



Photo: Frances Klatzel

SOUTH ASIA

FOREST TENURE ASSESSMENT

Environment and climate series 2011/3



HELVETAS Swiss Intercooperation Nepal produced this booklet through a collaboration with Rights and Resources Initiative. The views expressed in this booklet however are those of the author and contributors, and do not necessarily represent those of HELVETAS Swiss Intercooperation Nepal and Rights and Resources Initiative.

The booklet aims to highlight key issues and opportunities in the field of forest land tenure in the South Asian region. We would like to thank all the contributors to this publication and offer special thanks to the authors, Ganga Ram Dahal and Krishna Adhikari, for their intellectual inputs.

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HELVETAS Swiss Intercooperation is a Swiss association devoted to development and cooperation. It works towards the elimination of the causes of marginalisation and promotes solidarity with the poor in the south and the east. Its mission is to actively contribute to the improvement of the living conditions of economically and socially disadvantaged people in Asia, Africa, and Latin America. Currently, it runs programmes of co-operation in 30 countries including Nepal.

Through publications, it contributes to the generation of knowledge and the process of learning through sharing on development and co-operation. For more details or comments, please contact:

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The Rights and Resources Initiative (RRI) is a strategic coalition comprised of international, regional, and community organizations engaged in development, research and conservation to advance forest tenure, policy and market reforms globally.

The mission of the Rights and Resources Initiative is to support local communities' and indigenous peoples' struggles against poverty and marginalization by promoting greater global commitment and action towards policy, market and legal reforms that secure their rights to own, control, and benefit from natural resources, especially land and forests. RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, D.C.

For more information, please visit www.rightsandresources.org.

Disclaimer: This synthesis report drew heavily from country reports of six study countries, Nepal, China, India, Bhutan, Bangladesh, and Pakistan.

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By Ganga Ram Dahal and Krishna Adhikari

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This assessment report follows the conceptual framework developed by the Rights and Resources Initiative (RRI) in a publication - *From Exclusion to Ownership* (Sunderlin et al. 2008) for the collection and interpretation of tenure data for the selected South Asian countries, namely Bangladesh, Bhutan, India, Nepal, and Pakistan. For each country, the country consultants collected data; however, they also used data from RRI and FAO publications to supplement and triangulate their findings.

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Acronyms

CF	Community Forestry
CFUG	Community Forestry User Groups
FAO	Food and Agriculture Organization
FECOFUN	Federation of Community Forestry Users Groups, Nepal
FRA	Forest Rights Act
FRA	Forest Resource Assessment
GDP	Gross Domestic Product
IPs	Indigenous Peoples
ITTO	International Tropical Timber Organization
JFM	Joint Forest Management
Mha	million hectares
MOTA	Ministry of Tribal Affairs (India)
NTFP	Non-Timber Forest Product
RECOFTC	Regional Community Forestry Training Centre
REDD	Reducing Emissions from Deforestation and Forest Degradation
RRI	Rights and Resources Initiative
SAARC	South Asian Association for Regional Cooperation
SAFI-	Sarhad Forestry Ittehad
SFA	State Forest Administration (China)
SFD	State Forest Department
THED	Theory of Himalayan Environmental Degradation

Executive Summary

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As the most populous region in the world, South Asia faces formidable problems of livelihood crises, environmental disasters, and endemic poverty. Lack of industrialization and a rural economy relying predominantly subsistence agriculture is exponentially driving people to over-rely on natural resources. Forests and forestland, on the one hand, being continuously exploited by the states for revenue generation and, on the other hand, serving as the last resorts for livelihoods of the impoverished masses of the region, are bearing the disproportionate brunt. This development is giving rise to the critical reconsideration in the last few decades of the conventional models of forests and forestland management.

An increasing body of evidence shows that forest governance and tenure reforms are central to mitigating most of the problems related to forests, and which affect forest-dependent people. On this backdrop, this assessment of South Asian forest tenure systems was initiated for a greater understanding of the tenure trends and status in the region that can potentially inform the policy process. This is the synthesis report of forest

tenure assessments prepared by country consultants in five countries in South Asia: Bangladesh, Bhutan, India, Nepal, and Pakistan. Further supplementary data used in this report were collected from RRI and FAO sources.

