



Journal of

Forest and Livelihood

Vol 7 (1)

December 2008

ISSN 1684-0186

Understanding Tenure Security in Community Forestry

Harisharan Luintel

ForestAction Nepal

Ram B. Chhetri

Central Department of Sociology and Anthropology/TU, Nepal

Editors

Ram B. Chhetri

Harisharan Luintel

Editorial Support

Nirmala Sannyashi

Amrit Adhikari

Shova Prasain

Anil Shrestha (Language)

Photo

Jeni Thapa

© ForestAction Nepal/ERI

Satdobato, Lalitpur

PO Box: 12207, Kathmandu, Nepal

Contact number: +977 1 5552924; 5550631 **Fax:** +977 1 5535190

Email: forestaction@wlink.com.np; **URL:** www.forestation.org

Understanding Tenure Security in Community Forestry

Harisharan Luintel* and Ram B. Chhetri**

* ForestAction Nepal

** Central Department of Sociology and Anthropology/TU, Nepal

Corresponding author: hl@forestaction.wlink.com.np

INTRODUCTION

Tenure security for the forest-dependent communities has drawn increasing attention in recent years from development professionals, including advocates of poverty alleviation, forest conservation, environment- or climate-friendly human actions, as well as those speaking for human rights (Ellsworth and White 2004). A basic assumption of all such groups is that most of the forest-dependent people are poor and lack access to alternative property or assets needed for earning their livelihood. In this context, many forest conservation activists believe that much of the observed forest degradation is due to the centralized state control of forests and natural resources, which keeps the forest-dependent communities at bay. It is commonly held that, unless local communities are directly engaged in the management of forests and the natural resources there, and also unless they see adequate incentives for themselves through such engagement, the task of arresting or slowing the process of deforestation and forest degradation can be a daunting one. Given these assumptions, the issue of securing forest tenure for forest users is moving to the centre-stage in the overall discourse on sustainable forestry and development in Nepal. Since it is believed that the adverse impact of climate change for humanity can be minimized by conserving forests, the advocates of climate-friendly human actions, forest rights activists and conservationists concur that concerted efforts are needed for ensuring forest tenure security of forest dependent communities.

The degradation of forests and decline of forest area in Nepal have continued during recent decades and researchers have attributed this to the inappropriate planning and ambiguities in government policies with regard to the question of tenure arrangements for national forest in the past

(Wagley and Ojha 2002). For instance, even though the Private Forest Nationalization Act 1957 was primarily aimed at checking deforestation in the country, in practice its implementation has created insecurity with regard to the use rights of forest for the people and, therefore, resulted in accelerating deforestation. Even today, Nepal's forests in the Terai are said to be declining at the rate of 1.3% per annum. It is no wonder that the forest cover, which was 45% of the total land area of the country until 1964, was reduced to 29% in 1998 (NPC 1998: 290).

Given the failure of the state's bureaucratic mechanisms to promote sustainable and equitable forest resource management, the search for forest management alternatives led to (Agrawal and Gibson 1999) the framing of forest policies during the 1970s, which provided for the placement of local people at the centre-stage in the task of managing national forests in their proximity. Since then, improved and customized versions of participatory models that give different levels of tenure security to local communities in forestry sector have been discovered in Nepal (Ojha *et al.* 2007), along with timely reforms in policies, legislation and guidelines.

After the peoples' uprising of spring 2006, the discourses on federalism and state restructuring in Nepal have become part of popular agenda in the country. Federal governance structure is being increasingly considered crucial for state restructuring and democratization and for bringing to an end the age-old centralized practices in Nepal's governance. While such debates continue at political level, a parallel concern in the natural resources sector is gaining momentum; there is an urgent need to secure tenure rights on local forests for the forest-dependent communities in various parts of the country. While lay people in villages as well as professionals, including foresters, conservationists, researchers and

development workers, agree that tenure security in community forestry should be a high priority agenda, how tenure security could be achieved in actual practice in federal Nepal by means of legislative instruments as well as field implementation remains a *terra incognita*. This issue of the *Journal of Forest and Livelihood* is, therefore, aimed at filling some of this gap in knowledge, with particular reference to tenure arrangements in community management of resources and/or forests.

