KEY MESSAGES

- Current forest tenure policies and legislation largely address tenure issues but there are still major policy gaps in certain areas such as defining the role of the private sector, recognition of customary rights, harvesting and marketing of forest products and addressing climate change.

- In order to address these policy gaps the government will have to amend key legislations such as the Forest Act 1993, Forest Regulation 1995, Local Governance Act 1999 and Environment Protection Act 1997. For example, sections 25, 32, 35 and 42 of the Forest Act on customary tenure rights need to recognize customary tenure. In addition, new policies and regulations should also be formulated to address the policy gaps identified by the assessment.

- Community and leasehold forestry help to improve forest conditions in the Mid-Hills but these regimes are not very successful in improving the livelihoods of forest-dependent communities.

- Strong forest tenure policies and regulations are key factors for ensuring benefits from forests and forest land, but it is equally important to have strong institutional capacity and sufficient resources (human and financial) to implement policy effectively.

BACKGROUND AND RATIONALE

Improving the livelihoods and income of forest-dependent communities is important in the contexts of poverty reduction efforts, food security and sustainable development. In this regard, many countries in Asia have initiated forest tenure reform programmes. However, the outcomes of such effort are mixed and potential benefits for rural people are not fully realized. Restrictive and weak regulatory frameworks, tenure insecurity and insufficient institutional capacity are key factors that inhibit the impacts of forest tenure reform (Gilmour 2016; Larson and Dahal 2012; Yasmi et al. 2010).
FAO initiated a regional programme on Strengthening Forest Tenure for Sustaining Livelihoods and Generating Income in Cambodia, Nepal and Viet Nam in 2014. The main objective was to strengthen regulatory frameworks and the institutional capacity of these countries for forest tenure to ensure better income and livelihoods for forest-dependent communities. Key activities include, among others:

- National-level assessment of the status, progress and gaps on forest tenure policies and institutional capacity.
- Multi-stakeholder policy dialogues to formulate national action plans to address forest tenure and institutional capacity gaps.
- Targeted capacity development through training of trainers and exchange learning with China to learn best practices.

This brief presents the key results of the forest tenure policy assessment based on a review of 37 policies and regulations, two multi-stakeholder national policy dialogues and consultation with key government officials, civil society groups and development organizations. Key policy documents reviewed were: five forestry-related acts and regulations (e.g. the Forest Act 1993, Forest Regulation 1995), nine environment-related legal documents (e.g. the Environment Protection Act 1997, National Parks and Wildlife Reserve Act 1973), four land-related documents (e.g. the Land Act 1964), four governance-related documents (e.g. the Local Self Governance Act 1999), 13 policies, strategies and plans, and two guidelines, namely the Community Forestry Development Guidelines 2015 and the Community Forestry Inventory Guidelines.

The policy assessment framework was developed based on principles stipulated in the Voluntary Guidelines for Responsible Governance of Tenure (VGGT). The assessment follows four steps as shown in Figure 1 and assesses eight thematic areas and 26 subthemes (see Table 1). Policy dialogues held in 2015 and 2016 brought together over 120 key stakeholders to review the results.

**FORESTS AND FORESTRY IN NEPAL**

The total area of Nepal is 14.7 million hectares (mha), out of which forest land covers 5.96 mha (40.36 percent of the total land area). Other wooded land (OWL) covers 0.65 mha (4.38 percent). Forests and OWL together represent 44.74 percent of the total area of the country (MoFSC 2015). More than 80 percent of the population in Nepal lives in rural areas and is heavily dependent on agriculture and forestry for sustaining livelihoods. Forestry development in the last 25 years was primarily guided by the Master Plan for the Forestry Sector (1989), which ended in 2011. The Forest Act 1993, Regulation 1995 and various guidelines were enacted to implement the Master Plan. These two legislations are key milestones of decentralized forest governance in Nepal as they enable local communities to manage, protect and use forests through community-based forest management regimes. The Local Governance Act 1999 is another legal basis to protect and manage natural resources, including forests, at the local level. Studies indicate that the condition of forests has substantially improved since the government transferred protection and management rights and responsibilities to local communities but the outcomes in terms of the income and livelihoods of forest-dependent people have not been so satisfactory (RRI 2014; Larson and Dahal 2012).
In the context of promulgation of the new Constitution in 2015 the government approved a new forest policy in 2015 and forestry sector strategy in 2016 to provide guidance for forestry development. The government is committed to following international conventions and standards such as the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, the United Nations Convention to Combat Desertification, the Ramsar Convention on Wetlands of International Importance, the Convention for the Protection of World Cultural and Natural Heritage, ILO Convention No. 169, the International Tropical Timber Agreement, the VGGT and so forth. The Ministry of Forests and Soil Conservation (MoFSC) is the lead ministry, but the Ministry of Environment is also responsible for supporting environmental protection and forestry sector development.