Traditionally, people depending on forests in South Asia managed and used them in open access, as forests were abundant and the populations that relied on them were proportionally smaller. However, forest users' status in both governance and consumption of forests and their resources was reversed as colonial regimes usurped traditional forest-dwellers' rights, declaring the state as the sole owner of all forests and forestland. The colonial legacies of State land lordship and exploitation of forest timber and other resources for augmenting State revenue still continues to be the basis of forest tenure regimes throughout the region. This conventional, technocratic model of forest management, based on industrial logging concessions and emphasizing Protected Areas and nature reserves in the region, contributes to the exacerbation of forest conflicts, decreased livelihood opportunities, and ecological degradation.

Applying the analytical framework developed in RRI's *From Exclusion to Ownership? Challenges and Opportunities in Advancing Forest Tenure Reform* in the analysis of forest tenure data from the region, it is evident that the State continues to claim both ownership and management rights throughout South Asia. Eighty-six percent of the region's forest is under public ownership, while the remaining fourteen percent is owned by the private sector. This means, communities, and collectives do not own any forests or forestland in the region. However, because of progressive tenure reforms in the recent decades, communities in the region manage and use one-fifth of the region's forests, with limited and often varying terms of security.

There is a greater deviation in the size of forests as well as the tenure arrangements per country. While on average, countries in the region have approximately one-fifth forest cover, this varies widely: while Afghanistan and Pakistan have negligible forest cover, Bhutan's forest cover equals four-fifths of its total land area. Between 2005 and 2010, there has been mixed progress in terms of forest cover change, with countries like India, Afghanistan, and Bangladesh enjoying slight increases in forest cover due to plantation systems, no significant change in Nepal and Bhutan, and decrease in forest cover in Pakistan.

In the past two decades, Nepal and India have been advancing tenure reforms by designating local communities' management rights over customary forestlands. Recently, India has also recognized the rights of tribal communities and distributed land titles.

Bhutan is piloting the involvement of local communities in the management of forests near settlements. Plans to decentralize forest management to local communities in Bangladesh and Pakistan have not yet materialized. The experience from Nepal and India shows tenure reform can result in the improvement of the forest condition, and to some extent, support livelihood benefits. It is becoming increasingly realized that the region's forest governance reforms have suffered setbacks due to the lack of tenure security.

There are constant tensions between the drivers of tenure reforms and regressive policy moves, as evident in the Nepali government's attempts to roll back community rights and the lack of legal endorsement in India's Joint Forest Management (JFM) framework. With contemporary shifts in the development and governance discourse, emphasizing the greater rights and participation of local people and civil society in natural resource management, several networks of forest users, civil society organisations and other community forest champions are persistently resisting reverse changes and advocating for expansion of community ownership.

The evidence from the region's initiatives and recent tenure reforms in China giving ownership rights to forest collectives shows that tenure reform and security can help not only improve forest conditions and livelihoods, but also in addressing other social, ecological and economic problems. There is a greater need to learn from successful initiatives of tenure reforms in the region and mainstream them. Equally, community networks and champions in the region

that are operating on a small scale as change agents need further support to build their capacity for greater impact. It should be noted that while tenure reform and security is a key precondition

for managing emerging challenges, it is not a panacea and cannot succeed alone in absence of supportive systems of governance and sound institutional policies and legal frameworks.

MAP 1 | Geographical Map of South Asia



At the global level, eighty percent of the world's forests are owned publicly, eighteen percent are privately owned, and two percent are classified under other ownership categories. However, ownership and management of forests by communities, individuals, and private companies has gradually increased over the past ten years (FRA, 2010), meaning the corresponding forest area under public ownership has subsequently declined. However, despite an overall shift in forest ownership and tenure in some regions, most of the forests and forestland remain under public ownership. In some regions, particularly in South and East Asia (S&SEA) there is an increasing trend towards the involvement of communities, individuals and private companies in the management of publicly owned forests.

