanding in management plans, which an agreement can incorporate by reference or which can be officially approved or adopted by a government agency. Some partners have promised to adopt certification, with the effect of promising to follow the certifier's set of rules. A partnership could also put its agreement in the founding documents of a new association or business entity.
- To ensure that the rights of parties are fully documented, there may need to be more than a single contract involved in a partnership, and there may need to be contracts with others besides the main partners.
- Contracts have roles to play even if they are not legally enforceable. In many of the cases the courts were viewed as weak, not trustworthy, and expensive to navigate. Still, almost every case used written documents to record their agreements.
- Fully bargained arrangements can be costly to achieve especially when there is a need for multiple deals. In situations where standardized contracts are necessary, it is important to develop the contract template based on consultation and discussions with the key stakeholders. An additional approach is for the "outside" partner to use the advice of experts who have worked in the area for many years and had a good sense of the local context.

- Not all practical issues will be apparent at the beginning of a project; parties should think about structuring their agreement to address new issues as the project unfolds.
- Partners should talk about foreseeable risks before the project starts, to understand what each side's responsibilities would be in case of the event. Also, partners should design the project to minimize the losses from risks.
- The written document is a tool and not an end in itself. Entering a written contract can lead the sides to explore roles and risks in detail; it produces a reference point for further discussion, and its execution impresses upon the parties that they are making a true commitment. It can also be a means of informing potential outside investors and others about the agreement; if the contract can be recorded in the official property records, it may be a means of binding future owners of the land.
- Collaborative arrangements, including benefit-sharing arrangements should also aim to engage local communities in productive activities that generate positive social, economic and environmental outcomes for local communities (Lewis, Freeman, and Borreill 2008). As seen in the Ecuador case (Annex IV case 27), cash transfers can be victim to misuse and elite capture, reducing their potential contribution to poverty alleviation.
- In the benefit-sharing arrangement, the contract emphasizes communication and conflict resolution. When parties were committing significant resources to the associated project (the company's capital and the community's land) over a long time, with the payoff depending on keeping that single relationship intact, being able to resolve conflicts was mutually valuable.
- The commercially oriented contracts for market goods or land tended to have more detail concerning contingencies, prevention of loss, and allocation of risks than did the payment for environmental services arrangements. Commercial contracts for forest goods reflect many years of experience, so the risks are better understood. But there are other factors that distinguish the situations. For example, in the PES contracts, there is often only one potential buyer of the service; the quality of the service (or the reduction of service from a contingent event) may be difficult to measure directly; and even if an impact can be measured, it may be difficult to reduce the impact objectively to monetary terms. If the difference is just a matter of experience, there should be a tendency to see more detail on risks in future PES contracts.
- Government can both facilitate and hinder making and keeping effective collaborative arrangements. Government can play a positive role where it has policies and mechanisms for fostering partnership, dialogue, and negotiation. The role of government is less constructive where government processes are lengthy and capacity limited, or if there are irreconcilable differences in perspective between government and community regarding key issues such as land tenure.

Some of the broader insights offered by the cases are discussed below (see Annex IV for information on the cases from which these insights emerge).

TAILORING TO SCALE

The cases illustrated two scales of project (or two endpoints on a spectrum of scales): the individually crafted arrangement between two parties (e.g., company and community), and the mass-produced arrangement between one major party and several participants (e.g., company and individual outgrowers). In the individually crafted project, the parties can afford to bargain, to innovate, to tailor the agreement carefully to each party's needs. In the mass-produced arrangement, the transaction costs of bargaining each agreement would just be too high to build each agreement starting with a blank page. On top of that, there would be equity concerns, and additional costs in adapting oversight and management to the varying terms of each agreement. So, the forest company and the community might carefully structure a one-of-a-kind deal, but the forest company and the outgrowers deal on an off-the-shelf, take-it-or-leave-it basis. This does not mean that the mass-produced deal doesn't benefit from trying to understand the participants' interests. Some companies used community participation or social studies of the landowners in designing their standard contracts.

With the difference in scale there may also be a difference in the way that the agreement addresses conflict resolution. In an arrangement between two parties, the agreements often put more emphasis on communication and conflict resolution because a single conflict could stop the entire project. In an arrangement between one major party

and many individual participants, such as a PES scheme with multiple landowners, a few of the participants could fail or drop out without jeopardizing the whole project. In such cases, the parties still may want to address conflict resolution in their agreements, but rather than relying heavily on ways to preserve the partnership, they may come up with ways for participants to leave the project without harming others or unfairly enriching themselves.[20]

CONTEXT MATTERS

Context influences the factors that are important in processes for establishing collaborative arrangements. Factors such as community reliance on the natural resource, legal framework, scale, and scope of the partnership can influence the process elements and may need to be emphasized. However, there are some universally important process elements. These include trust, communication, practicality, and mutual respect. Trust and mutual respect help shape the relationship between the parties in the collaborative arrangement and help sustain the partnership through changes and challenges. Communication is important for various reasons, one of which is that it facilitates transfer of information, and with this can lower transaction costs associated with partnerships. Practicality is an important factor that should guide the parameters of a partnership (e.g., the extent of technical knowledge, capital, infrastructure, labor and time required) to ensure that the partnership can be implemented and will not fail from the onset.

NO PERFECT MODEL FOR CONTRACTS

Contracts play a range of roles in a collaborative arrangement. The structure and content of contracts should be informed by the purpose of the contract. Some (like the contract in case 1 of Annex IV) primarily concern coordination between the parties. Some (like the contract in case 19 of Annex IV) concern provision of environmental services from private land. Some are basically contracts for the supply of forest products over an extended period. Others are property leases. Each of these contracts contains a variety of approaches and ideas. The Case 1 contract and supporting documents offer useful examples of establishing formal communication and grievance-resolving institutions. Other contracts offer examples of dealing with shared risks, structuring of milestones, transparency, and other issues of general interest to forest partnerships.[21]

The contract drafting literature declares that the best contract document is one that is negotiated, signed, filed away, and never referenced again, because the sides have come to a genuine meeting of the minds around a practical plan of action (Siviglia 2007; Stark 2007). In line with this, there are key aspects of contract writing that need to taken into account when developing a contract. It is important, however, to remember that the written document is a tool and not an end in itself.

20 As Rosenbaum (forthcoming) pointed out, in the 1960s the Bank was instrumental in creation of the International Centre for Settlement of Investment Disputes (ICSID), to provide low transaction cost and neutral resolution of disputes concerning international investments. A similar inexpensive and neutral venue would be useful for natural resource partnerships, although the small scale of the disputes and the limited resources of the communities and landowners rule out using the ICSID as a model. A system of national or regional forest dispute resolution boards, offering mediation or arbitration services by and for local people, at low cost, could be highly useful to partnerships, and might be demonstrated through a pilot project.

Some survey respondents and interview subjects mention the usefulness of having a neutral facilitator preside at meetings of the partners, even when no dispute is on the table. The contract from case 1 of Annex IV provides for such a facilitator. In countries where partnerships are common, supporting training in facilitation or keeping a roster of trained or otherwise qualified facilitators might be a practical aid to the partnerships.

21 It would be useful to future drafters to have access to a library of agreements from past projects. Indexed and searchable, perhaps posted on the Internet, this library would be an asset to forest partnerships worldwide. Given the similarity of forest issues to issues in other natural resource areas, such as mining, it would make sense to have the library cover these fields as well.

Annex I: Electronic Survey on "What Is Important" Questions

1. WELCOME

Forests offer unique potential for boosting rural economies and reducing poverty. One way to harness this potential is to set up partnerships between rural people and businesses or governments. The challenge is to make arrangements that are sustainable and truly benefit local communities. The World Bank is conducting a study entitled "Making Contract-Based Partnerships and Benefit Sharing Work for Local Communities." By examining successful partnerships, the study aims to develop a framework for creating better partnerships. We are interested in a range of partnerships, from those where communities or landowners are active stewards to those with passive sharing of benefits. For purposes of our study, we call all of these "collaborative arrangements."

