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**Naya Sharma Paudel**

ForestAction Nepal

**Mani Ram Banjade**

ForestAction Nepal

**Ganga Ram Dahal**

Center for International Forestry Research, Indonesia

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Satdobato, Lalitpur

**PO Box:** 12207, Kathmandu, Nepal

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

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

## Handover of Community Forestry: A Political Decision or a Technical Process?

Naya Sharma Paudel\*, Mani Ram Banjade\* and Ganga Ram Dahal\*\*

\*ForestAction Nepal

\*\* Center for International Forestry Research, Indonesia

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

**Abstract:** This paper examines the status of community rights under Community Forestry (CF) in Nepal. It takes approval, renewal and implementation of operational plans as the basis for assessing community rights. Based on three cases—one each from the three ecological sites in Nepal, the paper examines how community rights are shaped by the regulatory framework, behaviour of the forest bureaucracy, community institutions and political constituency around the CF programme. It shows that, despite official handover of community forests, their users are restricted from exercising their rights guaranteed by the country's policies and laws. It is observed that a latent hesitation exists among government field offices to fully transfer the rights to communities.

*Key words:* community forestry, rights, operational plan, handover, regulatory framework.

### INTRODUCTION

CF is regarded as one of the major forms of forest tenure reform in Nepal. Under this programme, accessible national forests are handed over to locally organized Community Forest User Groups (CFUGs) based on their Operational Plans (OPs). Theoretically, CFUGs prepare OPs and apply to the District Forest Office (DFO) concerned for its approval. Once the OP is approved, the forest is officially handed over to the community, subject to its compliance with law. Therefore, OP approval and forest handover are the cornerstones of CF.

Although the user group approach is being adopted across diverse sectors in developmental activities and resource management in Nepal since the 1980s, CFUGs are distinct in many ways. The Master Plan for Forestry Sector (MPFS) clearly directs that forests should be handed over to local user groups with management and use rights. Article 43 of the Forest Act 1993 recognizes CFUGs as self-governing, independent, autonomous and corporate institutions so that they can acquire, possess, transfer or manage movable or immovable property (HMG/MoLJ 1993). The groups are entitled to receive all benefits from forest management. Besides, they can raise funds through grants, donations, sale of forest products and fines. It introduced the provision of handover of forests by the DFO to identified user groups that are

willing and capable of managing any part of national forests (Ibid).

The implementation of the CF programme, particularly in the mid-hills, has reversed deforestation and has resulted in the rehabilitation of degraded forests (Branney and Yadav 1998). Community tenure security through handover of community forests to local communities is recognized as the sole factor bringing about these positive environmental changes (Pokharel *et al.* 2007). Besides, there are significant positive economic and social outcomes of this tenure reform.

Despite these well-recognized and visible positive outcomes of recognizing community rights, tenure reform within CF continues to suffer from low appreciation and hidden reluctance to fully transfer rights to communities. The regulatory framework and the forest bureaucracy continue to show a latent hesitation to fully transfer rights to local communities and trust their capacity to effectively manage resources. Based on a study conducted by the Center for International Forestry Research-Rights and Resources Initiative (CIFOR-RRI) global research on tenure reform, this paper brings some specific cases of government-community interfaces in the context of CF and explains how these interfaces result in the undermining of community rights, often against the spirit of handover.

This paper is divided into five sections. The next section provides a brief conceptual

framework of tenure—three dimensions of tenure and a tenure box—to facilitate examination of the bundle of rights transferred. The third section presents a case each from three study sites in which community rights are undermined by regulatory constraints and uncooperative behaviour of DFO staff. This is followed by a discussion on the cases, based on the conceptual framework. In the final section, the paper concludes that restrictions on rights have undermined potential livelihood outcomes of community forestry.

