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Abstract: Forest land tenure patterns have rapidly changed in Nepal in the past. The historically dominant land tenures are disappearing, and new tenures are emerging. This paper describes and analyses this dynamic nature of forest tenure, forest management modalities and the tenurial pattern they embody as well as their impact on livelihood, income, forest condition and equity in benefit distribution. Here, tenure means all options and opportunities-legal, non-legal and customary-to own, use or share any forest products and trees. Nepal's forests can broadly be divided into two types from ownership perspective, viz., national forest and private forest. Within the national forest there are different forest management regimes encompassing different rights and responsibilities given to the people. The forest or trees held in common or managed by communities seem to be more sustainable than other forms of tenurial arrangement. Increasing numbers of community-based management modalities have developed innovative means of tenure arrangements to contribute positively to livelihood and environmental sustainability. It demonstrates that decentralized and democratic governance system strengthens land tenure in favour of local people's livelihood. The paper argues that secure tenure is important for the conservation of forest resources and for encouraging investment in conservation and management. Which tenure regime is suitable at a particular time and place or location is more of a contextual matter, and thus, depending upon people's participation, tenurial modalities need to be determined.

Key words: forest tenure, livelihood, community forestry.

UNDERSTANDING TENURE AND ITS HISTORY IN NEPAL

Forest management regimes in Nepal have been changing due to the efforts to improve resource regimes and benefits to different stakeholders. The political powers of stakeholders have been changing as are the management regimes and the tenure arrangements inherent in these regimes. Lately, especially after 1990, the power of people or users has increased, and accordingly, their stakes and participation in resource management have also increased. But a wide array of tenurial arrangements still exists in the management of forest and trees in Nepal. The emergence of these changes is deeply influenced by the historical land and forest control mechanisms.

Understanding Forest Tenure

There are two dominant forms of tenure in Nepal: *kanuni hak* (legal right) and *chalan* (practice or tradition). With the growing state interventions, people are becoming increasingly concerned about *kanuni hak* to secure tenancy rights. In some cases, these

two overlap, creating a situation of legal plurality. In fact, in rural areas, the plurality is more often seen in the use of resources such as land, forest, pasture and water. In the same line, Subedi *et al.* (1998) classify tenure as regulated (*niyamit*) and unregulated (*aninyamit*). Although a resource may be regulated in law, it may be unregulated in practice because of lack of governmental enforcement. On the other hand, a customarily managed resource may be unregulated in legal terms, but it could be well regulated in practice.

Forest tenure can be regarded as 'a bundle of rights' over a piece of forest, a tree or a group of trees. These rights can be broken up, re-divided and passed onto others. Some may be held by individuals, some by groups and some others by political entities (Riddell 1987). Riddle further argues that each of the rights in the bundle will have at least three dimensions: people, time and space. Furthermore, these rights could have been given by law (*de jure*) or just by practice based on understanding or tradition (*de facto*). The concept of tenure as a 'bundle of rights' has been proposed by Bruce (1989),

and these rights could be ownership, tenancy, usufruct, access, acquisition, partition, labour and extraction of products and benefits. Bruce further categorizes the objects of tenure (like land, forest, water, etc.) into private holdings, commons and forest reserve (or tenure niche). In Nepal, forest lands are government-owned in terms of legal ownership, but they could be managed and used by the government, communities, individuals or groups on lease. The benefit-sharing mechanisms are also different. Although local political bodies may own and even sell these resources (like forest, land, pasture or trees) depending upon situation, these are legally owned by the government. Forests and trees can also be planted on private land, and they entail different tenurial arrangements, depending upon the interest of owners and users. Moreover, tenurial regimes are changing as coping and adapting strategies, depending upon the needs of the people. It is also necessary to examine these innovations. For example, within Community Forestry (CF) there are several tenurial arrangements (Acharya 2005), including informal ones. Acharya (2005) finds three variants or tenurial/management systems within the CF. These types were guided by the same law, but they had evolved through local innovations to suit their resource regimes or geo-ecological and socio-economic needs.

It is important to understand why there is pressure to convert forests, which are largely common property, especially in Nepal, into private property. Private tenure on common property came mainly after the Industrial Revolution in Britain in the 18th and 19th centuries. As landlords and wealthy people had the capacity to invest in land or resources and develop them, their privatization was believed to be necessary. But the relative success of CF in Nepal has helped in changing the notion that private tenure of resources is not necessary for their conservation and development.