The region consists of eight countries: India, Nepal, Bhutan, Bangladesh, Maldives, Afghanistan, Pakistan, and Sri Lanka. During the 1970s and 1980s, the 'Theory of Himalayan Environmental Degradation' (THED) was the dominant narrative of Hindukush Himalayan region, particularly in Nepal, Bhutan, Pakistan, India, and Bangladesh where the increased human and livestock population was considered the key factor

behind environmental degradation in mountain landscapes. South Asia in particular, is widely known as a region with high population density and poor economic development indicators.

According to the World Bank's poverty data, South Asia is home to half of the world's poor, and more than 500 million people in the region are living below the poverty line, making South Asia the second-poorest region in the world, behind Sub-Saharan Africa. Afghanistan, Bhutan, Bangladesh, and Nepal are classified as Least Developed Countries (LDCs). Sri Lanka has the highest GDP per capita in the region, while Nepal has the lowest. India is the largest economy in the region, comprising almost 82% of the region's economy. Pakistan is the next largest economy, followed by Bangladesh (World Bank 2010).

As the largest country in the region in terms of forest cover, land area and population, the world's most populous democracy and a rapidly emerging economy, India has exerted strong geopolitical influence over governance systems in the rest of South Asia. Political and economic relations at the regional level have been maintained through

an inter-governmental forum called the South Asian Association for Regional Cooperation (SAARC). Yet corruption is still widely persistent across the region. The 2011 *Corruption Perception Index*, released by Transparency International, shows that Afghanistan is one of the most corrupt countries in the world. Nepal is considered as the second most corrupt country in South Asia after while Bhutan is the least corrupt country in the region.

Unstable political systems with weak governance and institutional arrangements are considered as some of the drivers behind increasing rate of corruption in the region. For example, Nepal is struggling to conclude the 2006 peace process between Maoist insurgents and the former monarchy to promulgate the country's new Constitution, while Afghanistan has been plagued by conflict over the past two decades, starting with the Afghan civil war and the extremist Taliban government. Likewise, Sri Lanka has just come out of the decades' long civil war between the Sinhalese majority and the Tamil insurgency. Similarly, India regards its Maoist uprising as its foremost internal security threat while Pakistan has persistent conflicts posed by home-grown and external terrorists groups.

Before the nationalisation of all land as state land, the governments in Pakistan, India, Nepal, and Bangladesh were

governed by feudal systems under various tenure provisions such as Birta and Zamindari, where senior government officials, retired military or functionaries of feudal lords and Maharajas were granted land in recognition to their services. As a result, a small number of landholders controlled most of the productive state lands.

According to the World Bank, 75% of the region's population lives in the rural areas and depends largely on agriculture and forest resources for their livelihoods. Despite agriculture being a major source of livelihoods, most of the countries in the region are neither self-sufficient, nor have they achieved food security. Malnutrition and child mortality rates, which are associated with food scarcity and insufficient education about nutrition and health, are correspondingly high throughout the region.

The paper begins with a discussion of the rationales and objectives of the study followed by conceptual basis of tenure assessment. An overview of forest tenure in Asia is presented followed by a targeted discussion of forests and forest tenure in South Asia. In the subsequent sections, the drivers of tenure changes, challenges and opportunities, and key lessons of forest tenure systems are analysed. Finally, the paper concludes with recommendations for ways forward.

2

Rationale and Objectives of Tenure Assessment in

South Asia

Systems of forest tenure vary from country to country in the South Asian region. Some governments have been very instrumental in devising plans and successfully bestowing authority and responsibilities to local forest communities in a systematic manner. Some governments have chalked out the plans and endorsed policies to devolve rights and responsibilities to the communities, but have yet to implement many of these plans and policies. However, many countries have done neither of these, as they still hold full control and ownership over all forests and forestland. Hence, drawing a generalized regional picture of forest tenure and ownership structures is difficult.

To illustrate a broader picture of the forest management systems vis-à-vis their impact on environment and livelihoods and monitoring future trends, we need to assess the tenure benchmarks. Knowing the state of forest and land tenure is prerequisite for designing any specific plan of actions or drawing conclusions and lessons. Therefore, it is important to begin our analysis with updated country-level tenure data on forest tenure, management and ownership for each country in the region, which in the long

run can be monitored as an indicator of the progress towards equitable tenure frameworks, particularly concerning increased community rights and ownership.