## CONCEPTUAL FRAMEWORK

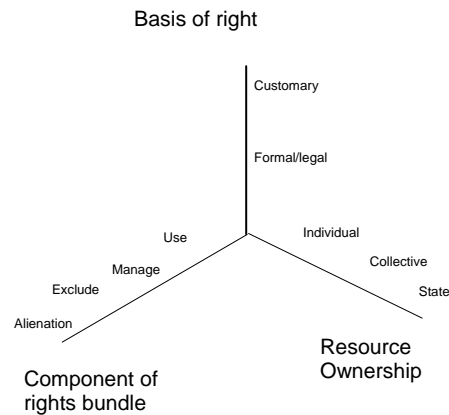
The word tenure originates from Latin 'tenere', which means 'to hold or grasp'. When applied to natural resources, it entails possession of a piece of land, forest or water resources for a defined period of time. By extension, tenure security is the degree to which an individual or group feels its relationship with the land or other resources delineated by a defined boundary (Poffenberger 1990). In the context of community tenure over forests, the notion of tenure involves two interrelated aspects: a) the degree of rights enjoyed by communities or individuals (Bruce 1989); and b) the security of those rights exercised (Ellsworth and White 2004). While the first aspect includes the types of rights transferred to communities, the second aspect contains the regulatory provisions, institutional arrangements and political constituency around the everyday practices of forest management that shape the security of the transferred rights.

Forest tenure is primarily understood in terms of different bundles of rights enjoyed by a community or an individual over a defined patch of forest. The rights may include the right to use products, to manage resources, to exclude others from using them and alienation from the existing rights. The bundle of rights transferred to communities, however, is not exercised in a political and institutional vacuum. The realization of these rights in practice is shaped by the regulatory environment (terms and conditions), bureaucratic behaviour, community institutions and political constitutions around the particular tenure regime (Ellsworth and White 2004).

Recognizing the complex notion of tenure,

we have adopted a conceptual framework developed by the CIFOR-RRI<sup>1</sup> project, which combines various components of rights into the concept of tenure (Figure 1). The framework combines three dimensions of tenure: forms of resource ownership, bundle of rights transferred and the basis of those rights. In this framework, resources can be owned by the state or by collective entities or by private agencies. Along the rights axis, the use rights are regarded as the lowest and alienation as the highest in the hierarchy of rights. The basis of these rights is either formal/legal or customary/traditional.

Figure 1 Conceptual Framework in Understanding Tenure



Although the above framework is helpful in analyzing the forest tenure in a wide range of situations, we need to go beyond it to explain the tenure dynamics under Nepal's CF. It should be noted that the state owns forest resources and hands over certain rights to local communities under a formal/legal contract. Here, the transfer of particular bundle of rights is the key contentious issue, which is shaped by the regulatory framework, bureaucratic behaviour, community institutions and the political constituency around it. The act, regulations and guidelines collectively form the regulatory framework. The regulatory environment creates an incentive structure

<sup>1</sup> The project 'Enhancing Equity and Livelihoods in Community Forestry' is implemented by the Centre for International Forestry Research (CIFOR) as part of a wider global initiative, called Rights and Resources Initiative.

by encouraging or discouraging certain practices and help shape behaviour of actors involved in it. The behaviour of the forest bureaucracy is another important element affecting the community tenure. Third, an important element is the community institution, which is the CFUG in this case. Finally, the fourth element is the political constituency, which is conceptualized as a section of the civil society, including NGOs, professional associations and unions (Ellsworth and White 2004). They can make important contributions to secure community rights through research and analysis, civic education and lobbying. In a situation where governments often tend to undermine the community rights, local communities alone are less likely to succeed in defending their claims.

The term 'handover' is the key concept adapted in Nepal's CF that provides an important analytical framework to understand tenure security. As land that is formally handed over to communities is owned by the state in any case, the only contested dimension is the bundle of rights. As envisaged by the Forestry Sector Master Plan 1988 (HMG/N 1988) and Forest Act 1993 (HMG/MoLJ 1993), forests are handed over to local communities not just to invite their participation but also to provide them with tenure security. The concept was introduced after the failure of a centralized policy that excluded people from the protection of forests. The exclusion led to alienation of local communities, which ultimately has undermined protection itself. The lesson is clear: provide clear tenure security to the local people. Strong tenure results in better protection of forests.

### **CASES OF RESTRICTED RIGHTS OF COMMUNITIES**

The information for this study has been collected from three ecological sites: Suspa CFUG (Dolakha) in high hills, Lamatar (Lalitpur) in mid-hills and Sundari CFUG (Nawalparasi) in the Terai. Information was collected using interviews, observations and a series of interaction meetings with CFUG members and other stakeholders as well as analysis of documents. Information from other sites was also used to complement the cases. This paper focuses on the preparation, approval, implementation and

monitoring of the OP, as this is at the crux of the state-community interface. This interface shapes the community rights.