Historical Background of Forest Tenure in Nepal

Forestland had been a major concern of the rulers of Nepal until 1950. This was because revenue could be generated by selling forest products or farm lands increased at the cost of forest for generating additional revenue for rulers. At a point in time, i.e., before the

war with the East India Company in the late 18th century, forests were also kept for security purposes, especially in the Terai. But after that, forests were seen as a means to generating resources and the rulers had adopted that policy to generate maximum revenue. Accordingly, forest tenure regimes changed drastically from time to time. It is because of the fact that the state was more intervening in the areas where resources were plentiful. On the other hand, in areas where resources were limited in terms of opportunities for taxes or income, the local ways of tenurial regimes were allowed to continue. The state used the traditional institutions and practices which placed revenue and ownership rights in the jurisdiction of individuals, institutions and communities. These were called intra-state agencies, which were mainly of four types: *rajya*, *birta*, *guthi* and *kipat*. *Rajya* meant a vassal state that was given to a family to exact revenue from resources and pass a certain portion of it to the central government. *Birta* was a tax-free land granted to an individual or a family. These grants were given to secure the support of the elite and at the same time accelerate the process of converting forestlands into agricultural lands. The *guthi* system arose when tax-free grants of agricultural lands, forests or villages were used to make temples, monasteries or other religious institutions. *Kipat* was another system under which a community had right over the resources located within its jurisdiction and it would allocate land and other resources to individuals for use under customary rules. State had no role or authority to interfere in the rights or taxes within the community. The other form of tenure in the past was called *raikar*, under which the state land, forest and other resources could be owned and used by individuals by paying certain taxes. However, the state had the full authority to confiscate the ownership. *Raikar* was more common in farm lands than in forestlands (Regmi 1988, Adhikari 2006). In addition, the system of giving authority through *lal mohars* or *sanads* helped in expanding the control of state over resources through the local elite (Adhikari 1996).

The rulers' main concern until 1950 was to secure the loyalty of the local elite and others having a role in the army and

administration. To appease them, *birta* was granted extensively to them; as a result, the common ownership (i.e. state ownership) got transferred to private ownership. The private ownership of forest in the Terai had assumed such a proportion that almost three-fourths of the forests in the Terai were under this grant, which were later converted to agricultural lands. The tenure system in the past resulted in:

1. Unequal distribution of land: The present skewed distribution of land in Nepal is the result of the past policies on the distribution and conversion of forestland. The land-dependent but landless or marginal land-owning communities thus remained marginalized. Those families who are dependent totally on land and have land holding below 0.6 hectare (ha) are highly vulnerable to food insecurity (CBS 1996, WFP and EU 2005).
2. Insecurity of land/forest tenure: Landowners did not increase investment, but employed common peasants on harsh terms and conditions to get whatever was possible without

investment. This led to marginalization and impoverishment of peasants, and subsequently their mass migration to India for survival.

Since 1950, which heralded the downfall of the autocratic Rana regime, forest management systems have been changing. The initial step after the political revolution of that time was to get back the forest or the land under private hands through the process described above. This led to the nationalization of the private forest and Land Act 2064. Since then, the government has been adopting different mechanisms and arrangements to manage forest. This has been affecting the forest tenure. Table 1 presents the government's various policies in the past to give management responsibilities to communities and certain targeted groups on long-term tenure basis for community development and poverty reduction. But with regard to ownership, the government's attitude is that of a landlord who thinks that he owns the forest and those using it as a community or leasehold forest are only tenants.

Table 1: Emergence of Forest Tenure and Management Regimes in Nepal by Period and Form of Government

Period	Form of government	Forestry focus
1800-1850	Shah monarchy	<ul style="list-style-type: none"> • Gift of forestlands in lieu of payment for services to state, mainly in the hills
1850-1920	Rana feudal regime	<ul style="list-style-type: none"> • Gift of tax-free forestlands in lieu of payment for services to state; extension of practice to Terai areas • Extraction of Terai timber to supply to British India
1920-1960	Rana feudal regime to democratic government to Shah monarchy (autocratic government)	<ul style="list-style-type: none"> • Export of timber • Clearance of forests for resettlement • Nationalization of forests
1950-1970	Shah monarchy	<ul style="list-style-type: none"> • Industrialization • Provision of Panchayat forest made for local control • Enactment of protection-oriented forest laws • Continuation of resettlement in Terai forest areas • Continuation of timber exports
1970-1980	Shah monarchy	<ul style="list-style-type: none"> • Eco-doom forestry • Introduction of CF but hesitation to give greater benefits and control to users • Continuation of timber exports
1980-1990	Less autocratic government, constitutional monarchy	<ul style="list-style-type: none"> • Emphasis on importance of participatory forestry by the new forest act, adoption of community-based forest management approaches by government • Introduction of benefit-sharing mechanism between the government and people • Land tenure remains with government • Imposition of ban on timber exports

