Creating Community Tenure: Policies and Institutions for Community-based Management

J. Gabriel Campbell[1] and **Dipti Thapa**[2]
[1] Director General, [2] NRM, ICIMOD

Abstract

Defining and deconstructing land tenure is a complex process in South Asia. Tenure is overlapping. The same plot of land is perceived as having a different tenure status from state ownership to private ownership, depending on who is asked. Overlaps exist not only between the land use and use rights of various stakeholders but also between de jure and de facto tenure. Hence, getting a clear picture of the tenure stakeholders is the first step towards establishing a successful community-based land use and natural resource management approach like community forestry.

As actual use and use rights often overlap, management choices affect the interests of the various stakeholders. That is, the short-term and long-term goals of management and the technologies required to achieve them invariably affect tenure and shares received by competing claimants. Therefore, it is important that a co-management approach involving all stakeholders, and taking into account the interest of various groups through a negotiated process, is pursued while developing management plans.

Introduction

Understanding tenure systems and institutional arrangements is the key to successful community-based management of natural resources. This paper draws from the experiences of community-based forest and land management projects in India and Nepal and discusses how tenurial and institutional arrangements affect the use and management of resources.

Tenure categories

Several types of tenure exist in India and the region in general, because property rights on the same tract of land differ by product or usage. During a mission by the World Bank to study the feasibility of a forestry project in the Punjab, the question "Whose land is this?" was asked about a degraded area of forest or pasture land. Invariably, a number of answers came forth, depending on who was asked. The same land was claimed as state, communal, joint, or privately-owned, based on the respondent's background and interest. This contested ownership especially holds true of forest, grazing, and fallow lands.

Thus, in many respects, one can say that all tenure is joint. Commonly registered and less restrictive government and forest lands are most burdened by overlapping rights, while privately registered lands and reserved forests are least burdened. This distribution of overlapping claims by land use is represented graphically in Figure 1. Further analysis shows that de facto tenure of different land-use types is as common as de jure tenure, as can be seen in Figure 2.
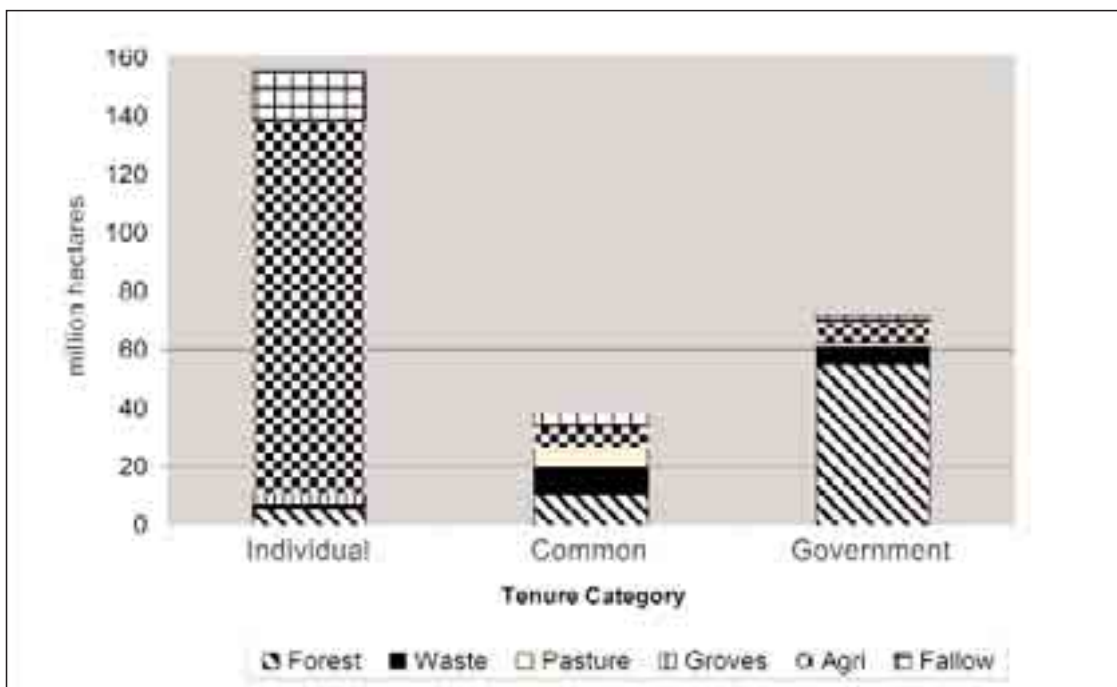
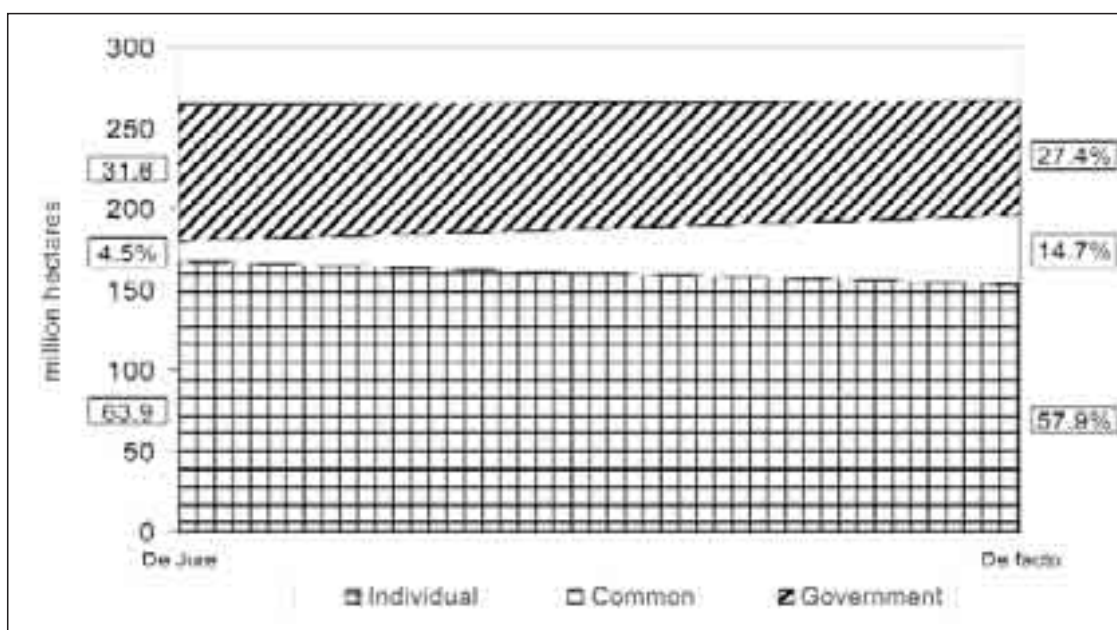Figure 1: Tenure and use rights by land use (estimated averages)