CONCEPT OF TENURE SECURITY IN COMMUNITY FORESTRY

The term 'tenure security' in forestry is understood differently by different groups of people. A very common definition of tenure security holds that it is equivalent to undisputed ownership of any property, i.e. defensible claim over certain resources. That is, it is a secure condition under which any property or resource is held by individuals or groups. Some define it as the degree to which an individual or group feels its relationship with land or other resources that support them in jeopardy (Poffenberger 1990). Resource tenure consists of the social relations and institutions governing access to and use of land and natural resources (Maxwell and Weibe 1998). It determines who is allowed to hold or access, transfer and use any of the specified resources within a defined timeframe. The tenure is also associated with responsibilities. The tenure security generally includes certain bundles of rights that a person or community holds in the form of land, trees or other resources (Bruce 1989). The bundle of rights may be either *de facto* or *de jure* in origin.

Community forestry tenure involves everyday practices of community forest user groups that legitimize and enforce claim over community forest resources (Vandergeest 1997). A tenure arrangement in community forestry is generally shaped by community members' social relations, including gender, class, kin, political, economic and legal relations. It is complex, ambiguous and constantly renegotiated temporally and spatially as communities' and individuals' interests and aspirations change. It needs to be determined with the consensus of all community members and

stakeholders concerned and properly communicated to all of them in a convincing way so that they accept, remember and help legitimately enforce the rights and duties. The knowledge held and practices promoted both by communities (often known as *de facto owners*) and by state agencies (often known as *de jure owners*) in defining community forestry tenure, including property rights, may be overlapping, complementary and conflicting in nature at different level and forms. In fact, both types of ownership rights—*de facto* and *de jure*—together may assist in defining just tenure security and property rights regimes in the context of community forestry.

The tenure rights in community forestry can be distinguished as operational-level rights (rights to access and withdrawal) and collective-choice level rights (rights to management, exclusion and alienation) (Schlager and Ostrum 1992, Agrawal and Ostrum 2001). Each of these rights has its own jurisdiction such as: *access rights* defines the physical property to enter (authorized user); *withdrawal rights* defines the products or resources to be obtained (authorized user); *management rights* defines regulating internal use pattern and transforming resources for improving them (claimant); *exclusion rights* defines who will have access rights and how this may be transferred (proprietor); and *alienation rights* defines the right to sell or lease the management and exclusion rights (owner). Looking at the community forestry practices, forest users may be authorized users, claimants and to some extent proprietors and owners. In case of forest products that are used for daily subsistence purpose such as timber, fuelwood, grass, leaf litter, medicinal plants, etc., communities hold all types of rights. However, for specific forest products such as timber from tree species like *Sal* (*Shorea robusta*) and *Khair* (*Acacia catechu*), the community forest users enjoy only claimant rights as these species are restricted for harvest for sale. Similarly, the users do not hold any rights to change the land use of the community forest.

Community forest user groups are given all or some of above-mentioned property rights over community forest resources as a result of the policies and practices on decentralization in the forestry sector. The

bundle of *de jure* property rights that local people or forest users get largely depends on the interests and effective mobilization of communities and local actors to benefit from the opportunities created by the state's forestry decentralization arrangements. In addition, a *de facto* property right systems, which are locally suitable and financially and ecologically sustainable, also prevails among community forest users.

ISSUES OF TENURE SECURITY IN COMMUNITY FORESTRY

The dynamics of property rights is very complex in community forestry. The diversity in the nature and form of community forest resources creates complexity in defining just tenurial arrangements and property rights in society. For instance, the same forest may yield different products (e.g. leaf, fruits, timber, branches, seeds, roots, barks) and services (e.g. watershed maintenance, groundwater recharge, carbon sequestration, ecotourism, animal habitat, etc.). A wide range of communities and individuals use and enjoy the same or different types of usufruct rights on different products and services of the particular forest patch in question. Furthermore, in some cases, any community or individual may not use and claim the rights of all kinds of uses of a particular resource; in other cases, those communities and individuals may put their claims on more than one type of use (sometime conflicting) of the same resource.