#### **Case 1: Provisions in OP that Undermine Community Autonomy**

An OP is the key document guiding the forest resource management and use by CFUGs. Besides, it helps set the relationship between forest bureaucracy and the CFUG by defining their respective roles and responsibilities. Although an OP is supposed to translate the government policy and acts into practice, forest officials often play the lead role in interpreting these legal documents. In this process, they tend to insert provisions that provide them with additional roles, through which they can monitor CFUGs' activities. For example, the OP of Sundari CFUG has the following provisions.

*'Notwithstanding what is written in this OP, the CFUG has to comply with Nepal Government's Acts, Rules, Regulations, Department of Forest's circulars and DFO's orders.'* (Rule 14.6).

Rule 12 has similar provisions:

*'Notwithstanding what is written in this OP and constitution of the group, the CFUG must comply with the circulars and orders of Nawalparasi DFO, Ilaka Forest Office and Range Post.'*

*'The CFUG's activities should be in line with the circulars and orders of the Department of Forest.'*

*'The CFUG must comply with any additional policy, programme and instructions issued by the Department of Forest considering the current situation of the forest.'*

*'All the forest management activities must be carried out in the presence of forest technical personnel and the records of harvest must be certified by the forest technical personnel.'*

#### **Case 2: Getting Approval for Timber Sale is Difficult**

Timber is the main forest product of many CFUGs, by selling which they can earn significant income. However, the existing regulatory frameworks restrict CFUGs from selling timber outside the CFUG.



Uncooperative behaviour of DFO staff further discourages CFUGs from selling timber. The chairperson of Suspa CFUG has had a bitter experience of bureaucratic behaviour. He had the following story to tell:

*'We had 300 cft of excess timber which we could not sell within the group. We needed DFO's approval to sell it in the market. We visited the Range Post five times in Ashadh (June-July). The Ranger was either absent or too busy to process our application. When we visited his office in Srawan (late July), the Ranger asked us to bring previous year's audit report. We submitted the audit report in our next meeting. This time he asked for a copy of our Executive Committee's (EC's) decision to sell timber and a detailed investment plan based on the expected income. Our EC met in Aswin (September) and took a decision accordingly. When we visited the Ranger's office with all these documents he was not in office. We also visited the following day, but found his office closed even in the mid-day. We had to visit over a dozen of times before getting an approval.'*

The story shows the lack of cooperative and accountable behaviour on the part of the DFO staff concerned. It clearly shows the lack of sensitivity towards the sufferings and other transaction costs incurred by the CFUG merely to get an approval for a small transaction. According to the CFUG

**Box 1. Is There a DFO? An Observation of Monitoring of Forest Management Activities**

In one site, a CFUG allocated a patch of forest to half a dozen of its poorest members for cultivating NTFPs. For the past four years, no DFO staff has visited the forest to see whether the allocated plots of land are being used in accordance with the stated purpose or not. Similarly, in the case of another CFUG, local blacksmiths used to mine slate in the forest before it was handed over as a community forest. Since its handover, DFO staff have hardly visited the forest to see whether the practice is continuing or not. Even if they visit, they prefer to walk through convenient routes and are little interested to know the management details. The CFUG leadership and general members fully believe that the DFO staff are not at all interested in such issues.

chairperson, the DFO staff dictate the use and management of the forest, although it was handed over to them. Since then, they have never sold timber outside the group.

While DFOs take a strong stand against harvesting and sale of timber, particularly outside the group, they appear to be little interested in the management of the forest. As the story in indicates, the communities enjoy more rights on forest products as long as they have no commercial value. Although many of such practices may have negative environmental impact, the DFO staff appear to be little sensitive here.

**Case 3: Slow Operational Plan Revision Weakens Community Tenure**

Renewal of OPs became one of the major challenges for nine CFUGs of Lamatar Range Post area. Their OPs had expired on July 2007. The leaders of the CFUGs began the process of renewing their OPs in October 2006, almost 10 months before the expiry date. As the previous OPs were protection-oriented, they decided to follow a more participatory and inclusive process to make the OPs more relevant to their situations and to enhance the sense of ownership among their users. They also decided to seek the support of the DFO and the district branch of the Federation of Community Forest Users of Nepal (FECOFUN). They decided to organize an EC meeting, followed by *tole* meetings and finally a general assembly to resolve all contentious issues. During the renewal, however, they hardly followed the plan. They also didn't receive any support from FECOFUN.