Through this survey we would like to tap your knowledge on collaborative arrangements: What makes them work? What do the parties need to do to form a good arrangement? What role do written contracts and agreements play? The number of questions that you will be asked depends on your responses. At most, there are about 20 short questions. Please answer only those questions that are relevant to you. Answering the whole survey should not take more than 15 minutes. Responses are anonymous. We will only contact you with further questions if you indicate you are available and interested. Your input is important to us!

Our sincere thanks for your time and input.

Which of the following best describes your connection to forests, forest management, or rural development?

- ☐ I'm a member of a forest community.
- ☐ I own forest land.
- ☐ I work for a government natural resource agency.
- ☐ I work for USAID, DFID, or a similar development agency.
- ☐ I work for the World Bank, FAO, or a similar agency.
- ☐ I work for an advocacy group or non-governmental organization (NGO).
- ☐ I work for an industry association.
- ☐ I work at a university, research institution, or think tank.
- ☐ I am a forestry consultant.
- ☐ I provide law, business, or other consulting services.
- ☐ I work for a forest-sector business.

Other (please specify)

In what capacity have you been interested in collaborative arrangements? (Please check however many are relevant.)

- ☐ My group has been party to an arrangement.
- ☐ I've helped to design or negotiate an arrangement.
- ☐ I've advised the parties.
- ☐ I've studied arrangements as a researcher.
- ☐ I've been involved as a development agent of a local or national group—a government agency or non-governmental organization (NGO).
- ☐ I've been involved as a representative of an international development organization or NGO.

Other (please specify)

How many collaborative arrangements have you been directly involved with in the last five years?

- ☐ None.
- ☐ One.
- ☐ Two to five.
- ☐ More than five.

2. WHAT IS IMPORTANT

Here is a list of statements about making agreements in forestry projects with communities or landowners as partners. These are statements about helping agreements succeed—mostly not about resource management or forest policy. Please review the statements. Most people agree that all these things are important to some degree. After you read the list, we will ask you which ones you think are most important, which are least important, and what is missing from the list:

A. LEGALLY VALID: It's important that the promises and duties of all sides in the project be written out somewhere—in a contract, a charter, a regulation, or some other formal, comprehensive, and legally valid and enforceable document.

B. FULLY BARGAINED: It's important that the sides really bargain with each other, that they talk enough to understand each other's needs, and that they reach agreements where both sides win.

C. MUTUAL RESPECT: It's important that the sides can deal with each other respectfully, and that no side is considered inferior to another or under the control of another. It's important that when agreements are reached, all sides have similar expectations about what the project will require and what the outcome will be. That applies to—

D. SHARED EXPECTATIONS ABOUT THE PROJECT: what it will require from each side; and

E. SHARED UNDERSTANDINGS ABOUT AGREEMENTS: a shared sense of what it means to make and keep an agreement, or at least an understanding and acceptance of the cultural lens through which the other party will view the agreement.

F: SELF-DETERMINATION: It's important that all sides enter the project freely, with an eye toward achieving their own goals, whatever they may be.

G. TRUST: It is important that the sides trust one another.

H. PRACTICALITY: It's important that the project agreements are practical, considering the context and the capacity of the participants.

I. VERIFIABILITY: It's important that compliance with the agreements is easy to verify.

J. COMMUNICATION: It's important that the parties can communicate with each other readily and easily throughout the project, without physical, behavioral, or cultural barriers.

K. HISTORY ADDRESSED: It is important that project agreements address any past conflicts between the participants, and try to resolve them.

L. INCENTIVES: It is important that project agreements involve the right parties and shape incentives so that the rewards for success flow to the people with the power to make the project successful.

Which of these are the most important? (Choose as many as you like.)

- ☐ A. LEGALLY VALID
- ☐ B. FULLY BARGAINED
- ☐ C. MUTUAL RESPECT
- ☐ D. SHARED EXPECTATIONS ABOUT THE PROJECT
- ☐ E. SHARED UNDERSTANDINGS ABOUT AGREEMENTS
- ☐ F. SELF-DETERMINATION
- ☐ G. TRUST
- ☐ H. PRACTICALITY
- ☐ I. VERIFIABILITY
- ☐ J. COMMUNICATION
- ☐ K. HISTORY ADDRESSED
- ☐ L. INCENTIVES

Which should be at the bottom of the list, not so important as the others? (Choose as many as you like.)

- ☐ A. LEGALLY VALID
- ☐ B. FULLY BARGAINED
- ☐ C. MUTUAL RESPECT
- ☐ D. SHARED EXPECTATIONS ABOUT THE PROJECT
- ☐ E. SHARED UNDERSTANDINGS ABOUT AGREEMENTS
- ☐ F. SELF-DETERMINATION
- ☐ G. TRUST
- ☐ H. PRACTICALITY
- ☐ I. VERIFIABILITY
- ☐ J. COMMUNICATION
- ☐ K. HISTORY ADDRESSED
- ☐ L. INCENTIVES
- ☐ I'll answer some specific questions.
- ☐ I'd rather not.

What statements are missing from the list?

If you are now involved in a collaborative arrangement, and you wouldn't mind answering a few specific questions about the arrangement,

please click "I'll answer some specific questions" below.

Otherwise, click "I'd rather not."

After you make your selection, click the "Next" button at the bottom of the page.

3. INFORMATION ABOUT YOUR CURRENT PROJECT

What is the name of the collaborative arrangement and where it is implemented?

Name

Location

What parties are involved in the collaborative arrangement? (Check the best description.)

- ☐ Private sector and communities or landowners.
- ☐ Government and communities or landowners.
- ☐ Government, private sector, and communities or landowners.
- ☐ Communities or landowners only.

What are the outputs that the collaborative arrangement hopes to produce from the forest?

- ☐ Wood products (such as timber, pulp, or fuel).
- ☐ Environmental services (such as biodiversity, carbon sequestration, watershed improvement, tourism, etc.).
- ☐ Both of the above.

If there is another key output, please specify:

How old is the collaborative arrangement?

- ☐ Less than a year old.
- ☐ At least a year but less than five years old.
- ☐ Five years old or older.

How would you rate the success of the collaborative arrangement so far?

- ☐ Excellent
- ☐ Good
- ☐ Fair
- ☐ Poor
- ☐ Failure

The most important way that the arrangement benefits local people is through

- ☐ Providing financial compensation to affected communities or individuals.
- ☐ Providing non-financial compensation to affected communities or individuals.
- ☐ Providing land or certainty about land tenure rights.
- ☐ Providing employment (e.g., in timber management, fire management, etc.).
- ☐ Offering land occupiers advice, materials, loans, or access to markets (outgrower schemes).

Other (please specify)

Which of the following choices best explains how the parties captured the main details of the arrangement?

- ☐ There is no special agreement: the rules are more or less set out in laws that governs arrangements like these.
- ☐ There is an oral understanding.
- ☐ The parties signed a written agreement or otherwise put their understanding in writing.
- ☐ The parties created a new organization or business whose charter or bylaws reflect their understanding.

4. ABOUT THE WRITTEN AGREEMENT . . .

Are any of the following in the written agreement or charter? (Select all that apply.)

- ☐ Clear details regarding the rights of the parties involved.
- ☐ Clear details regarding the responsibilities of the parties involved.
- ☐ Provision for contingencies: what the sides will do in emergencies or if things do not go as hoped.
- ☐ Details for dispute resolution.
- ☐ How monitoring of compliance will be done and who will do it.
- ☐ Milestones (intermediate steps to fulfilling the deal).
- ☐ Conditions that one side must meet to get access to services such as credit or expert advice.
- ☐ A plan or specific directions for managing the land.
- ☐ Prices for forest products.

Which of the following happened in the process of making the agreement? (Check all that apply.)

- ☐ In the course of discussions leading to the agreement, the parties identified the key points over which they could bargain. In other words, they identified the issues.
- ☐ In the course of discussions, the parties didn't just exchange offers and counter-offers—they discussed why each side wanted what it wanted. In other words, they talked about each other's interests.
- ☐ Everyone who needed to be "at the table" in the negotiations was there and had a voice.
- ☐ People "at the table" in the negotiations had roughly equal bargaining power.
- ☐ The arrangement was offered to one side as a "take it or leave it" no-changes deal.
- ☐ The process was not rushed.
- ☐ By their choices, the parties joined the arrangement freely, exercising self-determination.
- ☐ The parties came out of the negotiation trusting each other a bit more than when they went in.