Claiming use rights also comes with taking the responsibility to manage the resources and this adds an additional dimension to the complexities in defining and practising the tenure security and property rights of community forestry. Also, the practices and rules related to use of resources tend to be dynamic in nature and vary over time and space. Moreover, the use and ownership right of community forest resources is held simultaneously by individuals, households, community as well as the state. As a result, any attempt towards understanding community forestry tenure in Nepal can be a daunting exercise. The case studies presented in this issue of the journal provide discussion of some field-based practices and issues on the subject and, thereby, aid in the process of deriving a better

understanding of tenure security in community forestry.

Most of the forest-dependent communities are not only heterogeneous but may also have historically embraced unequal power relations and, therefore, may define property rights in unjust ways. For example, women, *dalits*, indigenous peoples, ethnic and religious minorities, etc. have had limited political space while shaping property right regimes in community forestry, negligible access to land and forest resources in spite of their high dependence on such resources for subsistence (Rechelean and Edmunds 1997). Furthermore, modern policies, directives, methodologies, tools, techniques and technologies developed by state-sponsored agencies to manage community forestry resources are not as friendly and accessible to these historically dominated and discriminated communities as would be expected. The development of just property rights system in community forestry remains difficult due to market factors and changing technologies, which together also cast a strong influence on the management of forests by communities. Furthermore, the community people's interests and usufruct rights may be encroached by forest bureaucracies' and donors' interests and their actions at national level by means of their dominating roles in shaping forest policies and property right regimes (Luintel 2006). Similarly, most of the *de facto* community rights are shaped by the traditional discriminatory, exploitative, feudal and inequitable cost and benefit-sharing practices. This is particularly possible because most of the local policy processes are dominated and captured by the local elite (ibid).

Besides these issues, the articles in this volume are specially focused on various facets of tenure issues in the context of community forestry in Nepal. They cover a wide range of issues related to community forestry processes, non-timber forest product management, mobile pastoralism, market and economy, and public land management practices.

Acharya and colleagues analyse the dynamic nature of forest tenure and forest management modalities in Nepal. They describe different forest management regimes, encompassing different rights and

responsibilities given to people and discuss the outcomes of those regimes while arguing that community forestry seems to be more sustainable than other forms of tenurial arrangements. However, the suitability of any given tenure regime is contextual. The decentralized and democratic governance system of the country strengthens forest tenure in favour of local people's rights. The authors argue that secure tenure is important not just for the conservation of forests but also for attracting investments in conservation and management of forest.

Dahal and Adhikari provide a regional comparison of recent initiatives on forest tenure reform in the South-East and South Asia. They argue that, while community forestry is yielding promising results in terms of forest protection, the livelihoods of local people are not fully recognized yet. The paper also indicates that some studies show positive discrimination in favour of the poor and marginalized. For instance, currently two different types of community-based forest management—leasehold forestry and collaborative forest management—have also been implemented in Nepal. However, it is not clear whether they encompass reasonable level of authority for local communities and just tenure security as compared to other community-based forest management modalities being implemented in the country.

Paudel and colleagues assess the community tenure rights over community forestry resources on the basis of preparation, approval, renewal and implementation of forest operational plans. They argue that the community rights that are ensured by the forest act and regulations are in practice restricted by government forestry officials and field staff.

The paper by Banjade and Paudel points out that the government and donors have been promoting non timber forest products as a panacea for poverty alleviation among the poor households within community forest users groups in Nepal. They contend that this is a false optimism. They further argue that community forest users are becoming interested in non-timber forest products only because they find the environment for timber trade from community forestry not favourable. They suggest that non-timber forest products management should be

promoted as complementing and not as substituting timber management in community forests.

In yet another paper, Banjade and Paudel argue that mobile pastoralism in the highlands of Nepal has been devalued not only by state policies and actors but also by local community forest users. The blanket approach to the community forestry policy has belittled the socio-cultural, economic and ecological aspects of the uniquely positioned high mountain ecosystem and livelihoods. Timely and adequate attention has not been paid to the high altitude pastoral communities' livelihood strategies.

Dhungana and Bhattarai point out that recent public policies have been relatively more favourable towards forest-based enterprises. However, they report that problems exist at implementation level. They argue that timber trade in particular is not feasible under the current mode of community forest management, which is almost passive and protection-oriented. They suggest a need for tenure security, forest certification, reward mechanism for environmental services, intensive forest management and enabling policies as the key factors for enabling local communities to effectively harness the economic and market potentials of their forest products and services.