1990 – 2000	Democratic government, constitutional monarchy	<ul style="list-style-type: none">• Continuation of efforts for community-based forest management• Emergence of NGOs; emergence of pro-poor models• Emergence of forest user groups' federation• Promulgation of a new Act (1993) giving more rights to users; development of management guidelines;• Initiation of Terai forest management efforts• Realization of NTFPs' potential• Initiation of long-term leasing of forest (state property), especially for poverty reduction
2000 - onwards	Democratic government and political crisis with emergence of autocratic rule; after April 2006, reduced role of monarchy	<ul style="list-style-type: none">• Development of forest policy for Terai, Inner Terai and Siwaliks; putting of focus on conservation in the Siwaliks• Participatory forestry and resource management gets a setback during the monarchical rule in this period• Emergence of community-based enterprises• Seeing of forests as a source of livelihoods• Use of forests for poverty reduction

Source: Partially adapted from Hobley 1996

DIFFERENT TENURIAL REGIMES IN NEPAL

The tenurial arrangements changed significantly after the 1950 political revolution, which led to the downfall of the autocratic Rana regime. In 1957, the government nationalized all forests. The trees planted on private lands were considered as forests. This policy was introduced to take back the forestlands granted to individuals by the state, but it also had adverse impact as it created a perception among the people that they had no security of right over the forest. As state could not control the forests, deforestation continued and the government reverted to the decentralized forest management system in the early 1970s. Since then different forms of decentralized management regimes (and tenurial regimes) have been implemented in Nepal as an effort towards sustainable forest management. The Forest Act 1993 and Forest Regulations 1995 are the main legal documents for managing Nepal's forest resources. The act defines a forest as an area which is 'fully or partially covered with forest', including 'barren lands or unregistered land (*ailani*), foot trails, ponds, lakes or streams, and land along banks within or in the vicinity' of the forest. Other laws that influence the tenure of forest are the Land Revenue Act 1977, Land (Measurement/Survey) Act 1962 and Land Act 1964. Further to this, the government possesses the right of preeminent domain in all kinds of land, including private forests. Following these acts, possible forest

management regimes in Nepal include private and national forest (HMG/N 1993).

- *Private forest*: It is defined as all the planted, nurtured or conserved forest in any private land that belongs to an individual as per the prevailing law.
- *National forest*: It is defined as all forests other than private forests, regardless of the demarcation of their boundaries and including cultivated or uncultivated land, roads, ponds, lakes, rivers, streams and the shingly land that is surrounded by or in the vicinity of a forest. This forest can be of the following types:
 - *Government-managed forest*: national forests managed by the government.
 - *Protected forest*: national forests that the government has declared protected in consideration of their environmental, scientific and cultural importance.
 - *Community forest*: national forests that have been entrusted to forest user groups for development, conservation and utilization in the interest of the community.
 - *Leasehold forest*: national forests that have been leased for the specified purpose(s) to a legally defined institution, forest-based industry or community.
 - *Religious forest*: national forests that have been entrusted to any religious entity, group or community.

This paper will focus on five forest management regimes, namely private forest, community forest, leasehold forest, government-managed forest and customarily-managed forest.

Private Forests

The Forest Act 1993 defines private forest as 'a forest developed or conserved in the land which is under the ownership rights of an individual according to the prevailing laws'. Broadly, this definition also includes all the trees planted in the private land. On the other hand, there is a provision for registering a private forest with the District Forest Office (DFO) to avail of government support and incentives. On the contrary, restrictions are imposed, viz. the Gazette notification of December 31, 2001; the government banned harvest, transport and export of six timber species¹ for commercial purposes. Furthermore, it banned the collection, sale, transportation and export of two NTFPs, viz. *Panchaule (Dactylorhiza hatagiera)* and *Okhar (Juglans regia)*. Similarly, eight other species are prohibited for export in unprocessed form without permission of the Department of Forest (DoF). It can be argued that the act is not fully favourable for private forestry because it still retains some of the legacy of the Private Forest Nationalization Act 1957.