THE STATUS OF FOREST TENURE POLICIES IN NEPAL

Table 1 has eight themes and uses the Likert scale (0-4). It describes what elements of forest tenure are or are not addressed in the policies.

<table>
<thead>
<tr>
<th>THEMES AND SUBTHEMES</th>
<th>SCORE</th>
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<tbody>
<tr>
<td>1  Legal recognition and respect of rights</td>
<td>2.7</td>
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<tr>
<td>1.1 Recognition of a broad spectrum of existing forest tenure rights and rights holders and their duties by the regulatory frameworks (for both statutory and customary tenure).</td>
<td>3.0</td>
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<tr>
<td>1.2 Recognition and respect of legitimate tenure rights holders and their rights in terms of providing a bundle of rights involving access, use, management, exclusion and alienation.</td>
<td>2.0</td>
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<tr>
<td>1.3 A system of formal recording of legitimate tenure rights holders and their rights is in place.</td>
<td>3.0</td>
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<tr>
<td>1.4 Tenure rights are well secured with regard to duration, scope, clarity, level of restriction on rights and protection from arbitrary withdrawal or breaching.</td>
<td>3.0</td>
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<td>2  Legal allocation and transfer of tenure rights and duties</td>
<td>2.6</td>
</tr>
<tr>
<td>2.1 There is a clear and explicit mechanism to allocate and transfer forest tenure rights and duties from the state to other actors.</td>
<td>3.0</td>
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<tr>
<td>2.2 Rights holders receive fair compensation and advance information to get consent if the rights are to be eliminated.</td>
<td>3.0</td>
</tr>
<tr>
<td>2.3 Assured security of the transferred rights from the state to non-state actors.</td>
<td>2.0</td>
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<tr>
<td>3  Access to justice and resolution of tenure disputes</td>
<td>2.0</td>
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<tr>
<td>3.1 Measures and mechanisms are in place for the resolution of tenure disputes.</td>
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<tr>
<td>3.2 Effective and accessible means and provisions to access judicial authorities or other approaches to resolve disputes over tenure rights.</td>
<td>2.0</td>
</tr>
<tr>
<td>3.3 Strategies to prevent tenure disputes from arising and escalating to violent conflict.</td>
<td>2.0</td>
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<tr>
<td>4  Gender and equity, pro-poor focus and inclusiveness</td>
<td>2.7</td>
</tr>
<tr>
<td>4.1 Gender sensitivity that ensures equal tenure rights for men and women, indigenous and other marginalized groups over access and use of forest land and resources.</td>
<td>3.0</td>
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</table>
The results show that existing policies and regulations address forest tenure disparately and to different extents. However, none of them address forest tenure fully as none of the eight themes score 4. Responses to the livelihoods of forest-dependent communities scored the highest (3), and this is attributed to the Leasehold Policy 2002, where pro-poor leasehold forestry is considered as a potential approach for poverty reduction and improving the livelihoods of the rural poor. According to the Community Forestry Development Guidelines (revised 2015), every forest user group (FUG) should allocate 35 percent of its income to activities related to poverty alleviation and this must be used among community members. In addition, Article 51 (g) of the Constitution of Nepal 2015 equally values the environmental and economic functions of forests. Despite having good policies in place, local communities and individual households are still unable to achieve livelihood and income improvement through forest protection and management. This raises a major question about the effectiveness of policy implementation on the ground.

