

Regulatory Frameworks for Community Forestry with Particular Reference to Asia

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Community forestry fits into the global trend of governments moving from public sector control of natural resources to private and community control and is a policy that has been adopted by many countries in Asia and beyond. The experiences are mixed, but there are numerous examples of community forestry becoming a national movement and one that is capable of delivering significant socio-economic and environmental benefits.

While each country has its own unique combination of historical, cultural, political, and economic factors, there are some generic lessons that can be learnt from several decades of experience in implementing community forestry. These can be widely applied to improve the regulatory framework for community forestry. Among the key lessons that have come from several decades of experience are:

- *Community forestry policy should be **enabling** rather than **enforcing**. Thus, it should **enable** rural communities to improve their own livelihoods and the condition of the forests in their vicinity by removing any constraints that inhibit them from doing so. Government agencies should adopt a supportive and facilitative role to assist communities in these efforts*
- *Lack of legitimate and effective control over resources by communities inhibits their ability to manage forests effectively. Governments often retain the major **authority** (the most power), while giving **responsibility** for sustainable forest management to communities. Responsibility without sufficient authority will not enable communities to manage forests effectively*
- *“Soft” rights (i.e. rights that cannot be defended or can be withdrawn at the discretion of the forest department) are not sufficient incentive to encourage communities to invest human and financial resources in forest management*

Consideration needs to be given at all levels of the regulatory framework to the benefits communities can secure from forests (benefit flow), as well as the distribution of such benefits at the community level (benefit sharing). Benefit distribution within communities is critical in terms of determining the extent to which community forestry can genuinely contribute to poverty reduction. However, poverty reduction must be seen as a wider whole-of-government agenda to which community forestry can contribute.

Introduction

Governments around the world are moving from public sector control of natural resources to private and community control. Community forestry fits into this global trend and is a strategy that has been adopted by many countries in Asia and beyond. The experiences are mixed, but there are numerous examples of community forestry becoming a national movement and one that is capable of delivering significant socio-economic and environmental benefits.

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The expectations for community forestry have changed over time. In the contemporary world it is often seen as a mechanism to deliver a wide range of outcomes, including: contributing to poverty reduction, increasing carbon sequestration (to mitigate the adverse effects of climate change), enhancing biodiversity conservation (including a wide range of ecosystem services) as well as income generation and general community development. In addition to this ambitious list of expectations, there is often the hope (sometimes implicit rather than explicit) that community forestry can be a practical mechanism for implementing government agendas associated with institutional reform (decentralization and devolution) and improved democratization (by engaging with multiple stakeholders).

NGOs play a significant role in supporting the implementation of community forestry in some countries in the region (e.g. Cambodia, Indonesia, Nepal, and the Philippines) while in others the government has the primary implementation role. However, in all countries, it is the government that has the mandate to set the regulatory framework within which community forestry operates (and the ultimate responsibility for ensuring that the nation's forest resources are managed sustainably.) As in any field of endeavor, good policy does not necessarily guarantee good outcomes. However, one could argue that good policy is a necessary (although not sufficient) requirement. In this paper I focus on the requirements for good regulatory frameworks (particularly policy) to support community forestry, and leave the question of implementation of that policy to others. In this paper regulatory frameworks are considered to include law plus subordinate instruments, referred to variously as decrees, subdecrees, orders, policies, operational guidelines, etc.

The paper draws on the experiences and lessons learned from an analysis of community forestry, particularly in Asia. Much of the material is derived from the contribution of participants in a Community Forestry Policy Forum organized by RECOFTC in Bangkok in August 2005 (Gilmour et al. 2005).

Lessons Learned in Developing Regulatory Frameworks for Community Forestry

One of the important lessons drawn from experience in implementing community forestry during the past several decades is that there is no one model for community forestry that will fit all situations and all countries. Every country has to develop its own modality to suit its own unique mix of historical, political, and economic conditions. However, there are several generic lessons that have universal application. There is considerable experience in Asia and elsewhere, which can be used to develop and improve policy for community forestry and implement nationwide community forestry programs. Among the key lessons that have emerged from several decades of experience are:

- Community forestry policy should be **enabling** rather than **enforcing**. Thus, it should **enable** rural communities to improve their own livelihoods and the condition of the forests in their vicinity by removing any constraints that inhibit them from doing so. Government agencies should adopt a supportive and facilitative role to assist communities in these efforts
- Lack of legitimate and effective control over resources by communities inhibits their ability to manage forests effectively. Governments often retain the major **authority** (the most power), while giving **responsibility** for sustainable forest management to communities. Responsibility without sufficient authority will not enable communities to manage forests effectively

- “Soft” rights (i.e. rights that cannot be defended or can be withdrawn at the discretion of the forest department) are not sufficient incentive to encourage communities to invest human and financial resources in forest management

Regulatory Framework for Community Forestry

Regulatory frameworks generally consist of a law plus several levels of subordinate legal instruments.