Private forests in Nepal can be classified into three types. The first would be the forest registered as private forest with the District Forest Offices (DFOs) across the country. The second type of forest in Nepal is what can be called 'agro-forests'. In every piece of land, people plant trees for use as fodder or timber or fruits or for a combination of these purposes. The tenurial system of the trees planted on private land (as agro-forest, not registered as private forest) is similar to land tenancy. The third type of arrangement is the 'tree tenure' system. This comes in various forms: planting trees in other's lands on a fixed rent or share basis (usually half), managing other's trees and getting a small share in fodder, fuelwood and timber, or

getting benefits from private trees, but some of their benefits (e.g. sheds or flower leaves for religious purpose) are considered public. A study on tree and land tenure in Eastern Terai shows that people do not plant trees on the land they cultivate as tenants. On the other hand, even poor farmers plant trees if they have right to the land. For example, Subedi *et al.* (1998) mentions that even some very poor villagers who own less than 0.1 ha of land cultivate more than 10 trees in their home compounds. They fully realize the long-term value of trees as a form of banking or security against contingencies.

The private forestry regime suffers from lack of institutional as well as technical forest management support. Some of the problems related to private forests are:

- Lack of clarity on the use of wildlife,
- Restriction on the sale of some products,
- Private forestry not regarded as an 'industry',
- Cumbersome bureaucratic process, viz. licensing, examination and permission to use forestry products,
- Dual ownership trees in resettled areas,
- No legal provision to develop a contract between 'private forest owner' and 'forest entrepreneur',
- Similar land revenue of the private forest areas with the cultivated land, and
- Value Added Tax (VAT) payment unlike agricultural products grown on private lands.

Community Forests

Partnership between government and people was envisioned as a way forward for better management of forests and for improving the access of people to forests. This came in the form of CF in 1978 following the enactment of legislation that allowed transfer of management and use rights of forests to local *panchayats*, the then local political units. There have been several changes in the policies and regulations related to CF. The Forest Act 1993 and Forest Regulations 1995 provide legal authority to hand over ownership of forest management and use to users and considers Community Forest User Groups (CFUGs) as an independent local institution. The CFUGs are legally registered

¹ *Chanp (Michelia champaka m. kisopa)*, *Khair (Acacia catechu)*, *Sal (Shorea robusta)*, *Simal (Bombax ceiba)*, *Satisal (Dalberia latifolia)* and *Vijaya sal (Pterocarpus marsupium)*. Ban on felling of *Sal* and *Simal* in private land lifted in late 2007.



with DFOs. They can fix the price of their products. The land under CF is of the government and, therefore, CFUGs cannot sell the CF land or put it as collateral for loan. Other laws of the state have also been affecting CF. The overlapping of rights on resources means that local political units under the Local Self-Governance Act 1999 can overrule the management plan and decisions of CFUGs. These local political units have also been given rights over all natural resources within their jurisdiction and they can also charge taxes.

Finally, it is clear that the government of Nepal has adopted CF as the main forestry management strategy and it has been recognized as one of the most successful programmes involving one-third of the total households in the country. The programme is contributing towards environmental sustainability and improving forest condition. In addition, recent evidences indicate its positive role in improving rural livelihood and income of the rural poor, mainly through pro-poor initiatives. Such initiatives will help improve equity in forest resource management. The CF also provides several exemplary replicas scaled up in different forms of resource management.

Leasehold Forests

Pro-poor Leasehold Forest (LF) in Nepal was first piloted in 1993 in three districts and then scaled up. This is in essence a programme complementary to the CF but targeted at poor people. As CF was considered to have strengthened or at least continued the existing structural biases in society, LF is considered to bring positive discrimination in favour of the poor and deprived people. Leasehold groups have the authority to extract forest products, distribute them among themselves, and sell the surplus to the outside people in accordance with the provisions of the operational plan. Leaseholders are responsible for protecting old trees, i.e. trees existing before the lease. They are government trees. Leasehold forests can be obtained for an initial period of up to 40 years and renewed for another 40 years. Only degraded forests (with less than 20% crown cover) are allowable for handover as 'leasehold forest'. The scale-up of leasehold is limited. There are several problems in this management regime, e.g. the forest act gives

priority to CF over LF, the DFO has no authority to hand over or take back the forest as LF, the LF groups used to be registered with the Small Farmers Development Office and the authority to hand over the forest rests with the Ministry (recently this authority has been given to the Regional Directorate). Until now, there are about 2,871 such groups in 26 districts, benefiting about 23,343 poor families or about 90,000 people who are now managing about 14,735 ha. Only about 0.2% of the total area of the country is now under this management regime².

The new policy formulated by the Cabinet in 2002 proposes that the DFO should hand over leasehold forests. The one-window policy on providing integrated services to leasehold groups has been approved and the DFO has been given this responsibility. The application procedure has also been simplified. A part of the income from the already existing trees conserved in the land to be handed over will also go to the group. But the policy has still to be enacted in the form of a law.