Do any of these statements describe what has happened since the agreement was made? (Check all that apply.)

- ☐ There have been problems implementing the agreement from lack of knowledge, tools, skills, or money.
- ☐ There have been some ongoing disputes between the parties.
- ☐ There have been some disputes that the parties have resolved.
- ☐ Things have gone in a direction that no one expected when the agreement was made.
- ☐ We have discovered that the parties really had different ideas about what the agreement meant.

5. CARE TO GIVE US YOUR CONTACTS?

If you would be willing to discuss your project in more detail with one of our researchers, please click the "Yes" button below, and we will ask you for your name and contact information. Otherwise, please select "No." After you make your selection, click the "Next" button at the bottom of the page.

- ☐ Yes, I would be willing to talk with a researcher about my project.
- ☐ No, thanks.

6. CONTACT INFORMATION

Please give us your contact information. Researchers from the study may get in touch with you to discuss your project.

Please give us your name and contact information. If there is a better way to contact you (such as through instant messaging [I/M] or Skype), please tell us here:

Name:

Company:

Address:

Address 2:

City/Town:

State:

ZIP/Postal Code:

Country:

Email Address:

Phone Number:

Please click the "Next" button below.

7. THANKS

Thank you so much!

Please click the "Done" button below to record your response.

Annex II: Interview Protocol

The interview protocol was used to guide the phone-based interviews. The protocol was available in English, Spanish, and French for the interviewers to use.

Interview Protocol

Legal and Transactional Aspects of Collaborative Arrangements
Draft of 6 April 2009

Name of Project:
Location (country, city/town/village):
Name of persons interviewed and title (if more than one person is interviewed, please list all the people and their titles):
Interviewer:
Date:

For the interviewer:

Some of the questions listed below have potential answers listed. The interviewer should check one of these boxes if the respondent's answer fits the options, and provide details. (If the answers do not fit within the options, please detail the answer.)

The interviewer should let the respondent know that there are three parts to the interview:

I. Details of arrangement (which should take approximately 15 minutes)
II. Process for establishing the arrangement (which should take approximately 15 minutes)
III. Context in which arrangement is being implemented (which should take approximately 10 minutes)

The order in which the questions will be asked should be indicated.

PART I OF PROTOCOL: DETAILS OF ARRANGEMENT

1. Tell me about your role in the project?

☐ one of the parties in the agreement (please specify which one:_____)
☐ negotiator (please specify for which party: _____)
☐ observer (details: _____)
☐ lawyer (details: _____)
☐ researcher (details: _____)
☐ other (details: _____)

2. Who are the main parties in the collaborative arrangement in the project and what are their roles? (Please list each party and their main role—e.g., community Y—party in the contract as supplier of raw material.) The answer to this question should provide a sense of the setup in this arrangement (e.g., whether an NGO was involved in consultations and facilitating the scheme).

3. How long has this collaborative arrangement been in place?
☐ less than one year (please specify exact length of time: _____)
☐ 1–2 years (please specify exact length of time: _____)
☐ 2–5 years (please specify exact length of time: _____)
☐ more than 5 years (please specify exact length of time: _____)
☐ completed (please specify when it was completed and how long it was in place: _____)

If the collaborative arrangement has been in place for more than a year, please ask the respondent if they have followed it from its inception, and if not, at what point they came on board.

4. What is the duration of the collaborative arrangement?
☐ less than 1 year (please specify exact duration: _____)
☐ 1–5 years (please specify exact duration: _____)
☐ 5–10 years (please specify exact duration: _____)
☐ more than 10 years (please specify exact duration: _____)
☐ other (e.g., no specific time frame—please specify: _____)

5. What is the scale of the arrangement?
- Volume of output or service (please include unit measure [time and quantity measure])
- Area covered (please provide a unit measure)
- Number of people involved (e.g., number of households in outgrower scheme or households in communities involved, etc.)
- Any other measurement/indication of scale:

6. What are the primary management goals for the land?
☐ commercial production of raw materials—for example, timber, woodpoles, nonwood forest products (please specify details: _____)
☐ production of specific environmental services (please specify details: _____)
☐ management of an area for biodiversity (please specify details: _____)
☐ development of tourism facilities (please specify details: _____)
☐ other _____)

7. How are the resource management goals set?
☐ decided at the beginning, as part of the arrangement
☐ jointly, by consensus of the parties
☐ by one party (which one: _____)
☐ by an organization or board created to carry out the project (describe: _____)
☐ other (e.g., a combination of the above or something completely different—please specify details _____)

8. How are the implementation decisions associated with the agreement made?
☐ decided at the beginning, as part of the arrangement
☐ jointly, by consensus of the parties
☐ by one party (which one: _____)
☐ by an organization or board created to carry out the project (describe: _____)
☐ other (e.g., a combination of the above or something completely different—please specify details _____)

9. What are the primary benefits to the community? (Please specify details and amounts if possible.)
☐ passive payments to the community or similar benefit sharing (please specify details, such as legal requirement associated with timber concession or something else: _____)
☐ purchase or rental of forest resources or rights from the community _____
☐ construction of infrastructure (roads, schools, etc.) _____
☐ management services for the community's land _____
☐ hiring of local labor (please specify details: _____)
☐ provision of access to the forest or forest land to the community

☐ provision of tools, incidental advice, or access to markets or credit
☐ other _____

10. Anything else you would like to mention regarding the details of the arrangement?

_____
_____
_____

PART II OF PROTOCOL: PROCESS FOR ESTABLISHING THE ARRANGEMENT AND CONTENT OF THE AGREEMENT

1. Tell me how the arrangement came about.
Let the subject give a brief history, then return to these points if not covered.

- **Did the sides have a history of particular differences before this project?** (For example, did they dispute the extent of customary rights? Did they argue about enforcement of forest laws or imposition of taxes? Did they complain about prices being unfairly determined by one side or the other? Did they disagree about distribution of costs, benefits, or risks in previous forest activities?)
  - Has the project addressed or resolved any of these old issues between the parties?
- **Did the parties discuss terms or options, or was this basically a take-it-or-leave-it deal?**
- **In the process of creating the partnership**, how did the leverage of the community or individuals compare with the leverage of the government or business? **Did one side clearly have the "upper hand"?**
- **Did/has the result change/changed the way the community or the individuals view the government or business?** Have the community or individuals come to understand the government or business better? Has the government or business come to understand the community better?
  - At this point, do the sides trust each other?
  - Did the result improve communication between the partners?

2. ***How satisfied are the main parties in the arrangement*** (on a scale of 1 to 5)?
1 = not interested in maintaining the arrangement
2 = dissatisfied
3 = indifferent
4 = satisfied
5 = highly satisfied

Community (or individual household that is party to the agreement) ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5
Private sector (if relevant) ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5
Government (if relevant) ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5
Other party (please specify) ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

Has this satisfaction been consistent or has it varied over the duration of the arrangement?
Please provide explanations for the ratings provided _____
_____

3. Let's talk about what legal documents are involved in the project.
How do the sides know what their obligations or rights are? Are these written out anywhere?

- Examples might include
  - **contracts** (formal sets of mutual promises),
  - **open offers** (offers to take action, such as to grant rewards, provide services, or share benefits, if others fulfill the terms of the offer),
  - **licenses** (one-sided grants of authority, often with conditions),
  - **laws** (statutes, regulations, decrees, etc. Include laws that are specific to this project, and if important in shaping the project, laws that govern community forestry partnerships),

  - **charters, articles of incorporation, or bylaws** (of a corporation, NGO, or trust set up to participate in the project),
  - or other documents.
- Are the understandings set out completely in writing? Or are key understandings not in writing and not otherwise set by law?
- Are the documents detailed or general? [This is the "fussy versus fuzzy" split. It is difficult to quantify, but when you compare a 30-page concession contract with a one-page license to cultivate an agro-forestry plot, you can see a difference.]
- What aspects of the arrangement are set by mutual understanding and not included in any law or document?
- Was anything done to ensure that the project is generally consistent with local law? For example, were attorneys involved in reviewing or setting up the project?