The law should:

- Define and enable community forestry
- Clearly specify the jurisdiction and accountability mechanisms for each level of the institutional hierarchy responsible for community forestry
- Establish rights or specify the means by which rights to forest resources under community forestry programs will be allocated, including by recognition of traditional uses and rights
- Provide for economic valuation of timber and nontimber resources
- Enable equitable benefit sharing
- Enable dispute resolution mechanisms
- Provide penalties for violations

Subordinate legal instruments should provide for:

- Specific rights of all institutions, groups, and individuals involved in community forestry, including incorporation of traditional uses and rights (if not already done in the law)
- Specific responsibilities of all institutions, groups, and individuals involved in community forestry
- Application of economic values of the timber and nontimber resources involved to ensure equitable benefit sharing, incentives sufficient to encourage compliance, and penalties sufficient to deter violations
- Decision-making mechanisms that balance interests of government and needs of communities
- Locally appropriate dispute resolution mechanisms

These subordinate legal instruments generally include:

- Rules and regulations for implementing community forestry (to provide the legal basis to operationalize the law and policy)
- Guidelines to assist government staff and NGOs in the process of working with communities to re-establish or strengthen traditional institutional arrangements for managing community forests, and to merge these arrangements with government policy requirements of sustainability and equity
- Guidelines for preparing management agreements—simple operational plans agreed between government and community partners to define and legitimize community forest management (set management objectives, agree on protection, harvesting and benefit-sharing arrangements, sanctions for those who violate the rules, etc.)

- Any additional requirements, such as registering village forest user groups as legal entities (so that they can operate bank accounts, etc.)

General Principles for Developing Regulatory Frameworks for Community Forestry

Based on the lessons learned from policy development and implementation in many countries, there are some general principles that can be applied to ensure that policy can be implemented successfully. These are:

- Avoid over-regulation (particularly in the early stages) so that the partners in implementation (generally government officials and community members) are capable of implementing the policies
- Provide secure and long-term access or ownership rights to forest resources
- When commencing initiatives, start simply and add complexity based on the ability of partners to adopt increasingly complex tasks
- Make every effort to minimize transaction costs for all partners (e.g. avoid complex and lengthy decision-making procedures, minimize the time involved in attending meetings, etc., which may impact more on poor people than others)
- Build capacity of all partners through experiential learning (apply action learning to build social capital)
- Apply adaptive management (including monitoring for biophysical and social outcomes for sustainability) to ensure continued institutional learning and to maintain flexibility and adaptability
- Ensure that benefits flow to communities early, particularly for livelihood support and poverty reduction (there are practical and ethical reasons for this)
- Consider equity of benefit sharing to ensure that the poor are not made absolutely or relatively worse off, and procedural equity to ensure that all sections of society have an effective voice in decision making
- Ensure continuous practice/policy feedback (apply action-learning approaches so that policy can be improved based on field experience)
- Build on and strengthen existing successful approaches (such as traditional land management practices)
- Ensure consistency between policies and legal instruments
- Ensure consistency between local government regulations and sector-specific rules
- Support accountability
- Support viable institutional arrangements (check on the existence of indigenous/traditional/customary systems and build on them if appropriate)
- Support evolution of independent (particularly community level) dispute resolution mechanisms
- Review and update regulatory instruments periodically

Communities need to be encouraged to invest time and energy to become involved in government-sponsored community forestry initiatives. The basis of such an approach is to: (i) build a relationship between government officials and the community based on mutual trust and respect (rather than the more traditional authoritarian one); (ii) minimize transaction costs for the community and government partners; (iii) maximize authority for communities to manage forests and distribute benefits; and (iv) ensure that benefits flow as early and as

equitably as possible. Some of these aspects can be built into regulatory frameworks while others need to be addressed through associated capacity building and reorientation activities.²

Challenges for Policy and Field Practice

Partnership and confidence building for effective compliance and enforcement of a regulatory framework for community forestry takes time and requires the support of national and local governance institutions and processes. Among the many challenges that need to be addressed include:

- Balancing the cultural dimensions of customary practices with contemporary values of equity, democracy, and sustainable natural resource management
- Demarcation of boundaries between different categories of land (private, customary, and government)
- Clarification of tenure of trees and forests (in particular, community and individual rights to use trees for subsistence and commercial purposes on various land categories)
- Agreeing on authority and responsibility of community and government partners
- Agreeing on benefit-sharing arrangements

Addressing Benefit Flows and Benefit Distribution³

The potential benefits from community forestry are many, including: the development of social capital, political empowerment, employment opportunities, capacity development, financial returns from sale of timber and nonwood forest products (NWFPs), direct use of the same resources, the maintenance of environmental services and more. However community management of forests also involves costs in the form of time, money, and opportunities foregone by community members. The balance of benefits and costs should favor sustainable forest management and poverty reduction. Consideration needs to be given to the benefits communities can secure from forests (benefit flow), as well as the distribution of such benefits at the community level (benefit sharing).

Priority areas to improve the flow of benefits to communities include:

- Consistent laws and policies from the national to the local level. National laws and policies should be inclusively developed, and provide broad guidance and guarantee certain rights, while more detailed rules and guidelines are better formulated at the level of provincial or local government, to enable greater flexibility and responsiveness to local conditions, institutions, and practices, but also anchored on the national framework. Governance arrangements at different scales need to be connected and complementary
- Emphasis on minimizing procedural complexity and transaction costs in implementing laws

² Reorientation refers to the change in attitude required for government field workers to make the transition from a policing and licensing role to one of adviser and extensionist.

³ The material in this section is drawn from Mahanty (2007).

- Monitoring of social and environmental outcomes for continuous learning and improvement
- Consideration of community forestry within the wider context of the integrated development of communities. Community forestry institutions could potentially serve as nodal points to channel and coordinate other community development activities
- Exploration of market-oriented approaches to community forestry, including opportunities for communities involved in community forestry to benefit from environmental service markets. Governments can facilitate this through better information, capacity building on value addition and enterprise management, and facilitating linkages with other market actors

Benefit sharing at the local level needs to be improved by:

- Better understanding of the social structure of communities and institutionalizing stronger involvement by the poor and disadvantaged in community forestry initiatives, together with capacity building and mentoring to give them a real voice
- Helping local community forestry bodies to function with good participation, transparency, and accountability
- Providing a legal framework for community forestry committees to act as democratic, decentralized local institutions
- Developing criteria and indicators to monitor benefit sharing in a publically transparent manner, and building the capacity of field staff and community groups to assess benefit-sharing outcomes
- Developing effective conflict management mechanisms to mediate conflict within communities and between communities and other stakeholders

Capacity Building for Community Forestry

Running through the entire process of planning for and implementing community forestry is a major need for building capacity for all partners. The following aspects are of particular importance:

- Awareness raising among all sectors of society (government and nongovernment) on the government's policy on community forestry
- Reorientation of government staff to fit them for new roles as advisors and extensionists rather than as policing and licensing officials
- Training of government staff and NGOs on procedures (tools and techniques) for implementing community forestry
- Training of villagers to give them knowledge and skills (technical, managerial, and financial) to manage their forests

Conclusions

Community forestry is an evolving, dynamic concept and it normally takes some time for suitable modalities to be clearly defined and applied in any particular country. It is usually expedient to carry out pilot trials of community forestry in order to refine the policy and implementation procedures based on well-documented field experience. While good policy will not guarantee good outcomes, it is clear that without an enabling policy environment, community forestry is unlikely to deliver the beneficial outcomes that are its promise. If community forestry is to have a significant impact on forest condition and rural livelihoods, the initiatives need to expand to become a national program. Benefit distribution within communities is critical in terms of determining the extent to which community forestry can genuinely contribute to poverty reduction. However, poverty reduction must be seen as a wider whole-of-government agenda to which community forestry can contribute.

This expansion into a national program will need:

- An enabling policy environment (legislation, policy, rules and regulations, implementation guidelines, etc.) to empower local communities to exercise real authority over the management of forests in their vicinity, and thereby to obtain economic and other benefits
- Continuing institutional reform (to support decentralization and devolution, including mandating communities as legal entities)
- Capacity building of all partners (including reorientation of government staff to shift from a policing/licensing role to a community facilitation role)

Partnership and confidence-building for effective compliance and enforcement of a regulatory framework for community forestry takes time and requires the support of local governance institutions and processes.

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