Kunwar and colleagues present case studies on public land management and point out that this arrangement has the potential to promote the resource rights of the landless and land poor in Nepal's Terai. On the basis of case studies, they argue that effective management of underutilized public land provides an important asset for resource-poor communities, enabling them to avail of forest-based livelihood opportunities. However, they contend that lack of appropriate legislation on tenure security for the poor and landless discourages them from investing in such lands.

THE WAY FORWARD

The tenure security in community forestry needs to be looked through different lenses in order to arrive at a better understanding of the issues in question. Shallow understanding and/or a blanket approach to define it through state policy may create

problems in its implementation in the field. Therefore, both traditional (*de facto*) and state's emerging (*de jure*) contexts in relation to tenure security need to be taken into account while shaping the community forestry policy. Since the current community forestry policy tends to follow a 'one size fits all' or a blanket approach to the tenurial security of the forest-dependent communities, the policy needs to be reviewed so as to explicitly ensure tenurial rights of all kinds of resource users and interest groups involved in the process of community-based forest management endeavours in the country.

An effective lobbying through networks of federated structures of resource users can be instrumental in articulating and safeguarding the tenure security of all kinds of people dependent on forest resources. Better understanding of the conditions that enhance or restrain the emergence of effective property right regimes, higher adaptability of these systems, along with the changes in exogenous and endogenous factors and affordability of the cost involved to maintain the regime, may help communities and their networks and federations to become effective. Furthermore, critical and reflective awareness is equally important in order to dismantle the conditions of historically prevailing inequality in Nepali society in general and in the context of tenure security in the natural resources sector in particular.

REFERENCES

- Agrawal, A. & Gibson, C.** 1999. Enchantment and Disenchantment: The Role of Community in Natural Resource Conservation. *World Development*, **27**(4): 629-650.
- Agrawal, A. & Ostrum, E.** 2001. Collective Action, Property Rights, and Decentralization in Resource Use in India and Nepal. *Politics and Society*, **29**(4): 485-514.
- Bruce, J.W.** 1989. Community Forestry Rapid Appraisal of Trees and Land Tenure. *Forest, Trees and People Community Forestry Note*. Rome: FAO.
- Ellsworth, L. & White, A.** 2004. Deeper Roots: Strengthening Community Tenure Security and Community Livelihoods. Washington DC: Ford Foundation.
- Luintel, H.** 2006. Do Civil Society Organizations Promote Equity in Community Forestry? A Reflection from Nepal's Experiences. In: S. Mahanth, J. Fox, M. Nurse and L. Mclees (Eds.), *Hanging o the Balance: Equity in Community-Based Natural Resource Management in Asia*. [pp 122-142] Bangkok: East-West Centre and RECOFTC.
- Maxwell, D. & Weibe, K.** 1998. Land Tenure and Food Security: A Review of Concepts, Evidence, and Methods. *LTC Research Paper 129*, Land Tenure Center, University of Wisconsin-Madison.
- NPC** 1998. *Ninth Plan (1997-2002)*. Kathmandu, Nepal: National Planning Commission.
- Ojha, H.R., Timsina, N.P., Kumar, C., Belcher, B. & Banjade, M.R.** 2007. Community-based Forest Management Programmes in Nepal: An Overview of Issues and Lessons. *Journal of Forest and Livelihood*, **6**(2): 1-7.
- Poffenberger, M.** 1990. *Keepers of Forest: Land Management Alternatives Southeast Asia*. CT, USA: Kumarian Press.
- Rochelean, D. & Edmunds, D.** 1997. Women, Men, and Trees: Gender, Power and Property in Forest and Agrarian Landscape. *World Development*, **25**(8): 1341-1371.
- Schlager, G. & Ostrum, E.** 1992. Property Rights Regimes and Natural Resources: A conceptual Analysis. *Land Economics*, **68**(3): 249-262.
- Vandergeest, P.** 1997. Rethinking Property. *The Common Property Resource Digest*. **41**: 4-6.
- Wagley, M. & Ojha, H.** 2002. Analysing Participatory Trends in Nepal's Community Forestry. Policy Trend Report 2002. Japan: IGES. [pp 122-142]