4. ***Now I'd like to discuss whether the understandings that the parties have reached have been practical.***

- Tell me about problems implementing the project so far.
- Have there been or do you anticipate any problems implementing the project because of
  - legal issues?
  - technical knowledge?
  - financial matters?
  - knowledge of law?
  - cultural understanding?
  - problems with tools and equipment?
  - problems with infrastructure?
  - capital, including access to credit?

5. ***Let's talk about conflicts and disagreements.***

- Since the documents were signed or put in place, have there been any disagreements over what they mean? Have there been problems that seem to be completely outside what the original project documents contemplated?
- Tell me about any other conflicts or issues that have surfaced (numbers, kinds).
- Do the legal documents include any formal steps to take to handle conflicts between the parties?

6. ***I'd like to explore how the parties will know if the partnership is meeting its goals.***

- How do/will the parties determine if the other party is meeting its obligations in the partnership?
  - Is there
    - 'a **single end-point** test (e.g., delivery of a specified amount of timber, or a single site inspection upon completion of management obligations),
    - 'a **series of checkpoints** (e.g., annual goals, annual inventories or reviews of remote sensing data), **or**
    - '**more or less continuous performance standards** (e.g., management activities must conform to an agreed-upon plan)?
  - Are the major standards **objective** (e.g., every marked tree cut and no stumps over 10 centimeters tall), **subjective** (e.g., to the satisfaction of the buyer) **or a mix** of both?
- Does the arrangement require either party to keep records?
- Does the arrangement allow either party to inspect records or work in the field?
- How about outsiders who might have an interest in the project?
  - For example, can third parties inspect the site, work done under the contract, or records kept under the contract?
  - Can third parties see the contracts or written agreements that the project is based upon?

7. ***Let's talk about what the sides expected to get from the project when they began, and what they have gotten so far.***

- Has either side been surprised by what has happened since it agreed to participate?

- As it turns out, did the sides really understand the partnership when they made it? Have they changed their understanding as time has passed?
- If we asked each side to explain the partnership to us today, would we get the compatible stories?
  - Would the two sides describe the **obligations** of the community or individual participants roughly the same way?
  - Would the descriptions of the **obligations** of the government or business be roughly the same?
  - Would the descriptions of the **rights** of the sides be similar?
- Looking back, when they made the arrangement, did the partners overlook options that could have made the arrangement better?

8. Success of the project so far, in various areas

How would you rank this arrangement (on a scale of 1 to 5)
1 = not at all
2 = low
3 = average
4 = high
5 = very high

- From a general financial (purely monetary) or economic point of view: ☐ 1 ☐ 2 ☐ 3☐ 4 ☐ 5
- (if choose both financial and economic then indicate separately)
- Economic sustainability: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5
- General social point of view (positive impact on all members of affected community—women, marginalized, etc.): ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5
- Environmental sustainability: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5
- In terms of the effort to implement the project—the work to make the project work—and the quality of the institutions involved: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

The interviewer should ask the respondent to provide explanation for the ratings provided (e.g., seen as very financially sustainable because the amount of money each household gets is *x* percent of their total income/month or per year, or financial sustainability is scored average because households see the monetary compensation as fair. Similarly the arrangement is seen as highly environmentally sustainable because the area under forests has increased by *x* hectares, etc.)

Finally—

- What should I have asked that I have not?
- What else should I know to really understand the agreements of the partnership, how they were reached, and how they are working?

PART III OF PROTOCOL: CONTEXT IN WHICH ARRANGEMENT IS/WAS DESIGNED AND IMPLEMENTED

Interviewer: For this section, please make sure the respondent is familiar with the issue being discussed before asking for details. If they are familiar with the issue, then please obtain as much relevant detail as is possible (keeping in mind time) and sources for the information to confirm the validity of information provided.

Reason for this section: The context within which an arrangement is designed and implemented can influence how effective the agreement is and should ideally have informed how it was designed. To get a sense of the context in which this agreement is/was designed and implemented, we would like to ask the following questions regarding context:

- What would you say is the households' reliance on the natural resource that is affected or (if more appropriate) the income from the agreement? Any studies done to validate this?

  1 = not at all ... 5 = high

  1. Not reliant at all (none of their subsistence or income come from forests
  2. Not very reliant (less than 25 percent of their subsistence and income comes from forests)

3. Modest reliance (less than 50 percent of their subsistence and income comes from forests)
4. Reliant (more than 50 percent of their subsistence products and less than 50 percent of their income come from forests)
5. Very reliant (more than 50 percent of their subsistence products and income together comes from forests)

- Are the rights and tenure of local communities clearly defined and recognized? What are the main conflicts with regard to use rights and tenure? Who owns/has use rights to the land? Who owns/has use rights to the resource?
  1 = not clearly defined or recognized . . . 5 = clearly defined and recognized
- How helpful is the national legal framework—does it facilitate collaborative arrangements, provide clear indication of affected community, and so on?
  1= not very helpful . . . . 5 = extremely helpful
- How well are the relevant laws enforced?
- How much reliance would the parties in the agreement place on the court system for addressing conflict? 1 = little (because not well functioning, not accessible, costly, etc.) to 5 = a lot
- What informal or traditional mediation systems are accessible?
- Does the community involved have access to credit (including micro) and use it?
- Does the community involved have access to extension services and use them?
- Does the community involved have access to information regarding the kind of activity they are involved in through this agreement (e.g., how much money the mining company is actually making from their resource)?
- How is the community's access to markets?
- Does the community receive many offers for collaborative arrangements of this kind?
- Level of education in communities
  1= low to 5 = high
- Level of organization in the community
  1= low to 5 = high

Annex III: Collecting and Distributing Revenues through Benefit-Sharing Arrangements: Some Insights from Extractive Industries and Forestry

Management and distribution of resource revenues, through benefit-sharing instruments, has placed a lot of emphasis on the distribution of benefits to communities. Companies in oil, gas, and mining are recognizing that building good relations with stakeholders is important for doing business. The business case for this is based on the following:

- Investments in maintaining community social services will improve community relations and reduce risk of compensation and damage suits.
- Companies with good environmental and social performance will be perceived as less risky by financial markets; the cost of capital will be reduced. Similarly, insurance premiums will be reduced.
- Transaction costs such as negotiating contracts and dealing with disputes will be reduced.
- There are reputational advantages: Responsible business practice has a positive impact on the reputation and public perception of the company.

When operating in second-best situations, it is important to (Fischer 2007)

- define beneficiaries—using assessment of land tenure, identify which private stakeholders have the right to negotiate and expect compensation;
- consult with local stakeholders including those who do not have legal tenure over the land but are adversely affected by the resource extraction, and consider and incorporate their concerns into designing the activity and offering or negotiating compensating benefit;
- identify, based on capacity measures, an institution for providing the promised services and formalize the management arrangement; and
- define the benefits and to the extent possible offer benefits in a productive form.

A challenge in benefit-sharing arrangements is structuring the arrangement in order to effectively collect and redistribute a share of the benefits. A review of the benefit-sharing arrangements of ten extractive industries covering five continents both in developed and less developed countries[22] revealed the following:

- Royalty payments seem to be a common way for mining companies to compensate the communities (five out of ten cases); very often these payments are done through a trust fund that is established between the company and the community or through a foundation (Hill 1999; IFC 2005; ADB 2005; Creamer 2006).
- In the North American cases (Alaska and Canada [Quebec] cases) where land rights of the First Nations are clearly stipulated, many times the royalties are channeled through corporations where the local communities are shareholders; these are specifically set up to receive and manage compensation money (Hill 1999).
- Another common trait is the setting up of a Community Development Program consisting of projects designed to help the local community in areas such as education, health, and so on; these projects are set up in direct consultation with the communities who form a decision-making committee (Hill 1999; IFC 2005; CSRM 2005).
- There was also one joint venture arrangement in which the indigenous community (Royal Bafokeng Nation of South Africa) held a 13.4 percent stake in the mining company. In addition, they received royalty payments from the mining company. Revenue from mining

22 Three in Africa, one in Australia, one in Papua New Guinea, two in North America (Canada and Alaska), two in the Philippines, and one in Guatemala.

has made this indigenous community rich (Creamer 2006).