Government-managed Forests

Government-managed forests occupy the largest area under the national forest (4,631,085 ha or about 79.5% of the national forest). The government-managed forests are regulated by the Forest Act 1993 and Forest Regulations 1995. People are allowed to collect grasses, dead branches and certain fruits. The level of concessions to collect these items is mainly dependent upon the decisions of forest guards and to a certain extent of forest officers. From time to time, the government has devised different modalities to manage this type of forests. One of this is the Operational Forest Management Plan (OFMP), which was to be implemented in 19 Terai and Inner Terai districts. But this could not be successful. In 2000, the government formulated a forest policy to include collaborative management system of forest in the Terai. Under collaborative management, benefits have to be shared between the central government, local government and people, both immediate and distant users.

² Department of Forest.

Protected areas are another type of forestland managed by the government. There are a total of 16 protected areas, including nine national parks, which are managed according to the National Parks and Wildlife Conservation Act 1973. There are provisions in the act for strict and government-led protection of wildlife and their habitats. A series of amendments in the act provided slightly participatory schemes such as buffer zone with which local people living in surrounding areas were provided with incentives (30-50% of the income earned by the national parks, and entry to the park for the collection of thatch grass twice a year) to contribute to the conservation. However, the act does not make specific case for indigenous communities or for poor and marginal households, although all the people from the community are entitled to get benefits in the form of community development or other development activities. Furthermore, it is claimed that the authorities used these provisions ignoring customary rights of indigenous peoples, which have direct bearing on the livelihood of indigenous communities and poor people. Moreover, there are unaddressed serious problems caused by wild animals for the livelihood of people, especially the cases of wild animals' depredation on crops, livestock and people's life are very serious.

Customary Management Systems

Several customary resource management systems are still practised in various locations in Nepal. These systems are still working in areas where the government's presence is negligible. These traditional management systems have been effective in many cases in preserving the forest and maintaining a system whereby access of all is guaranteed. But it is also a fact that management decisions are often feudalistic, taken by a few village leaders. For example, one can take the *Riti-Thiti* (customs) in Gurung villages. '*Toh Syoro*' was an indigenous village assembly held once a year and this was responsible for formulating and revising *Riti-Thiti*. In Thakali villages in Marpha, a local committee composed of 12 members (from four family clans) continues to control the firewood collection. Among these 12 members, four are responsible for forest protection, four for agriculture, and

four for canal improvement and maintenance. These members rotate every year, and the four Chan family clans (Hirachan, Jwarchan, Pannachan and Lalchan) administer the system by appointing a *Mukhia* (*Thakali, Thuiming*) headman from among themselves. This headman can fine villagers up to Rs 50 for collecting green firewood, of which Rs 25 goes to the village development fund and Rs 25 to *Mukhia*.

These traditional systems have been functioning, but are practised as extra-legal system. They have been helping in the conservation of resources. But it is also seen nowadays that these traditional customs are used by the wealthy in getting more benefits at the cost of poor households. Therefore, there is a question of equity and access to decision-making for the poor. Usually, in a traditional system, there is no access to decision-making for the poor and marginalized.

LEGAL FRAMEWORK OF FOREST TENURE

Different types of tenure regimes are situated within the legal framework. Even though there are both customary and formal legal frameworks to regulate tenure, more emphasis is given to formal legal structures, which provide legitimacy from the government side. The following are those salient features of these frameworks that affect the forestry tenure.

Insecure tenure rights: The forest legislation indicates that all community-based forest management systems are management modalities of national forest. According to Sections 67 and 68 of the Forest Act, the government has the ownership of all types of community-managed forests. It has discretionary power to alter the use of forestland and to withdraw the community forest on certain conditions. This has made CFUGs insecure about their tenure in community forest.

Group-based tenure rights: The government recognizes only group-based tenurial arrangements for national forests, including CF. The management plan of such groups is a contractual document for the arrangement of tenurial rights over forest resources. If any member of the group violates any

provision of the management plan, it affects the tenure rights of all members of the group.

Tenancy sharing: All kinds of forest management modalities have their own benefit-sharing mechanisms and no two systems are alike. Therefore, there are lots of confusion as well as debates about the benefit-sharing mechanism of forestry sector.