The nine CFUGs jointly applied to Lalitpur DFO on October 2006, requesting for its support to prepare new OPs. As they did not get any response from the DFO, they sent another application, on April 2007, requesting for technical support. On May 2007, the DFO wrote a letter to Lamatar Range Post, asking it to help the CFUGs renew their OPs. Since then, the CFUG office-bearers have been following up the process, sometimes with a lot of frustrations. Rajaram Paudel, the chairperson of Pandali CFUG, shared his experience of the process:

*'Since then, we have been following the process. We have offered every support, including tools and equipment, to the Range*

Post to prepare an inventory and voluntary human resources for inventory preparation in the field. The Range Post staff often made one or the other excuse, such as the problem of leeches, rain or muddy field. Although we continued to push them hard, we could not speed up the process. Finally, we have got a newly approved OP.'

The Range Post staff prepared the first inventory in three CFUGs, Chisapani, Mathillo Patle and Manidanda, between 3<sup>rd</sup> and 4<sup>th</sup> week of October 2007. On average, inventory preparation took two to three days in a CFUG. Based on the involvement of group office-bearers, inventory of all the nine community forests may have taken roughly twenty-two days. Another twenty-seven days may have been taken to organize and interpret the information in the inventory. Using this data, writing actual OPs may take another thirty-six days for forest personnel. This means roughly eighty-five days of technical work to complete the OPs of the nine CFUGs. But the whole process has been so slow that many of the CFUGs had not received their OPs even in October 2008.

The OP renewal is absolutely necessary for CFUGs. Once OPs expire, forest management activities are deemed illegal even if forests have been handed over to CFUGs. After the expiry of their OPs, the CFUGs remained vulnerable to potential legal actions against them by the DFO. Consequently, some CFUGs deliberately kept forest management records secret to hide any evidence of using forests during this period. All other regular activities of the CFUGs also faced difficulties. Legally, CFUGs are required to prepare their annual plans by mid-April (New Year according to the Nepali calendar). However, as most of the OPs had not been approved by this date, the CFUGs could not prepare their annual plans. Consequently, all of their activities could be deemed illegal.

## DISCUSSION

The three cases presented above bring specific aspects of government-community interfaces where we can observe dynamics of unequal power relations between the two. Let us slightly elaborate the cases to understand them through different perspectives.

In case 1, the DFO staff have sought to expand their monitoring and control role even to very minute activities of the CFUG, using the above provisions. Some of these provisions completely undermine the autonomy of the CFUGs. The CFUGs are asked to comply with all circulars and orders from different levels of forest bureaucracy. Besides, there are dozens of provisions on responsibilities for looking after forests, keeping all kinds of records, frequent reporting to the DFO and being liable for any illegal activities in the forest. The provisions demonstrate how the government has transferred a bundle of responsibilities and not a bundle of rights through forest handover.

Although these provisions are mutually agreed upon by CFUGs and DFO, they tend to expand the role of forest authorities and undermine the autonomy of CFUGs. One can sense the influence of DFO in inserting these provisions in the OP. Given the unequal power relations between DFO and CFUGs, the latter appears helpless in avoiding such provisions as that would exacerbate their conflict with DFO, which they cannot afford.

In case 2, we saw how the regulatory framework and bureaucratic practices undermined the autonomy of the CFUGs despite formal handover of forests. Here, we can see the huge transaction costs involved and resultant frustrations in getting the sale permit for the timber harvested according to the OP. As the chairperson expressed, CFUGs cannot sustain such transactions in the long run. These transaction costs simply add to the sufferings of the CFUG office-bearers who have been investing substantial part of their time and effort to protect and manage forests. In most of the cases they work voluntarily and there is hardly any mechanism to compensate them.

In case 3, the CFUGs had to fully rely on the DFO staff's cooperation in the OP renewal process. The DFO staff assisted the process at their convenience as there is no obligation and set deadline for it. Consequently, the renewal process had been lingering over a year and had not been completed at the time of this study. It is also observed that communities are paying for the cost of delay in various forms.

As the cases show, handover of forest in community forestry does not mean transfer of ownership. It is not that CFUGs can do whatever they like. But it is a conditional handover--giving rights to manage and use forests under certain mutually agreed conditions such as maintaining the ecological health of the forest. Many agree that this could be a rational and justified condition for handover of certain patches of national forest.