- Three of the formal agreements contained the following key elements: preferential employment opportunities for local indigenous people, education and training commitments, financial compensation, preferential business opportunities, and environmental commitments (Hill 1999).

Often the allocation of resources among various funds depends on prioritization placed between saving for the future and short- and medium-term development needs. Also, where countries have confidence in the quality of the central budget process there tend to be fewer earmarked funds (e.g., for development projects), as they devote funds implicitly to public goods, services, and economic development (Fischer 2007).

The literature suggests that cash transfers are likely to be spent on nonproductive consumption especially where there are no supporting financial institutions (for saving and investment). In favor of cash transfers is the point that they ensure direct benefits for citizens and limit government's ability to divert funds to undesired ends (Fischer 2007). There are additional reasons in favor of cash transfers—for example, they force governments to raise revenue through normal means of taxation. This will make the institutions more accountable to the citizenry and limit the government's ability to direct the funds toward desired ends.

LESSONS FROM THE CASE STUDIES

Interview respondents reported several forms of benefit sharing. One common form was direct payment to individuals or the community. Where the arrangement entailed production of forest products, the payment typically depended on the price and volume of the forest products, often a market price or a market price with a premium paid for higher quality, such as certified wood or organic nuts (e.g., Annex IV cases 3, 4, 18,[23] 22,[24] etc.). In one outgrower scheme, the landowner could have either a fixed land-rental fee, a share of the income from the timber, or a combination of both (Annex IV case 8).Where the arrangement included labor for a business, the business often paid wages (e.g., Annex IV case 26). Where the project entailed production of environmental services, the payment typically was based on the status of the land on a reporting date (e.g., Annex IV case 23[25]).

Sometimes these payments were in the form of cash; however, at least one case (Annex IV case 4) took special effort to make the payments as deposits to bank accounts, presumably to enhance recordkeeping, verification, or transparency. In one case, where the cash payments were contributing to increased alcohol consumption, the partners agreed to switch to vouchers that the individuals could redeem at a local market (Annex IV case 27[26]). In another case, where there was concern about the way that cash was being spent, the community asked to switch to payments in the form of productive goods, such as beehives (Annex IV case 26).

Sometimes the revenue came in the form of advances or credit. One project gave the participants an advance of 30 percent of the anticipated revenue (Annex IV case 17). One partner first extended credit and then arranged for outside credit (Annex IV case 3[27]).

In one case (Annex IV case 20), part of the payment was in the form of a 10 percent equity stake in the company purchasing the certified wood.

The cases illustrated several ways to make payment to groups. Direct payments to local government were unusual. In one case where there was such a direct payment, the outside party believed that the funds were being spent inequitably (Annex IV case 11). In some cases, the payments went to an association of local participants (e.g., Annex IV

23 Total value of payments to the community in case 18 were $15,600 (USD) in 2007 and $20,700 in 2008.

24 In addition to purchase of timber from community lands, the partners in this project created a $5000 (USD) fund to promote better management and harvest practices on private property of community members.

25 Payments in case 23 were variable, but had been running at $1.75 (USD) per hectare per month. The total area potentially eligible for payment, if properly conserved, was 638 hectares.

26 The sponsors of this environmental services project were actually providing income to the community in at least three ways. The sponsors were buying trees from the community nursery. The sponsors were paying vouchers to individual participants to plant and tend the trees. And the sponsors were paying into a social fund, kept by the communal assembly. In all, one sponsor estimated that the project cost about $1.40 per tree, of which 20 percent was going to the social fund.

27 The line of credit was for about $142,000 (USD). The project involved 110 families and 300 hectares of land.

case 17). In one case, although the original plan was to make all payments to a community fund, the parties decided it would be more equitable to pay part into a fund and part to individuals based on how many hours each worked on the project (Annex IV case 27). In another case, the community divided itself into teams, and payments depended on the volume of forest products that each delivered, even though this put some teams at a disadvantage based on the productivity or location of their assigned land (Annex IV case 20).

In a few cases, one side or the other created a new organization to receive and disburse the shared revenue. In one case (Annex IV case 23), the outside partner put a share of water revenues into a trust to pay the participating farmers. In another (Annex IV case 6) the partners together proposed to create a new NGO to manage the land and receive revenue from the business partner.

In two cases, the payments went to a fund held by the district or national government, but put to uses agreed upon jointly by the government and local people. In one case, the district government held the fund, to be spent on projects benefiting the participating village (Annex IV case 7). In the other, the national government held the fund, to be spent for reforestation and other environmental improvements on public and private lands in the community (Annex IV case 5[28]).

The benefits were not solely monetary. Sometimes the benefits included access to land or assistance in agricultural operations (e.g., Annex IV cases 7, 8, and 26). Partners often offered technical assistance in land management. In one PES case, one set of the individual participants received only payments while another set received payments and technical assistance. The group receiving technical assistance was considered more successful. (Annex IV case 19). Some partners offered training in business skills (e.g. Annex IV case 20).

Sometimes the assistance included help in navigating administrative processes. Some cases helped the local partners to get the necessary delegation of authority from the central government to manage centrally owned public lands (e.g., Annex IV case 2). Some cases helped the local partners get government permission to conduct forestry activities on private land (e.g., Annex IV cases 3 and 4). Some cases involved assistance in meeting certification requirements (e.g., Annex IV case 2).

In a few cases, a key benefit to the community was settling title to local resources. In one case, the project established the community's rights to control an undeveloped area, which became a nature reserve (Annex IV case 6). In other cases, the outside partners facilitated resolution of disputes over community boundaries (Annex IV cases 2 and 7).

In a few cases, the outside partner provided benefits in the form of infrastructure or land improvements (e.g., Annex IV cases 4, 7, and 13).

WHAT CAN GO WRONG?

Sometimes mistakes are more instructive than successes. The interview subjects reported the following errors:

- Making payments to community leaders who fail to distribute them fairly. In one case, the partner believed that the leader was diverting revenues for personal use.
- Making payments to heads of households if they spend the income on frivolous temporary indulgences, such as alcohol. In two cases, the community participants decided to take payment in goods or vouchers for goods instead of cash because of this problem.
- Failing to make payments at the promised time.
- Having benefits that rose and fell with commodity prices. This is probably a greater problem if the community does not expect any variations, or if commodity prices are highly volatile.
- Having few benefits in the early years of the project. Again, this is probably a greater problem if the payment pattern runs counter to community expectations.
- Becoming a surrogate provider of government services. Some of the business partners provided water, electricity, communication, or road-building services incidental to the development of the resource. However, one interview subject cautioned against becoming the sole source of basic services that are ordinarily the responsibility of government

28 In a recent accounting year in this case, the government sold over 12,000 cubic meters of timber from public forests under the agreement, retaining over $500,000 (USD) to be spent on restoration and improvement projects. Many of these projects were contracted to businesses outside the community, but those businesses often hired community members, and the improvements were to public and private lands in the community.

Annex IV:
Summary of Cases

Brief Description	Breakdown of Risk Property Rights and Market Orientation	Duration	Type of Written Documentation	Addressing Conflict	Tailor to Scale	Other	Have Contract Docs?
Case 1: Ghana. Benefit-sharing arrangement in mining sector							
Case involves a mining company that set up three social responsibility agreements with the communities (employment, benefit sharing, and creation of a forum to handle issues arising from the operation of the mine)	Low risk to community in that community does not make any investment, and the arrangement is usually set up so that the community is being provided with goods, services, and financial compensation. The benefit-sharing arrangement is not oriented toward market profits, although one of the objectives of the benefit-sharing arrangement can be establishment of community enterprises that individually have profit orientation. The property (land rights) belong to chiefs (though there are layers of ownership)—not state land	The arrangements were worked out over the course of 1.5 years of discussion	One agreement regarding forum, an agreement regarding foundation for the benefit sharing, and one agreement is regarding commitment to hire local people	Did have conflict over how much company would pay for destroyed crops. Also company slow to deliver the expected actions. These points have been discussed, plus a major objective of one of the agreements is to set up a forum to air concerns and grievances. • The sides hold monthly meetings, where grievances can be brought for informal resolution	Fully bargained agreement. The effort of negotiating the agreement improved the relations between company and community; also, company needs the support and property protection	The main parties to the agreement are the company and community. Devised three agreements. The idea behind the agreement came from the community and local chief. It took 18 months to put in place. Have a situation in which the company needs to get social license to do business	Y
Case 2: Tanzania. Supply-driven community approach in natural forests							
Objective of this partnership was to help villages manage the forests under FSC certification for one species of wood	The property is state-owned lands (village forest reserves). The risks associated with this arrangement for the community are low. No investment, but obtaining access and management rights of forest land. Market orientation: primary objective is commercial production	Management plans for the various villages have been approved at different times—2006 onwards. The FSC piece is more recent	Had two documents: management plan and agreement between the villages and technical assistance (TA) organization to join the FSC certification group	• Outside partner settled pre-existing conflict between communities • Adopted grievance procedure as part of certification • Multiyear experience working in region resulting in strong informal relationships	Here we have several villages that are to jointly obtain forest certification—group certification. For doing this we need to have the various villages managing their forests in a particular way (recognizing local elements). So use of a template for the management plan makes sense. The agreement to join the certification is a take-it-or-leave-it agreement. Developed the latter after discussions with the communities		Y