The assessment also identified policy gaps and shortcomings in the current policies and regulations, some of which are related to implementation, capacity and resources. Current policies are relatively weak in responding to climate change, providing mechanisms to resolve tenure disputes, defining
the roles and accountability of state and non-state actors, including business enterprises, and defining and following the principles of SFM as all these scored 2 in Table 1. Section 33 of the Local Self Governance Act authorizes local government and Section 29 of Forest Act authorizes community FUGs to resolve conflict over forest resources at the local level. However, this has often created confusion in resolving tenure conflict as no further guideline is provided. CF Directive 2014 and Forest Regulation 1995 are unclear about the role of the private sector in forest-based enterprise development and marketing. Similarly, the National Strategy on Disaster Risk Management was formulated in 2008 but it has not defined tenure and its importance in addressing climate change and other natural disasters. The Forest Act 1993 cites SFM but is more oriented toward conserving forests rather than using forest resources through scientific forest management. Furthermore, there is no clear policy and guidelines under the Forest Act 1993 to provide technical support to FUGs to strengthen tenure rights and provide technical help to review and update forest management plans every 5-10 years. In the absence of such policies more than 40 percent of FUGs are currently unable to update their plans and hence cannot harvest timber and non-wood forest products from their forests.

Overall, the tenure policy assessment results indicate that there are both strong and weak elements in current regulatory frameworks. The weak areas need to be strengthened through the amendment of current policies and legislation or promulgation of new ones.

CONCLUSION AND POLICY RECOMMENDATIONS

There is clearly a set of gaps in forest tenure policies. Legal and policy frameworks address forest tenure but there are major areas to be improved, such as defining the roles and accountability of the state and non-state actors, including business enterprises and the private sector. There is no enabling legal and policy environment for private sector investment in forestry. Existing disputes require an amicable settlement mechanism with clear implementation guidelines. Legitimate rights holders should have access to judicial authorities to protect their rights. The criteria and indicators for SFM should be redefined and implementation guidelines should be developed.

Existing forest policies and legislations such as the Forest Act 1993, Forest Regulation 1995, Local Governance Act 1999, Environment Protection Act 1992 and Forest Policy 2015 should be revised and improved by identifying policy gaps. This will inevitably result in the formulation of new policies and regulations in specific areas such as private sector involvement and harnessing of economic benefits from forest resources.
While policies and regulations are preconditions for rural communities to obtain benefits, they need to be implemented effectively to ensure better impacts on income and livelihoods. In order to do so there is a need to develop policy capacity at all levels and secure sufficient resources. For this, Nepal needs to strengthen existing institutional capacity and manage necessary human and financial resources to strengthen forest tenure and support the livelihoods of forest-dependent communities.

The most important strategy to implement agreed action plans while addressing policy gaps is to establish strong collaboration and cooperation among stakeholders to ensure collective implementation of these action plans. Sharing resources and mutual complementation should ensure that the proposed action plans are implemented effectively on the ground. In addition, there should be a strong commitment from the key actors who are directly involved in strengthening forest tenure in Nepal.

The assessment also provides some pragmatic strategic action plans and approaches to move forward in addressing current policy and capacity gaps. These action plans were endorsed by key stakeholders during national policy dialogues held in Kathmandu in 2015 and 2016. Key recommended actions include:

- Promulgate new legislation and guidelines to encourage private sector investment in promoting forest-based enterprises, supporting harvesting and marketing of forest products.
- Develop national standard criteria and indicators for SFM.
- Establish a database and accounting system for all types of forest management regimes.
- Facilitate the establishment of a national-level team of forest tenure policy experts within the MoFSC to provide continued guidance in strengthening forest tenure.
- Amend current policies and regulations to ensure that all FUGs will get enough support and resources to update their forest management plan every 5-10 years.
• Formulate new policies and guidelines for forest-based ecotourism and payments for ecosystem services.

• Scale up agroforestry nationwide with strong market linkages to demonstrate the benefits and income improvement for local communities.

• Formulate pro-poor policies and guidelines to ensure that poor forest-dependent communities obtain benefits from forests to support their livelihoods.

• Increase people’s access and rights to valuable resources and encourage them to participate in their sustainable management and trade.

• Remove restrictions imposed on harvesting and marketing of timber and non-wood forest products from community and leasehold forests. Allow communities to harvest and sell timber as agreed under forest management plans.

References

Gilmour, D. 2016. Forty years of community forestry. Rome, FAO.


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