Informed consent: For effective protection of tenurial rights over forest resources, every legal or customary or use right to forest resources of all local communities requires clear documentation, and the approval of the document by the government agencies concerned. All legal rights of the local community should be protected as per the forest laws. However, the government has the right to use such forests in public interest or to take back such forests from the community if there is significant adverse impact on the forest area. Legally, the ownership of protected areas is vested in the government. Moreover, in the management of buffer zones, the government has no right to encroach on the private land for declaration of buffer zone and preparation of a management plan. If it is necessary to use a private or community land for a short period, it is required to inform the owner of private land and local community.

Security: Enterprise development, access to loan, insurance and tax are important factors for the protection of land and forest tenure. According to Nepalese laws, the local community can run forest-based enterprises, but they have to get the DFO's recommendation, which is not an easy task due to procedural and attitudinal barriers. As per rule 31 of the Forest Regulation 1995, a CFUG may obtain loans from financial institutions by pledging forest products of CF as collateral for developing a CF or a CF-based enterprise. However, financial institutions refuse to pledge forest products due to the lack of legal provisions for insurance of forest products. The

taxation systems for the forestry sector are also not clear.

Dispute settlement mechanism: The dispute settlement mechanism regarding forest tenure is also not clear, and is overlapping and controversial in Nepal. Disputes in the community forest sector are generally treated with hostility. As both the bureaucracy and users need to work together for the conservation and sustainable use of forest, both need to avoid animosity, mistrust and hostility. A harmonious means of conflict management and resolution must be internalized in the realm of community forest management.

Furthermore, the current law, while implicitly accepting community forest as a contractual regime, does not have any provision for arbitration (Bhattarai and Khanal 2005). Violation of the operational plan often results in withdrawal of the community forest area, which is then followed by prosecution. Such a deficiency creates an adversarial relation between CFUGs and other individuals and groups concerned. Given that arbitration, conciliation and mediation are accepted as mainstream dispute resolution mechanisms. There is no reason why they cannot be included in the Forest Act.

Comparing Long-term Tenure and Benefit-sharing System

Long-term tenure: Different types of forest management modality have different periods for the management of forest resources. If a legal system accepts the people's tenure rights over forest resources, it is required to ensure long-term tenure and use rights to the forestland and its resources. In addition, it is necessary to define, document and establish the tenure rights clearly and legally in the document concerned (e.g. certificate, management plan or government document, etc.). Table 2 highlights long-term tenure security in private, state and collective management modalities.

Table 2: Period of Forest Tenure in Various Management Modalities

Management system	Period	Salient Features
Private management		
Private Forest (registered or non-registered)	Not fixed (dependent on owner's wish)	<ul style="list-style-type: none"> • Written permission required to sell forest products in the market • It is necessary to pay land revenue • VAT is imposed, unlike on agricultural products grown on private lands • Restriction on growing certain species
State management		
Government-managed forest	Tenure is unlimited but management is defined usually through an annual scheme or a periodic or yearly plan	<ul style="list-style-type: none"> • Limited or non-recognition of people's rights over forest • Collection of NTFPs for household consumption or commercial use, for example <i>Yarsagumba</i>
Protected forest	Tenure is unlimited but management is defined usually through an annual scheme or 5-year plan	<ul style="list-style-type: none"> • No management plan for such type of forest, except for one case in Surkhhet
National parks and wildlife reserves	Tenure is unlimited but management is defined usually through a 5-year plan	<ul style="list-style-type: none"> • Limited access to local people in core areas • Thatch grass harvesting is allowed with nominal royalty • 30-50% park income is invested in local development
Collective management		
Community forest	Tenure period is not defined by law, management is regulated usually by a 5- or 10-year management plan	<ul style="list-style-type: none"> • Recognizes traditional use rights and access to forest • Defines members and non-members based on mutual agreement • Users have rights to fix royalties and sell forest products • No species restriction or green felling ban • Users can revise management plan • Users can decide management rules
Leasehold forest	40 years, which may be extended for another 40 years	<ul style="list-style-type: none"> • Existing trees are not allowed to be used • Only degraded lands are allowed for handover • System of inheritance is not defined
Religious forest	Tenure is unlimited but management is defined usually through an annual scheme or 5-year plan	<ul style="list-style-type: none"> • Reorganizing of traditional use rights required • Sale of forest products for commercial purpose restricted
Collaborative forest management	Tenure is unlimited, but management is defined through an annual scheme or 5-year plan	<ul style="list-style-type: none"> • Yet to be formalized through regulations • Use of lops and tops and 25% benefits to local people allowed
Buffer zone (BZ) CF management	Tenure is unlimited but management is defined usually through an annual scheme or 5-year plan	<ul style="list-style-type: none"> • 30-50% park benefit is allowed to buffer zone management • CF is required to work based on the management plan of the buffer zone approved by government • CF has no authority to sell timber in outsiders