Case 3: South Africa. Market-driven community approach. Plantations

Arrangement is for growing an acacia species on farms that were recently sold to community members. The entry point is through credit arrangements	Sharing of risk: community bears production risk as they take out a loan linked to production. "The CPA's commitment under the agreement will continue until the community repays its loans" and "Community is also using black wattle species based on advice of private company." The company bears the risk associated with having a product that meets their needs: "wants the supply of bark for its processing factory, which is on adjacent land," Market orientation is for profit. Property: community owns the land (however, the transfer requires them to grow trees on it)	Arrangement does not have a fixed duration—it is active until the loan is paid back	There is an agreement between the community association and the cooperative providing the loan, and between the cooperative and government agency regarding a larger portion of the overall loan	• Formed management committee with equal representation of participating sides; • Agreements are legally enforceable, but courts are not anticipated to play a role in resolving disputes • Working to improve avenues for informal communication; • Contract includes arbitration mechanism for handling disputes	Have the legal agreement and a separate mentoring agreement with the community (this is outside the legal agreement)	N

(*Table continued on following page.*)

Brief Description	Breakdown of Risk Property Rights and Market Orientation	Duration	Type of Written Documentation	Addressing Conflict	Tailor to Scale	Other	Have Contract Docs?
Case 4: South Africa. Market-driven community approach. Plantation							
Outgrower scheme involving small plots managed by rural people. Began in 1983	Sharing risk (production is with landholder and market is with private company): "The landholder plants, tends, and harvests the trees." "The grower decides when to weed, when to fertilize, and even when to harvest. " Company provides seedlings, financing (interest-free loans against income from sale of the wood), technical advice, and in a few cases infrastructure. It also guarantees a market. Land privately owned. Market orientation: for profit	Contracts run to the harvest of the trees (8–10 years)	Individual contracts	• Annual formal communication with partners, combined with informal meetings with approachable field staff; • Uses local associations and elders to work out conflicts with individual participants	There is a standard "take-it-or-leave-it" contract. The company discussed the terms of the contract with various grower groups and the contract has changed a bit over the years. Some matters that the contract allows to vary (for example, rates for fertilizer and supplies from the company) are renegotiated every year. Contract: 8–10 pages, plus addendum covering things like rates paid and tribal approval of use of the land. The rates are renegotiated annually with the growers as a regional group. Contract is drawn up with participation of company lawyers	Not worth the company's costs to take a grower to court. If a grower reneges, the company can go to the tribal authorities, but often it just accepts the loss and walks away	N

Case 5: USA. Public-private-community partnership and market-driven community approach. Both natural forests and plantations

Through collaborative efforts, the federal forest agency and a community stakeholder committee design, and the federal agency contracts out, forest stewardship projects. Projects on federal reserved forest generate net income from commercial thinning. The income is retained to fund further jointly designed non-commercial stewardship and watershed improvement projects on federal reserved forests and nearby public and private lands	The risk to the community is low. The income-generating activities are on public lands. The reforestation, invasive plant control, and watershed improvement activities are on both public and private lands. The community benefits from employment (in forest and mills), improvements in the watershed, and reduced conflict over resource use. The orientation is principally toward non-profit stewardship, but the partnership depends on retained income from thinnings	Since 2000	The individual contracts The laws authorizing stewardship contracting Internal Forest Management (FM) plans and environmental assessments A statement of principles adopted by the stakeholders—but not legally binding A memorandum of understanding concerning the administration of funds	• Project decisions made through a committee of stakeholders that had long prior history of conflicts; • Project uses independent facilitator to promote dialogue	Work with stewardship contracting, where best value proposals are accepted for the objective and then contracts are made with each activity individually. The memorandum of understanding (MOU) concerning management of funds and the community organization's internal principles are almost certainly custom-made for the one case. The contracts for the individual projects are probably full of standard agency contract language	N

(*Table continued on following page.*)

Brief Description	Breakdown of Risk Property Rights and Market Orientation	Duration	Type of Written Documentation	Addressing Conflict	Tailor to Scale	Other	Have Contract Docs?
Case 6: Nigeria. Public-private-community partnership involving natural forests. Related to mitigation measure for an extractive industry							
A company with power plant is causing pollution to neighboring areas. This arrangement is between a company and community to set up a park as a mitigation measure to the plant's activities (similar to what was in environmental impact assessment [EIA])	Company decides the management plan (because it has to line up with findings of EIA). Community benefits include (1) establishment and recognition of the community's ownership of the land and (2) prevention of encroachment by competing chiefs. The land is community land. There is potential for ecotourism but the latter is not a source of profit yet (not market-oriented as main objective is land preservation)	The idea to set aside land has been in place since 1995. At the time the company was contacted with the information that the land needed to be set aside for 30 years. The formal organizational structure, however, still needs to be created.	Have agreement between NGO and company. There is a letter from the community to the company, which has little legal weight but great weight in the community. There are the proposed by-laws of the community NGO that will run the park one day. And there are the one- or two-year management contracts between the company and NGO	• Project uses a local NGO as a facilitator; • Project management will eventually be through a board made up of representatives from the community and the company; • NGO has experience with local culture and uses local, informal methods to address most disputes; • Company is building local capacity to bridge language barriers	Wanted to have a setup with an NGO established that the company will endow a trust fund to support the project. In the meantime, they have signed a short-term management contract with an existing NGO—to be able to get things off the ground in terms of management of the park		Y

Case 7: Lao PDR, benefit-sharing arrangement. Plantation forests

Company is leasing land from government for plantation. Company sees food security of the community as key to success of plantation and is managing plantation in a way that allows for this additional objective (mutual use of leased land)	The arrangement poses low risk to communities as the area management ensures that the villagers always have land for planting rice and always have labor opportunities on the plantation. The land is formally state land under the central government and provincial government. The company has a profit orientation, but benefit-sharing arrangement is not focused on that	Not specified	• Company has identified culturally sensitive lands (to avoid future conflict); • Company has sought to mark community boundaries and help settle existing land disputes between communities; • Company has established informal channels of communication with women in the community, who provide much of the project labor	No actual agreement with the community because the community is illiterate. Nevertheless, trust is completely based on the villages' willingness to participate	Trust is essential especially between company and villages. The program is completely based on the villages' willingness to participate. Emphasis of the benefit-sharing arrangement is certainly sensitive to context... has a situation where the government and villages do not have the same understanding of land ownership. Therefore, have government keeping people off the traditional lands, and if people do not have enough land for traditional lifestyle, then this would be a problem. Therefore, have a planting arrangement that ensures that villages always have land for planting rice and labor opportunities on plantations	N

(*Table continued on following page.*)