There are, however, a host of questions around these seemingly straightforward issues. Who sets the conditions? How are the conditions monitored? Who decides whether the conditions are fulfilled or not? How are the changing resource-society relations taken into account in setting or monitoring the conditions? All these questions have implications for the transfer of rights to communities.

When we examine the tenure arrangements under community forestry using the conceptual framework presented in Figure 1, we can see that, in terms of ownership, the forest land belongs to the state. Similarly,

since rights are transferred under a formally approved OP, the basis of claim is a formal one. The bundle of rights transferred to communities remains a contentious issue and varies from case to case. The use rights, management rights and exclusion rights are partially transferred to CFUGs in a CF. CFUGs have restricted rights to withdrawal and management, but can exclude non-members from using forest resources. The transfer of rights in practice is usually controlled by the system of approval. DFO's approval is required for the CFUG to claim itself as a legitimate group to take over the forest, operate various silvicultural activities, harvest forest products and sell them outside the group and to renew the OP. Therefore, the whole system gets into trouble if DFO does not appreciate and recognize the community rights.

The tenure box, as shown in Figure 2, is developed based on actual transfer of bundle of rights to communities and individuals, on the use and management of timber in one of the sites.

Figure 2 Tenure Box Showing Transfer of Bundle Rights on Timber Management

<b>Bundle of rights</b>	<b>Use/Withdrawal</b>	Approves the OP that sets out harvest limits	CFUG itself collects or may allow individuals to collect, decides the season and duration	Can purchase at subsidized rates
	<b>Management</b>	Approves annual allowable cut, approves any sale outside the group	Carryout silvicultural practice, harvest, process and sale timber and NTFPs	
	<b>Exclusion</b>		Identify their members and can exclude non members	
	<b>Alienation</b>	Government holds rights to alternative use		
		<b>State (DFO)</b>	<b>Community (CFUG)</b>	<b>Individual users</b>
		<b>Right holders</b>		

The three cases presented in this paper show diverse forms of regulatory instruments and bureaucratic behaviour that ultimately undermine community autonomy even in officially 'handed over'

forests. Four important observations can be made from the cases.

First, CFUGs are facing a number of restrictions on utilizing their forest products.

For example, in Suspa, although the CFUG had harvested timber in accordance with their OP, it had to get a permit to sell it. Similarly, an analysis of Sundari OP shows that the CFUG cannot operate even its regular activities without the presence of DFO. It has to get DFO's approval and invite her/him to carry out even minor activities. This has ultimately reduced the essence of handover. If DFO's approval is required for each and every activity, what is the meaning of the OP?

Second, CFUGs have no say but to obey the decisions and actions of DFO. In Suspa, the chairperson continued to visit the DFO, although he was completely exhausted by the lack of cooperative behaviour of the staff concerned there. In Lamatar, the CFUG office-bearers had no option but to wait and see the progress made on the OP renewal process. In both the cases, the CFUGs had no way to expedite either the approval process or the renewal process. For example, in Lamatar, although the CFUG office-bearers were feeling insecure after the expiry of their OPs, they could not put pressure on the DFO to expedite the renewal process. They had no means to hold the DFO accountable and responsible to the CFUG's needs and concerns.

Third, as the OP of Sundari CFUG shows, DFO staff do not trust local communities. The provisions require DFO's approval of each and every management and harvesting-related activity and close scrutiny of these operations by DFO staff. There is an implicit suspicion on the transparency and accountability of CFUGs, and DFO's close monitoring is seen as the solution to avoid possible mismanagement. While the role of well-designed monitoring is always appreciated in improving the governance and capacity of CFUGs, its use as a coercive means to control CFUG practices has undermined local autonomy.

Fourth, the OP renewal process in Lamatar and the provisions of Sundari OP show that the preparation, approval and renewal processes are conceived as technical matters and their political dimensions have been ignored or diluted. Importance is given to technical aspects such as preparation of an inventory, calculation of annual allowable harvest, writing the provisions of the OP, typing and binding the OP, etc. These

processes are led by DFO staff. The political aspects of preparation and approval of OP such as detailed discussions within user groups, particularly, among different interest groups, decisions on allocating roles and responsibilities to DFO and CFUG are often left to DFO staff. In some cases, OPs are approved or revised without proper discussion within the CFUG. Only a couple of office-bearers are tied up with DFO staff in the process and users in general remain little aware of the process. Preparation of the OP and its approval by the DFO appear to be the major concerns, and discussion among members is given a low value. From legal point of view, the latter has little meaning; therefore, it receives low attention. Consequently, the significance of OP as informed negotiation among users has largely been reduced to a myth.