Based on the information collected from the selected countries in South Asia (Bangladesh, Bhutan, India, Nepal, and Pakistan) this report presents comprehensive analyses, which could provide a basis to expedite forest tenure reforms in the countries where the reform process has not started yet. Similarly, the findings are expected to inform policy in the countries where the reform process has already been initiated but not significantly implemented or realized.

The centuries-old system of forest tenure in most South Asian countries sits oddly with the ground realities, which have changed significantly over time. The population in South Asia has exploded with increasing pressure on forests, forests have deteriorated at alarming rates, and the concept of decentralization, and people's participation and recognition of Indigenous Peoples' (IPs) rights have made inroads in the development discourse and management of natural resources. These changes have brought

rapid transformation in relationships and perceptions of stakeholders in different sectors, particularly between traditional forest users and government services, the legal custodians of forests and the local users. In this changing context, it is indispensable to look on existing forest tenure systems, assess their impact in meeting needs of the people depending on forests, and provide inputs to policy makers to inform tenure systems in tune with the unfolding economic and social changes.

In a broader sense, this assessment of forest tenure systems in South Asia aims to contribute to the understanding of the current state of tenure and the relationship between tenure security and sustainable forest management and livelihood opportunities. The assessment also aims to provide a set of recommendations for ways forward, which could provide some guidance to lawmakers and policy makers. In doing so, this report presents a comparative analysis across the region emphasizing the progress made when local communities are given some authority to manage forest resources.

The key objective of this assessment is to determine the existing forest tenure situation, and status and trends in tenure frameworks in South Asia. In addition, the assessment aims to discover both drivers and institutional issues associated with tenure reforms and community ownership of forests in South Asia, and presents data on the following:

- The 'absolute' area of public forestland administered by government,
- The 'absolute' area of forest

designated for use by communities and IPs,

- The 'absolute' area owned by communities and IPs, and
- The 'absolute' area of forestland owned by individuals and firms.

Researchers participating in this assessment collected and updated information through quantitative and qualitative research in each selected country, focusing on the following areas:

- Current tenure data in each selected country,
- Tenure distribution over the last 10 years (2001-2010) measuring two comparative points in time, i.e. 2005 and 2010,
- Existing policies and legal frameworks, and
- Existence of community-based networks and federations and their role.

In order to gather the above information, country consultants collected primary data from government sources and available national databases. Data from other secondary sources such as FAO, RRI, forest-related civil society organizations, research centres, or from independent sources have also been collected and triangulated. One notable setback in tenure assessment comes from the lack of quality data on forests and land tenure in the region; this information varies according to sources. Therefore, it is worth noting that relying on variety of data sources has been limitation, which sometimes does not match with each other.

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Tenure can be conceptualized as a bundle of rights consisting of access, use, management, exclusion and alienation rights. The term “tenure” normally entails a variety of arrangements that allocate rights to, and often set conditions on those who hold land, but the term also applies to the resources located on and within those lands. Hence, tenure regulates access to and use of resources. Forest tenure implies rights, whether defined in customary or statutory terms that determine who can hold and use forestlands and resources, for how long, and under what conditions (FAO 2006). Customary tenure is determined at the community level through the local ownership and management of the forests, whereas statutory tenure is determined by governments, who are the owner of the forests by default in most cases.

Due to embedded rights issues, forestland and resource tenure is strongly related to other rights, such as citizenship, civil rights, human rights, and gender equality. The issue of ownership that is central to the tenure refers to a particular type of tenure in which rights are allocated to the landholders which includes exclusive and permanent rights, and the rights to

sell the property (Gilmour and Fisher 2010). Security of tenure is recognized as a fundamental requirement to ensuring that resources are managed sustainably. Duration, robustness, and exclusivity have been identified as the main legal elements constituting secure tenure arrangements. This implies that tenure holders should have assurance of enjoying benefits of their investments without any interference or discontinuity. For analytical simplification, Schlager and Ostrom (1992) and Meinzen-Dick (2006) have further unpacked the bundle of rights into five types as described in Table 1.