Table 2 shows that the forest tenure is silent in terms of duration, except in leasehold management. The undefined tenure period has contributed to uncertainty about people's rights and insecurity over forest

resources. Therefore, local communities are trying to ensure their title, customary rights, marketing opportunities, right to agreement, compensation, etc., in the legally valid documents such as certificate, operational

plan and constitution. The benefit-sharing mechanisms listed in Table 3 illustrate that private forest products are discriminated against compared to other products from the

same piece of land. The table also indicates that collective management such as CF is enjoying greater benefits compared to other forms of management.

Table 3: Benefit-sharing Mechanism in Different Management Modalities

Forest management modality	Tax	Charge	Income sharing	Forest management
Private management				
Private Forest	VAT is applicable on private forest products			
State Managed Forest				
Government-managed forest	VAT applicable to national treasury		<ul style="list-style-type: none"> • Equal distribution of the income from stray timber between local government and central government • 10% revenue to the local government from the total income of forest 	All costs to be allocated by national treasury
National Parks and Wildlife Reserves			30-50% benefits to Buffer Zone management	
Collective management				
Community forest	VAT collection in commercial transactions	15% charge on commercial transactions of <i>Acacia catechu</i> and <i>shorea robusta</i> in Terai	100% benefits to local community	25% of the total income of CF to be spent on forest development activities
Leasehold forest	-	No lease fee is charged to poor people	100% benefits to local community	-
Buffer Zone CF	Sale of timber to outsider restricted	-	Collection of revenue from sale of stray timber	-
Collaborative forest	Application of VAT on auctions	-	75% for national revenue and 25% for local government or community	Not fixed

IMPACT OF TENURE ON LIVELIHOOD, INCOME, FOREST CONDITION AND EQUITY

Impact of different types of forest management modality on Livelihoods, Income, Forest condition and Equity (LIFE) is briefly discussed in this section.

Impact of Private Forest on LIFE

Little is known regarding the impact of private forests on LIFE because very few studies deal with this issue. There is no doubt that trees are extremely useful for all, including the poor. Poor have planted trees

as far as possible if their land tenure is secure. However, they are reluctant to plant trees in the lands they cultivate as tenants because in this tenorial form they lack security over the trees and also landowners are inclined to develop private forest. Not much is known about the condition of private forests or their impact on other forests such as government or community forests. However, one can safely assume that if fuelwood and timber could be produced and made available cheaply in the market, the pressure on other forests would reduce. On the question of equity, it is difficult to

objectively analyse whether private forest has been helping in promoting equity. The only way it could help is by creating employment opportunities or by providing environmental services.

Impact of Community Forest on LIFE

The CF was initiated with the aim of restoration of degraded hills and supply of basic forest products to rural people. Recently, the livelihood concept has been introduced in the CF. The CF has been able to develop community-based resources and services. The fund that is generated is being used for various community development activities such as school support, construction of trail, community enterprises, irrigation canals, drinking water supply, community buildings, temples, cooking utensils for the community, etc. These are generally the activities used by the wealthier households in the village. Therefore, community development activities are blamed for not being of direct help for the poor (Adhikari and Ghimire 2002, Gentle 2000, Kanel 2004). There is also the question of 'inclusion' of all in CF. Especially *Dalits* and women seem to be excluded from decision-making, whereas both of them share a disproportionately heavy load in labour contribution. However, within CF several provisions have also been introduced for the benefit of the poor and for realizing gender equity in management. Some of these initiatives have come locally. These include:

1. CF has introduced a system of at least 50% women in all committees or beneficiaries.
2. The membership of CF in the name of women.
3. Women's exclusive groups have also been formed and they have in general been more successful.
4. Quota has been fixed for *Dalits*.
5. For poverty reduction and to improve the access of the poor, groups of poor have been formed and given exclusive rights in certain activities such as planting Non-Timber Forest Products (NTFPs) within CF. These are also given to women groups.
6. Income-generating activities have been conducted for groups of poor.
7. In a few user groups, forestland is allocated for income-generating

activities for poor families identified through well-being ranking.

8. Many CFUGs offer scholarships for students from poor families.

Regarding forest condition, research has indicated that with community forest management, there has been a reversal in the trend of deforestation. Branney and Yadav (1998) report that the total number of stems per unit area increased by 51%, even though the basal area of forest in poor condition increased by a significant rate, i.e., 29%. In a study of land use change, Jackson *et al.* (1998) mentions that shrubs and grasslands have been converted into more productive categories of forestland, reflecting the care that communities take in managing and conserving their forest resources. Dev and Adhikari (2007) have also gathered evidence from across the hills confirming this assertion.