The consequences of undermining the local community rights are too obvious. Despite these, forests are officially handed over to communities, and communities have a weak feeling of ownership. Many users perceive that whatever rights they have been using are temporary privileges granted by DFO. There is a strong sense of feeling that the extent of rights they are enjoying depends on their relationship with DFO. This weak sense of tenure security has led to low investment in forests in terms of management interventions such as thinning, pruning, plantation, construction of fire line, introduction of new species, etc. As a result, the CF has low productivity.

Another negative effect of the restrictions on selling forest products outside the CFUG is that CFUGs have been unable to benefit from the emerging market opportunities. While relative freedom is given to households in the use of many forest products, selling them outside the group is discouraged. Although there is a growing market for many forest products, particularly for timber, communities are forced to use most of the products within the group. This has undermined the potential incentive for forest conservation.

The regulatory constraints and bureaucratic hassles have not recognized the fact that trusting local communities and providing them with tenure security is the key factor for rehabilitating the degrading hill forests. Since handover of state-owned forests to



local communities is at the heart of CF, diluting or weakening its essence would ultimately undermine the central rationale of CF in Nepal. It is interesting to understand why these processes are continued unnoticed or apparently unquestioned despite the fact that they are highly constraining to the CF. Some of the plausible explanations can be the following.

It is not surprising that CFUG office-bearers are vulnerable to DFO's actions and, therefore, hardly oppose DFO's behaviour, including the imposing and restrictive provisions in their OPs, as seen in Sundari CF's case. The office-bearers are too weak to defend their rights as they do not want to strain their relationship with DFO. Since CFUGs have to rely on 'positive' decisions from DFO's discretionary power, they are compelled to maintain 'good' relationship with DFOs.

The CFUGs are often left alone to deal with DFO at local level and there is hardly anyone to support them in such difficult situations. There have been no local governments (District Development Committees and Village Development Committees) for several years and, even if they had been there, it wouldn't be so keen to take on CFUG's case because of their latent conflict over resource management. Bilateral projects and I/NGOs often try to avoid discussing such issues with government agencies as this would risk their 'successful' operation within their predetermined agenda. Although FECOFUN is expected to take up these issues, the local entities of FECOFUN are often poorly equipped and little influential to defend users' rights. The movement of FECOFUN, though fighting for forest users' rights, is either too general to address these issues or gets diluted when it reaches local level.

Is this due to the inherent nature of the regulatory framework and bureaucratic structure? Or is this part of very calculative and deliberative attempts to undermine community rights? In most of the cases, both aspects interplay in diluting the spirit of the Forest Act 1993, ultimately undermining the rights. As a result, the political decision to 'hand over' forests to local communities is reduced to the technical process of giving management responsibilities and retaining the crucial

elements that ultimately shape management.

While some of these practices are outcomes of deliberative attempts to bring CFUG activities under close scrutiny, many others are linked with the poor performance of the forest bureaucracy. For example, restrictive provisions in Sundari OP seem to have been inserted deliberately. Given the likelihood of financial mismanagement, particularly among the rich CFUGs in the district, officials prefer such provision to reduce such possibilities. In case of Lamatar and Dolakha, the usual negligence of the forest bureaucracy may have been at work. Whatever may be the case, the spirit of the forest policy and laws has not been respected and community rights have been seriously undermined.

## CONCLUSION

The political essence of handover, guaranteed by the Forest Act 1993, has been reinterpreted, diluted and reduced by the OP approval and renewal process. The three cases presented in this paper demonstrate that communities are restricted in exercising the rights granted by the Act. It is observed that they have to rely on DFO for OP approval, renewal and even to operate the regular management and harvesting activities. Here, official 'handover' has little meaning. Every practice between the state agency and local communities is so complex that the existing policy and laws have little control over the outcomes. Therefore, not only policy and acts, but a deeper consideration is required of the operational legal instruments, particularly the structure of bureaucracy so that the policy intent is truly respected and materializes.

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