Brief Description	Breakdown of Risk Property Rights and Market Orientation	Duration	Type of Written Documentation	Addressing Conflict	Tailor to Scale	Other	Have Contract Docs?
Case 8: Uruguay. Public-private community partnership and market-driven community partnership. Plantation forests							
Private company leasing land from local land owners for plantation, and providing grazing rights to local people on some company-owned lands	The agreements are for (1) access to company land for grazing and (2) long-term outgrower schemes on private lands. Payments for outgrower schemes are either in yearly installments (low risk to landowner) or a share of the income from the timber (higher risk to landowner) or a combination of both. In most cases the orientation of both parties is profit, but as part of the company's social responsibility program, some of the grazing rights go noncommercially to small-scale community dairy or wool cooperatives that need access to land	Outgrower agreements are for 10, 20, or 30 years. Commercial grazing agreements are annual. The noncommercial agreement program is in an early phase, and the initial agreements are for 3–4 months	Understanding is fully set out in contract. Grazing: There are different contracts for the commercial arrangements and the noncommercial arrangements for the benefit of small cooperatives. Outgrower: Contracts differ depending on whether the landowner is getting simple rent or a share in the income from the timber	• Company has adopted NGO-endorsed tools for community interactions; • Overall project preceded by social assessment of area to identify issues; • Company participates in local development roundtable, where projects and problems can be discussed	Model contract for tree-growing uses: done after "benchmarking the community's interest." The company seeks contract consistency for administrative efficiency. Most of the terms and conditions are standard and not left for bargaining. The company negotiated "umbrella agreements" with the local government providing general guidelines for making grazing land available for small cooperatives		Y

Case 9: Senegal. Supply-driven community approach. Natural forests						
Management of communal forest (ministry of environment and communities)	Communal forests. Have sharing of risk.	In place since 2007 (not specified for how long)	Management plan plus document indicating how things will be managed administratively including financial responsibility of each party and how revenue from project will be distributed, and a legal document stating responsibility of various parties	• Agreements were fully negotiated, leading to understanding and communication; • Agreements provide for formal investigation of disagreements by officials, if informal dialogue fails to resolve conflicts		Y
Case 10: Bolivia. Market-driven community approach. Natural forests						
Contractual arrangement between community organization (composed of five communities) and company where the company needs sawn timber and the community produces it from their land (recently obtained through land reform)	Community bears the production risk	In place since 2006	Contract between community forestry enterprise (comprising the households involved from the five communities) and the company. The contract only specifies species and volume; the purchase price is set up as market price. Signed by the community but not notarized	• NGO recruited to act as facilitator; • Agreement contained conflict resolution mechanism, but the project ran into capacity problems and failed before the mechanism was ever invoked	There is one organization made up of five communities. This was tailored to the situation, but it was not practical in how it was drawn up. It required the company to have capital, hire extracting machinery, run the sawmill, contract services for transport. There was need for investment in the community forest enterprises, but this was not done	N

(*Table continued on following page.*)

Brief Description	Breakdown of Risk Property Rights and Market Orientation	Duration	Type of Written Documentation	Addressing Conflict	Tailor to Scale	Other	Have Contract Docs?
Case 11: Cameroon. Public-private-community partnership							
Private company has partnership agreement with community for management of communal forests. The private entity is a subcontractor	Community does not bear much risk. The community has rights over the communal forests and this is an arrangement that allows the community to receive rental from the forest area. However, there is elite capture and the rental fees are often embezzled and used by the Mayor for their own material and political benefit	Started in 2005, duration 30 years	There is a partnership agreement and an addendum regarding the commercial rights. But details regarding the commercial component are based on mutual understanding	Contain clause where parties pledge to try to settle disputes amicably if possible	• Contracts were fully negotiated; kept the commercial addendum outside of the contract—and have not registered this with the ministry of water and forests. The commercial understanding is left to mutual understanding	The Mayor's interference has distanced the community from the company	N
Case 12: Peru. Public-private-community partnership. Natural forests							
Company wanting FSC certification had to negotiate with community that claimed that the concession was partly on their land. This resulted in two agreements—a conflict resolution negotiation and a collaborative arrangement	The agreement does not have risk for the community; it has a CSR component, and therefore does not have a profit orientation, and the state leased the land to the company (Instituto Nacional de Recursos Naturales [INRENA] approved the management plan)	Since 2006	Have a collaborative arrangement between community and company that is negotiated annually between the leadership of the community and all its members, and the person in charge of community relations for the company.	• Parties engaged in negotiations and settled pending lawsuits as part of present arrangement; • An environmental NGO and an indigenous association have been engaged as mediators/ facilitators; • Working toward FSC certification, which requires grievance mechanisms			Y

Case 13: Cameroon. Benefit-sharing arrangement. Natural forest

When forest resources are delimited and an inventory has been done, a committee representing the different parties is established to determine the utilization of objectives of the resource and its management. A management agreement is then developed defining the specific roles of the parties. This was done in this case	The arrangement poses low risk to communities, as it is a benefit-sharing arrangement. There are profit motives for the company but not the community	2007 (not specified until when). This is renewed annually	Terms and conditions, forest management plan, and socioeconomic development plan	• Underlying management objectives are set by a committee made up of representatives of the parties. If conflicts arise between participants, the contract calls for an NGO to act as a mediator seeking voluntary resolution	Resource was delimited, inventory done, and a committee representing the different parties established to determine how the resource would be used. The objectives of equity and sustainable development were established and a management agreement defining the specific roles of each party developed (tailored)	N

(*Table continued on following page.*)

Brief Description	Breakdown of Risk Property Rights and Market Orientation	Duration	Type of Written Documentation	Addressing Conflict	Tailor to Scale	Other	Have Contract Docs?
Case 14: Tanzania. Supply-driven community arrangement. Natural forest							
An example of JFM. The project began after the district council demarcated the forest without community consultation. The community opposed the move and requested greater involvement in the process. Consequently, demarcation followed traditional and administrative boundaries	Low risk to community similar to other JFM arrangements	There has been interest to gain local control since mid-1990s	Management plan. Law also requires that a joint management agreement be negotiated with government. The legal elements were covered by consultants to the community	• Project recognized traditional land claims and boundaries, ending conflicts between community and government over land rights; • Established disciplinary committee to deal with violations of project by-laws; • NGO provides capacity to local community and acts as intermediary in disputes with government partner	Local community set detailed rules. There is the obligation to adopt a management plan that the local community and district government can weigh in on (therefore, though template form, have an avenue for tailoring)		N

Case 15: Honduras. Public-private-community partnership. Natural forests

Agreement between manufacture of instruments in United States and community in Honduras with United States and Honduras NGO as intermediaries	Not much risk for community other than production of wood	Renewed on an annual basis	Contract between private company and U.S. NGO, MOU between United States and Honduras NGO, and legal contract between Honduras NGO and community. Also the forest that the cooperative is managing is national forest. The use rights to this need to be renewed every year	• The community and the business each have a close, trusting relationship with an NGO, and the two NGOs are sister organizations, creating a channel to promote communication and deal with problems that arise	Have two layers of commercial agreements and an MOU connecting these two.	N

Case 16: Peru. Market-driven community approach. Natural forests. Collection of Brazil nuts

Producers association identified a company wanting to purchase nontimber forest products (NTFPs) and set up a deal with the company. An NGO helped in the preparation of the agreement	The community bears primarily the risk of production (through collection of Brazil nuts). Have a market orientation. Community has a 40-year concession that can be renewed	Five years, concluded this year. In the process of renegotiating	MOU between the company and the association. It is based on trust; it is not notarized. The company did have a lawyer revise this agreement	• No formal conflict management steps were identified in the interview. However, the subject noted that the parties prefer informal negotiation over formal legal proceedings	Community organization decided which of the private companies in the area they wanted to negotiate with. The NGO intermediary helped set up interviews. They heard from the manager what they would offer, and based on that they decided who they would work with. The community had help to prepare the contract and presented a list with requests to the company, and manager responded with what could be accepted (tailored)	N

(*Table continued on following page.*)