Figure 2: De jure vs. de facto tenure, total of all land use types

These charts demonstrate the complexity of dealing with land-use issues and the importance of understanding the differences in the various tenure systems in order to properly plan and manage the resources in question. Furthermore, tenure is not a static characteristic of land, and existing tenure is constantly challenged, modified, and recreated. As usage changes, the land's predominant users and even their nominal users may change. Thus tenure is a dynamic changing process with a number of societal actors and ultimately dependent on a societal consensus for its acceptance.

Broad definitions

In spite of the varying definitions of tenure and the plethora of registered land categories that stem from them, based on registered ownership and common usage patterns, four broad definitions of land category can be distinguished.

Private ownership – This can be defined as land predominantly owned by individuals, families, or institutions. It could be cultivated, fallow, or even non-arable and can include homesteads and river banks.

Community ownership – These are generally non-arable, often grazing, lands used by natural or revenue villages as common lands, e.g., shamlat in Pakistan or panchayat land registered or transferred to panchayat ownership in India. It could also include revenue generating or other government lands to which villages have recorded customary rights or purchased rights, e.g., Khacharia in Punjab.

Co-parcenary – These are lands (generally non-arable) owned by corporate groups or shareholders under some form of joint tenancy. It includes divided lands which are managed through joint decisions, e.g., joint ghasni, makbuza malkan, and others in Punjab, or undivided contiguous land units with registered individual owners or shareholders, e.g., mustarka malkan, private shamlat). This category also includes hamlet, village or revenue unit group lands with registered owners that exclude some members of the community, e.g., shamlat pati.

Government ownership – These include lands under the legal control of the government and administered by the forest or revenue departments. They can consist of non-arable revenue, barren, grazing, or partially forested areas and are used as commons by the surrounding communities. More often, they are classified as forest lands of various categories, for example protected, reserve, or national park.