Impact of Leasehold Forest on LIFE

The pro-poor LF approach is considered a good approach to poverty reduction, but its coverage is not extensive. Moreover, as poor people are mostly given degraded land, they are generally not able to invest in upgrading the land. Despite these, in some cases, poor people have been able to improve the natural assets such as grasses and trees, helping to produce fodder for the livestock (Mukharjee 2003, Singh and Shrestha 2000). Even though long-term lease provides security, the long gestation period of trees and insecurity of tenure after that time is a concern for users.

Impact of Government-managed Forest on LIFE

Government-managed forests provide forest products and several NTFPs for local communities. Such forests have no schemes to directly benefit the poor and the disadvantaged. The indirect benefits might come through government-sponsored programmes if the revenue is increased. But, it is also a fact that the poor and disadvantaged also use government forests, but illegally. Therefore, they are at risk of punishment. The greatest benefit from the protected area system is achievement in nature conservation and species conservation. In addition, the forest condition within the system is relatively good compared to non-government managed

forests. The local people are benefiting from the promotion of ecotourism and related activities such as hotels, guide and other employment. Equity in benefit sharing has improved since the introduction of the buffer zone concept in the early 90s. The buffer zone concept has contributed towards the improvement of livelihood, development of partnership for conservation and habitat conservation outside the protected areas. Despite this, there have been frequent complaints against the damage and disturbances caused by wild animals to people's crops, animals and even human lives.

Impact of Customary Systems on LIFE

Customary systems have evolved taking into consideration both conservation of resources and people's livelihood. Generally, traditional rules seem to favour the rich, who generally have a say in decision-making. But norms are followed more or less strictly and voluntarily because non-

compliance usually cannot be treated through legal means. Until now there is no legal basis for customary system of management of resources. However, customary systems are considered better in terms of reducing the vulnerability of individuals. There is a social network and safety-net in traditional systems that looks after the people suffering from contingencies and the like.

Based on the above discussion and considering both positive and negative impact of different tenurial regimes, the following picture (Table 4) emerges based on subjective judgment. It has been presented as a hypothesis on the impact of different forest tenure regimes on LIFE for further examination and testing. The impact has been categorized as low, medium and high. The table makes it clear that community-based management regimes are more favourable for poor and marginalized communities.

Table 4: Subjective Evaluation of Impacts of Various Management Modes on LIFE

Management regimes	Impact on			
	Livelihood	Income	Forest Condition	Equity
Community forestry	H	H	M	M
Leasehold forestry	M	H	H	H
Private forestry	L	M	M	L
Government-managed forestry	M	M	M	M
Customary management of forest	M	L	M	M

Note: L= Low, M= Medium and H= High

CONCLUSION

There is a multiplicity of rights in different forest tenure systems. However, what is in the law is not necessarily practised. The tenure regime is also dependent on the outlook of the law enforcement agencies. There are different opportunities and options for people to use resources. Even in a case of complete ban, people are using forest despite the risks it entails. Accordingly, people's efforts for conservation of forests and their impact on livelihood differ in different management regimes that have different tenure systems. The tenure system is seen to directly affect the access of the poor to resources.

Despite inequitable distribution of benefits in favour of wealthier households in CF, beneficial impact on LIFE is high in this

system as compared to government-controlled management (like government forest and protected areas), customary and private management. Within CF, however, various innovations have been introduced and most of these may not be in congruence with the legal system. There is a wide range of variations in the tenure system within CF. If people are encouraged to develop their own systems that is helpful for them and to conserve the forest, they will make various innovations suitable to their conditions. Therefore, this flexibility is important. LF, which seems to benefit the poor and the disadvantaged, has been very slow in making real progress in reducing poverty. In places, where it has been successful, the poor have been able to increase their income and other livelihood aspects such as education and health of family members.

But bureaucratic procedures and the need for investment in improving the land have been discouraging the poor.

Secure tenure is important for the conservation of forest resources and for encouraging the poor to invest their labour in them. But no mechanisms have been developed for this so far. CF and LF show some promise, but again separate space is needed for the poor in CF and some initial support for development of resources in the LF. The capacity of CFUGs, leasehold groups and the government agencies directly helping these local institutions should be enhanced. Customary rights are also necessary and they should be recognized and remoulded in a way that they can have positive impact on equity.

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