Brief Description	Breakdown of Risk Property Rights and Market Orientation	Duration	Type of Written Documentation	Addressing Conflict	Tailor to Scale	Other	Have Contract Docs?
Case 17: Tanzania. Market-driven community approach. Planted forests. (agroforestry). Carbon sequestration							
An NGO facilitating a carbon deal between a community and foreign company	Farmers bear risk as they adopt a new system based on the options presented to them. The buyer bears the risk of permanence of carbon sequestration. Orientation: profit	Just getting started	Have a standard contract between NGO and farmers (the contracts contain maps indicating land involved)—have management options that farmer chooses from	• NGO middleman has prior relationship with community, has worked to keep community's expectations reasonable, has employed participatory methods, and maintains an ongoing presence in the community	Have a template with options for land management that the landholders sign up for, and they agree which of the management options they will adopt. The NGO is then also the intermediary between the community and the actual international buyer		N
Case 18: Bolivia. Market-driven community approach. In natural forests							
Private company has a deal with a community for timber production to augment the timber the private company is producing from their land	Community bears production risk. The company will help the community sell on the market the timber that the company does not need. The orientation is profit, and the company has the title to the land.	Five-year contract	There is a written and legalized five-year contract between company and community. No lawyers. Contract is very basic. All aspects reflected in contract, except for point on company not needing all tree species. Also prices and volumes are revised annually	• FSC-certified, so the project is developing formal conflict resolution procedures; • An NGO is involved, and can act as a facilitator in disputes; • The company can raise issues with a five-member committee of community representatives or directly with the full community	There are bilateral agreements; decisions are made during meetings organized with the community. Outside of the contract are things that were discussed later—company's support for activities such as training, commercialization of unused INPA timber species		Y

Case 19: Colombia. Market-driven community approach. Payment for environmental service scheme						
Arrangement for sale of environmental services. Parties include NGO, international development organization, and cattle rancher association. The international organization is purchasing environmental services (carbon and biodiversity). The NGO is implementing agency and the seller of service is an association of cattle ranchers	Landowners get incentive to change land use practice. Primary management goal of the land is pasture and environmental services. Private landowner. Market orientation. Risk of land use practice change is borne by individuals.	Five years	Voluntary contract, but due to the number of persons involved, it is a take-it-or-leave-it agreement. However, the association of cattle ranchers participated in the technical component of the agreement	• Local NGO used to facilitate the project; • Contracts provided for Chamber of Commerce arbitration, if necessary	Aspect of arrangement that was not detailed in the agreement: respect of environmental law. This issue was treated during training session. Voluntary contract, no corrective measures. If the landowner doesn't respect the agreement, payments are stopped	Y
Case 20: Ecuador. Market-driven community approach. Natural forests						
Medium-sized enterprise purchases raw material (timber) from community. This is an FSC FM/COC certified company	Community territory. The community does the production and management according to FSC requirements—doing this only for part of their land. Therefore low risk. Company orientation is commercial and for profit	Two years from first contact to signature. Agreement with community is indefinite	Signed contract, which is not notarized. Then the community also has 10 percent shares of the private company (these are inscribed at the main stock exchange)	• The project follows FSC requirements for conflict management; • The company sends a forester to the community three or four times a month, to promote communication	Contract is very simple. The granting of share to community is unique to this case. However, the requirements of being FSC managed probably make this contract somewhat standardized	N

(*Table continued on following page.*)

Brief Description	Breakdown of Risk Property Rights and Market Orientation	Duration	Type of Written Documentation	Addressing Conflict	Tailor to Scale	Other	Have Contract Docs?
Case 21: Ecuador. Market-driven community approach. In natural forests							
A carbon deal between company and indigenous communities, farmer associations, and cooperatives. Activity involves reforestation, and the company obtains 100 percent of the carbon credits	Company pays for manual labor for the first three years, supplies seedlings, collaborates in reforestation activities, and management plans, and pays for technical advisory costs, monitoring costs, and certification costs. Company bears 100% of certification costs. If at end of medium-term contract, community decides not to maintain the area forested, it has to give 30 percent of the value of the timber to the private company. The community bears the cost of the reforestation activities. Community provides labor. Community has 100 percent right to wood extracted and to forest subproducts	Have medium- and long-term contracts (medium is 15 years)	Have annual operative plans between community and company	• FSC certified, so project follows FSC conflict management requirements; • Contracts include an arbitration clause if disputes cannot be settled amicably; • Parties communicate regularly at meetings of the sides		There is a problem of the communities not admitting to a contract if they do not want to comply with some of the terms of the agreement contained in the contract. Monitoring: records (visits, trainings, agreements) are kept as well as a monitoring plan. The contract has a clause stating that the community has to inform PROFAFOR when they do wood extraction	N

Case 22: Ecuador. Public-private-community partnership. Natural forest

A private company buying NTFP from communities	The company bears most of the risk because they advance the money. Even if some producers owe the company money, the company would never go to court; it would be just a waste of money and time	Each contract is signed annually, but have been working with individual producers since 1989	Have a purchase agreement. Each has a copy, but not a legally valid document. The agreement includes an estimation of the quantity the producer will supply to the company and a reference price	• The company has twenty years of experience in dealing with local people, and employs three local agents as its bridge to local people; • The contracts have no dispute resolution provisions			Y

Case 23: Ecuador. Market-oriented community approach. PES

An agreement for watershed protection environmental services; buyer is a municipality and the agreement is with landowners		Indefinite: it can be revised every five years. Amount of payment is decided every year and based on amount of money available in trust fund	Management plan for each farm indicating area that is going to be protected and area for agriculture. There are two documents—statutes of trust fund, and forest conservation agreement (with property documents annexed)	• Spending decisions overseen by a committee with representatives of all sides; NGO involved as facilitator ; • Conflicts with individual landowners either resolved amicably or by ending their involvement in the project	All decisions regarding management of trust fund are made by the committee including the amount paid. Each family receives monthly payments per hectare of protected forest. Degraded land in process of recovering also receives payments	Government support and facilitation	Y

(*Table continued on following page*.)

Brief Description	Breakdown of Risk Property Rights and Market Orientation	Duration	Type of Written Documentation	Addressing Conflict	Tailor to Scale	Other	Have Contract Docs?
Case 24: Ghana. Benefit-sharing arrangement. Extractive industries							
Benefit-sharing arrangement, one in which company supports community to plant oil palm and make income from oil palm	Low risk for community. The benefit-sharing arrangement should result in revenue for community. Company's overall objective is profit	Has been in place for 1–3 years (communities signed at different time)	MOU signed by the company, community, and NGO	The MOU has formal steps to address conflicts. The NGO representative is from the community and undertook extensive consultation to identify whether the people would be agreeable			N
Case 25: Bolivia. Market-oriented community approach. PES							
Payment for environmental service arrangement. Main actors: upstream and downstream community members and water company. NGO facilitating the arrangement	Direct payments to landowners (not in cash but as goods: bee boxes, barbed wire, fruit trees). Smaller landowners that do not have forest any more get compensated for planted trees of secondary forest regeneration	First agreement signed in 2004. They are annual or biannual and often renewed. Some have been reviewed four times	Agreement has land use restrictions and active controls. In areas where there are NTFPs, people can still exploit NTFP	• NGO participant worked to increase community skills in negotiation, • Contents of model agreement form fully negotiated by representatives of the sides, in the process reducing past mistrust; • Contract provides penalty of five years' exclusion from participation if landowner does not comply (penalty increased from one year to five years at request of complying landowners)			Y

Case 26: Democratic Republic of the Congo (DRC). Benefit sharing. Extractive industries							
Benefit-sharing arrangement in mining situation	Community has low risk. The land tenure situation is not clear. The company has a profit orientation, but the benefit-sharing component is not explicitly about profit, though they are facilitating creation of enterprises			• The company appointed liaison officers within the community, who help connect community members with the necessary people in the company; • The company established a formal grievance procedure, which is slow and seldom used	This was a tailor-made arrangement. They needed the community to be on board for the safety of their investment and in order to not have interference	They are not giving any financial payment, because they want to focus on helping communities stand on their own, so they are facilitating wheat production and creation of enterprises	N
Case 27: Ecuador. Market-driven community approach. PES							
A government fund has a reforestation agreement with a community. The objective is environmental services. The fund is a trust fund that buys the environmental service and ensures that the work is being done properly	The fund/program provides the communities with the seedlings, and economic compensation for the labor during the first three years, and the community commits to conserve the plants at least for an additional five years	Has been in place for four years—last eight years	Have letters of intent with the communities, which are reforestation agreements. These are signed by the leaders to the community and the Executive Director of Fund for the Protection of Water (FONAG)	Do not have conflict addressing measures in the letters of intent	The agreement is very simple. The community will not sign a document that is too detailed or with complicated terminology, and that they do not understand. The support for the social program is not part of the agreement		Y

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