Figure 3 distributes these categories on a scale ranging from private (individual) through common to government and uses these three roughly divided categories of nominal (registered) ownership to depict overlapping tenure. The division of property rights has been estimated using equal weights to the various characteristics of property: viz., exclusivity, transferability, alienability, and enforcement, and averaging in de facto usage rights.
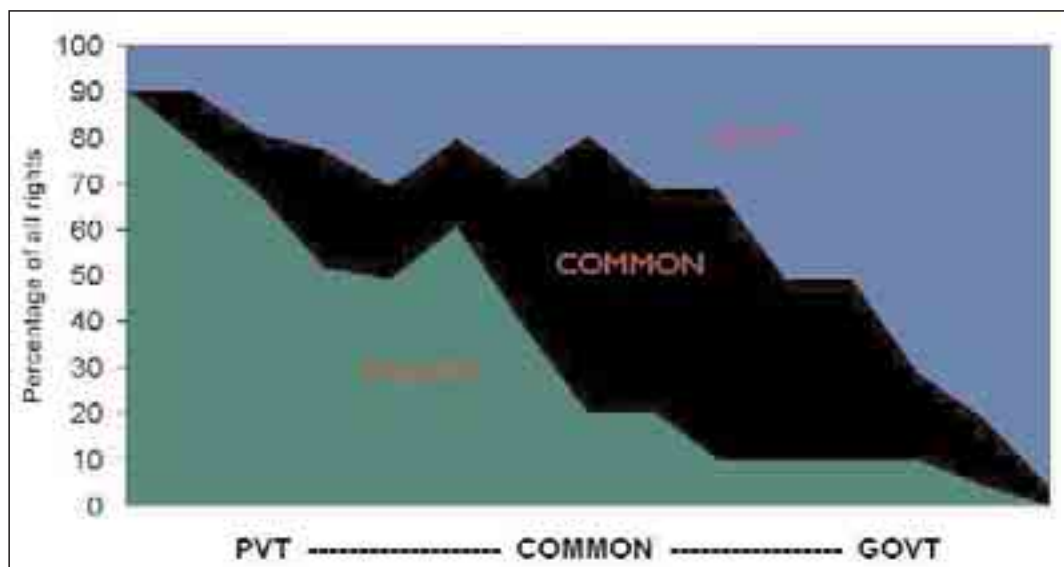

Figure 3: Overlapping tenure rights on different land types

Tenurial options

Keeping in mind these different tenure systems, three main options are usually considered for improving the management of common use resources: viz., privatisation, introducing stronger state control, and co-management.

The third option is of particular interest in that various community-based co-management options can be considered depending on various socioeconomic and ecological factors. The conservative route most often taken in the past was for the state to retain ownership of the land but issue use permits or tolerate the use of the resources by local communities allowing only token community participation. The second route was for the state to enter a joint decision-making and benefit-sharing arrangement with community committees while retaining ownership as is found with joint forest management (JFM) in India. The third route, and the one that is now gaining credence, was to transfer ownership or provide long-term leases of the land to community user groups, e.g., community forest user groups in Nepal, and the ban panchayat in India.

Resistance and trust in community management

There is still strong resistance from state agencies to transferring real ownership and management responsibilities to communities. Some of these are legitimate concerns, such as the danger of resources falling into the hands of elite members of the community, the potential abuse of rights and mismanagement of the resources, and the loss of benefits and revenue to the government and secondary (indirect) users.

Therefore, the starting point for champions of co-management is to build trust among decision-makers in the community's ability to shoulder the responsibilities. On the ground demonstration of actual successes, such as community forestry in Nepal, are perhaps the most convincing. Fears can also be allayed by putting mechanisms in place to ensure equitable benefits to legitimate owners and users, to comply with the prescripts of socially and environmentally viable management, and to honour the rights of and obligations to the members of the group. Supporting legislation and policies that are translated into multi-faceted programme support are critical and reinforce trust as well as management skills.

Processes in adopting viable co-management options

There are several conditions and steps that need to be taken in establishing functional and effective community-based natural resource management systems.

