



FOREST TENURE POLICIES AND LEGISLATION IN CAMBODIA, NEPAL AND VIET NAM: STATUS, GAPS AND WAY FORWARD

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KEY MESSAGES

- *The current regulatory framework in Cambodia, Nepal and Viet Nam addresses the issue of forest land tenure and recognizes the rights of legitimate holders of forests and forest land. Each country is at relatively different stages of forest tenure reform. However, major policy gaps commonly exist in terms of allocation and transfer of tenure rights, access to justice and resolution of tenure disputes, gender equity, defining the roles of state and non-state actors, responses to climate change and the livelihoods of forest-dependent communities.*
- *To address these gaps, each country will have to amend specific policies, guidelines and regulations. In addition, new policies and regulations should also be formulated to address the policy gaps identified by the assessment.*
- *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 and technical capacity, and sufficient resources (human and financial) to put policy into practice.*
- *Strengthening tenure policies through coordinated efforts and participatory and bottom-up processes is crucial to ensure livelihood improvement for local people.*

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; RRI 2014; Larson and Dahal 2012; Yasmi et al. 2010).



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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 key results of the forest tenure policy assessment based on the review of over 130 policy documents in each pilot country (29 in Cambodia, 37 in Nepal and 76 in Viet Nam), two multi-stakeholder national policy dialogues and consultation with key government officials, civil society groups and development organizations in each country. A 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 2). National policy dialogues held in 2015 and 2016 brought together some 300 key stakeholders in these countries to review the results.

**REGULATORY
FRAMEWORK
MAPPING**

*Policies, Laws,
Legislation,
Acts,
Guidelines,
and Strategies*

WHAT EXISTS?

*Key elements
regarding forest
tenure and its
security, scope,
duration,
clarity, and
ownership
distribution*

WHAT IS MISSING?

*Missing elements
to ensure strong
and secure tenure
with balanced
distribution of
ownership*

**WHAT NEEDS TO
CHANGE?**

*Recommendations
to address
missing elements
and tenure policy
gaps*

Figure 1:
Assessment framework



FORESTS AND FORESTRY IN PILOT COUNTRIES

Improving the livelihoods and income of rural communities remains an important challenge in the Asia-Pacific region. Many poor and disadvantaged communities live in rural areas, some of them at forest frontiers. In the pilot countries, the rural population forms a major part of the national population: 79 percent in Cambodia, 83 percent in Nepal and 72 percent in Viet Nam. The livelihoods of these rural inhabitants are heavily dependent on forests and agriculture. Therefore, land and forests are natural assets of great importance. The status of forests and forestry in each pilot country is different. Table 1 gives an overview of the forest area, including other wooded land (OWL), as of 2015 in the pilot countries and the key regulatory frameworks for forestry and land management.



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Table 1. Forests, OWL and key regulatory frameworks

Country	Forest area (million hectares)	OWL (million hectares)	Total forest land including OWL (million hectares)	Percentage of land area	Key regulatory frameworks in forestry and land
Cambodia	9.45	0.13	9.58	54.5	Forestry Law 2002, Guidelines on Community Forestry 2006, Protected Areas Law 2008, Land Law 2001
Nepal	3.63	1.89	5.52	38.6	Forest Act 1993, Forest Regulation 1995, Forest Policy 2015
Viet Nam	14.77	0.45	15.22	49.1	Forest Protection and Development Law 2004, Land Law 2013

Source: FAO, 2015

THE STATUS OF FOREST TENURE POLICIES IN CAMBODIA, NEPAL AND VIET NAM

The result of the policy assessment across the pilot countries were based on the qualitative Likert scale that attributes specific scores (0-4).¹ The aggregated score of the six themes was calculated based on the score of their subthemes as shown in Table 2.



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Table 2: Forest land tenure policy assessment result

Themes and subthemes		Score obtained		
		Cambodia	Nepal	Viet Nam
1	Legal recognition and respect of rights	2.0	2.7	3.0
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).	2.0	3.0	3.0
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.	2.0	2.0	3.0
1.3	A system of formal recording of legitimate tenure rights holders and their rights is in place.	2.0	3.0	3.0
1.4	Tenure rights are well secured with regard to duration, scope, clarity, level of restriction on rights and protection of rights from arbitrary withdrawal or breaching.	2.0	3.0	3.0
2	Legal allocation and transfer of tenure rights and duties	1.0	2.6	2.3
2.1	There is a clear and explicit mechanism to allocate and transfer forest tenure rights and duties from the state to other actors.	1.0	3.0	3.0
2.2	Rights holders receive fair compensation and advance information to get consent if the rights are to be eliminated.	1.0	3.0	2.0
2.3	Assured security of the transferred rights from the state to non-state actors.	1.0	2.0	2.0
3	Access to justice and resolution of tenure disputes	2.0	2.0	1.6
3.1	Measures and mechanisms are in place for the resolution of tenure disputes.	2.0	2.0	2.0
3.2	Effective and accessible means and provisions to access judicial authorities or other approaches to resolve disputes over tenure rights.	2.0	2.0	1.0
3.3	Strategies to prevent tenure disputes from arising and escalating to violent conflict.	2.0	2.0	2.0
4	Gender and equity, pro-poor focus and inclusiveness	2.0	2.7	2.0
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.	2.0	3.0	2.0
4.2	There is a special mechanism that supports and encourages the roles of the poor and marginalized.	2.0	3.0	2.0
4.3	Provisions that ensure inclusiveness and participation of all stakeholders in forestry.	2.0	2.0	2.0
4.4	Legitimate tenure holders receive equitable benefits from forests and forest land.	2.0	3.0	2.0
5	Role and accountability of state and non-state actors including business enterprises	2.0	2.0	1.6
5.1	Clearly defined roles and accountability of the state and non-state actors, including business enterprises, in respecting human rights and the rights of legitimate tenure holders.	2.0	2.0	1.0
5.2	The state ensures the protection of the rights of legitimate rights holders against any rights abuses by private business enterprises.	2.0	2.0	2.0
5.3	Fair and transparent processes to allocate investment for any forest-based enterprises.	2.0	2.0	2.0