Defining community owners
Community grouping and primary ownership rights should be based on traditional user groups and not on administrative units. Nepal has devolved management of forests from panchayats to user groups at the local level based on lessons learned in the 1980s which showed that devolution to the panchayat level was not acceptable to the community of actual users. This identification of the primary community of owners and the inclusion of competing secondary users within the management regime is the single most important feature of successful community-based resource management.

Potential for scaling up
Co-management must be based on enabling the community of users to determine their own priorities for management, while ensuring that the basic subsistence needs of the poor and marginalised are being met. Communities sustain interest in the resource

when it also generates cash income for improving livelihood conditions by meeting the market demands for selected products for which the local conditions provide comparative advantages. The potential for scaling up is generally determined by how successful the approach is in meeting the needs of the members. In seizing the opportunities offered by community-based approaches, long-term consequences and mechanisms of sustaining the group and its access to the longer-term benefits, such as those from commercial timber production in community forestry, should be taken into account.

Agreement and management plan

The starting point is to verify and establish existing de jure and de facto rights and uses of all stakeholders to the natural resource under consideration. The rights and responsibilities should be clearly aligned to benefits and incentives and reflected in agreements among the stakeholders. A management plan that takes into account social, economic, and environmental considerations and embraces the blending of scientific and indigenous knowledge perspectives has a better chance of working. It should be remembered that such plans can change tenure and, therefore, care should be taken to ensure that the desired change is achieved. To this end, the agreement and plan document should normally clearly define the objectives, the indicators of success, the inputs and activities to be undertaken, the mechanisms of benefit distribution and access to resources mutual obligations and responsibilities, work schedule, and conflict resolution procedures.

Choice of technology

Just as plans can change tenure, so can technology. The technical choices being made can represent the differing interests of the various stakeholders and can easily compromise the need of one in favour of another. For example, managing forests for timber and using timber species for planting by the forestry department could result in the deprivation of fodder, fruits, medicines, and other minor forest products for local people and thereby result in the de facto loss of their use rights to the forest. However, if planting timber species is done with wide spacing, it would still allow the use of forests for grazing and other purposes.

Thus, the choice of technology should cover the whole spectrum, from the choice of technology for investments to the choice of technologies for management and marketing of products, and it should include environmental impact assessment methods. Cost is an important consideration and technology should not be used as an excuse to exclude the poor from participation. It is thus essential to get the varying interest groups to engage in negotiating a fair agreement and to provide platforms for putting their views.

Still, no single instrument provides the solution for common property resource management problems, and there is ample evidence of failure rates for methods that do not empower communities to learn from their own mistakes. The most promising solutions, therefore, would appear to lie in enabling communities to learn and start with their own ground realities. Accepting the fundamental fact of overlapping tenure while striving to reduce the ambiguities that undermine higher levels of sustainable investment requires careful negotiation to maintain a level playing field. The most important starting point for the removal of ambiguities is the recognition and rationalisation of existing de jure and de facto rights and thorough analysis of existing legislation on all categories of land. Effective common property resource management

must start from the premise of joint management, from the recognition that individuals, communities, and the state all have some legitimate claims in resource production.

Concluding thoughts

Tenure is a key factor influencing investment, sustainability, and equity in community-based natural resources. To the extent that the tenurial option is accepted by society as being a fair representation of their respective property rights, the chances of its being maintained in a productive state increases. In the case of forestry, tenure is multi-stakeholder, dynamic, and created though the interplay of policies, technology choices, and resource use. To address the demands and concerns of all the stakeholders adequately, operational planning is the key decision-making platform, since access and control over planning determines future tenure and outcomes.

In the case of other natural resources such as pastures and rangelands, land tenure is even more complicated than forests and, at this stage, much less studied and regulated. This represents a major research, policy, and programme gap, one that presents both problems and opportunities for governments and research and development organisations like the International Centre for Integrated Mountain Development (ICIMOD), the Regional Community Forestry Training Centre for Asia and the Pacific (RECOFTC), and the Centre for International Forestry Research (CIFOR). The starting point while tackling this issue would be to consider policy options based on an understanding of how tenure can change the sustainability of resources and address social equity concerns. Also to be considered is how technology choices, such as fencing, water holes, reseeding, and so on, can change tenure. Effective tenure should ensure the rights of the primary and secondary user communities and the legitimate concerns of the local and national governments, including a fair share of the revenue, the flexibility to adapt to changing market demands, and the sustainability of resources.