Themes and subthemes		Score obtained		
		Cambodia	Nepal	Viet Nam
6	Responses to climate change and emergencies	3.0	2.0	2.0
6.1	Strategies and mechanisms are in place to address climate change impacts and emergencies.	3.0	2.0	2.0
6.2	Legal instruments and mechanisms exist to address REDD+, carbon emissions and climate change.	3.0	2.0	2.0
6.3	Provisions where the state addresses tenure issues in the context of disaster prevention and preparedness.	3.0	2.0	2.0
7	Sustainable forest management (SFM) and administration of tenure	2.0	2.0	2.0
7.1	The principles of SFM and administration of tenure are well recognized by policies and laws.	2.0	2.0	2.0
7.2	Legal instruments that confirm the principles of SFM management by considering the extent of forest resources, biodiversity, forest health, functions and the legal policy framework as criteria to define SFM are in place.	2.0	2.0	2.0
7.3	There is a system that records tenure rights, valuation, taxation and planning.	2.0	2.0	2.0
8	Responses to the livelihoods of forest-dependent communities	1.0	3.0	2.6
8.1	Approaches and strategies are in place to support the livelihoods of forest-dependent communities and indigenous people.	1.0	3.0	3.0
8.2	Poor and marginalized forest-dependent communities have access and rights to the use and sale of forest products, sharing of benefits, value adding and reduced poverty from the forests and forest land they have been managing.	1.0	3.0	2.0
8.3	Both environmental and economic functions of the forests are equally emphasized.	1.0	3.0	3.0

¹ 0 = not addressed at all; 1 = partially addressed; 2 = moderately addressed; 3 = mostly addressed; 4 = fully addressed.

The results are mixed across pilot countries. Overall, Nepal and Viet Nam have relatively stronger tenure policies than Cambodia although all countries are having major policy gaps. Access to justice and resolution, responses to the livelihoods of forest-dependent communities, allocation and transfer of rights, ensuring gender and equity, defining SFM and defining the roles and accountability of state and non-state actors are some of the thematic areas with weak tenure policies. In Cambodia, legal allocation and transfer of rights as well as responses to the livelihoods of forest-dependent communities are very weak and need serious attention. But in Nepal and Viet Nam these two areas are relatively better addressed. Interestingly, policies related to climate

change impacts and emergencies are stronger in Cambodia than in Nepal and Viet Nam but their implementation is not adequate. Hence, impact on the ground is yet to be seen in concrete terms. In Viet Nam, legal recognition and respect of rights is the strongest of the eight themes, whereas in Nepal, policies responding to the livelihoods of forest-dependent communities is the strongest theme. However, challenges remain in putting these policies into practice. Elite capture, lack of distribution mechanisms, corruption, limited institutional and technical capacity, limited resources, weak commitment of key actors in implementing policies and weak governance are some of the factors that inhibit the outcomes of tenure policies across pilot countries.

CONCLUSION AND POLICY RECOMMENDATIONS

The outcomes of forest tenure policy assessment in these countries clearly point to a number of policy gaps. On the one hand, it seems that legal and policy frameworks address forest tenure. On the other, there are major areas that need improvement in each country. Overall, tenure policies still do not provide a strong basis for local people to benefit from the management of forests. In Cambodia, policies tend to favour large-scale land acquisition and forest land concessions. In Nepal, regulatory barriers limit the potential extraction of timber and non-wood forest products and hinder the development of forest-based enterprises in community and leasehold forests. In Viet Nam, forest land allocation is confined to production and plantation areas but economically viable natural forests in protection zones are not allocated to local communities and households. In all of these countries forests are commonly allocated to local marginalized people. Furthermore, current policies do not adequately address customary rights such as the rights of ethnic minorities and indigenous people, resulting in conflicts.

Improvement can be accomplished by revising existing forest and land policies. Such policies and regulations are preconditions for rural communities to gain benefits, but more importantly they need to be implemented effectively to ensure better impacts on income and livelihoods. Thus there is a need to develop policy capacity at all levels and secure sufficient resources. In this context, each pilot country needs to strengthen existing institutional capacity and manage necessary human and financial resources to advance forest tenure and support the livelihoods of forest-dependent communities.

The most important strategy is to establish strong collaboration and cooperation among stakeholders to ensure collective implementation of action plans, which have been identified in each country through multi-stakeholder processes. 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 land tenure in each pilot country. Key policy recommendations include:

- Formulate or revise policies and regulations to enable local people to fully benefit from forest resources.
- Formulate or revise policies and regulations to support the expansion of community ownership and management and consider the 'community' as a legal entity. Policies should ensure that communities can obtain access to forests and forest land of good quality to benefit from forest management.
- Establish resources to implement tenure policies such as financial and human resources, knowledge and skills.
- Allocate good forests to local communities and support them in the implementation of SFM including the harvesting of timber for commercial purposes.
- Encourage private sector involvement in the promotion of forest-based enterprises and marketing of forest products by formulating an enabling policy environment for private entrepreneurs.
- Scale up agroforestry options wherever possible with strong market linkages to demonstrate the benefits and income improvement of local communities.

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