Tenure reform is known as legal reform of rights pertaining the properties, lands, waters and associated resources. Forest tenure reform is different from land reform in that the latter entails redistribution of land holding and changes in the agrarian structure, whereas the former is a change of one or more rights regarding forestland and forest resource management (Larson et al. 2010; Sunderlin et al. 2008; Bruce 1998). Forest tenure reform usually involves formal granting of all or some of the abovementioned rights from the state to communities and individuals or to private entities.

TABLE 1 | Bundle of rights

Types of rights	Descriptions of rights
Access rights	The rights to enter a defined physical area and enjoy non-subtractive benefits, e.g. to camp or rest inside the area
Use rights	The rights to obtain resource units or products of the resource system, e.g. extracting timber and non-timber forest products from the forest
Management rights	The rights to regulate internal use patterns and transform the resources by making improvements, e.g. harvesting rules, planting seedling and thinning trees
Exclusion rights	The rights to determine who will have access and withdrawal rights, and how that right is transferred
Alienation rights	The rights to transfer, sell or lease, and all the above-mentioned rights

Source: Adapted from (Schlager and Ostrom 1992; Meinzen-Dick 2006)

Tenure data in this assessment are presented based on the tenure framework developed by RRI in 2008, which emphasizes rights of exclusion and ownership (Table 1). This framework broadly divides tenure into two main domains: public and private. Each domain is further divided into two sub-categories based on who manages

them. The public domain includes the public land administered by governments themselves and designated for use by communities and IPs. Similarly, the private domain includes the land owned by communities and IPs, and owned by individual and firms. Each category is explained in Table 2.

TABLE 2 | RRI Categories on Forest Tenure Distribution

Public Domain	Public land administered by government	Typically includes all lands in the legal forest estate that are owned and administered exclusively by the government and that are not designated for use by communities and indigenous people. Note that this category includes some protected areas and forestlands awarded as concessions for logging, agro-industrial or silvicultural plantations, and mining.
	Public land designated for use by communities and indigenous peoples	Refers to forestlands set aside on a semi-permanent but conditional basis. In this category, governments retain ownership and entitlement to unilaterally terminate local group's rights over entire areas. Local groups lack rights to sell or otherwise alienate land through mortgages or other financial instruments.
Private Domain	Private land owned by communities and indigenous peoples	Refers to forestlands where rights cannot be unilaterally terminated by a government without some form of due process and compensation. Private land owners typically (but not always) have rights to access, sell, or otherwise alienate, manage, withdraw resources and exclude outsiders.
	Private lands owned by individuals and firms	Includes those lands where the rights cannot be unilaterally terminated by a government without due process or compensation.

Source: RRI/ITTO 2009, Sunderlin et al. 2008

For the last two decades, central governments in some Asian countries have initiated progressive tenure reform in the forestry sector through the transfer of forest management and use rights from the State to local communities, indigenous groups, local government units, private companies, and individual households. In many cases, much of the country's forest has been converted to alternative land uses and may no longer be classified as forest.

Some of the devolved tenure models, such as collective forestry in China and Vietnam, and community forestry in Nepal and the Philippines are yielding promising results in terms of forest protection, but such schemes have not always been fully translated into improved livelihoods of local communities. This is due to multiple factors: the degraded condition of the resources handed over to communities; the failure to hand over the full bundle of rights; overly burdensome regulatory frameworks and improper implementation; and overemphasis on environmental conservation without attempts to improve livelihoods.

A tenure study undertaken in 2011 by The Center for People and Forests (RECOFTC) collected data from 11 countries in the Asia-Pacific region (Australia, Cambodia, China, India, Indonesia, Japan, Myanmar, Nepal, Papua New Guinea (PNG), Thailand, and Vietnam) that together account for approximately 90% of Asia's forests¹. The data shows that, as of 2008, the State maintained ownership and management rights over the 67% of total forestland in Asia. The area of public forestlands administered by governments in the 11 selected Asian countries increased slightly from 430.9 Mha in 2002, to 444.73 Mha in 2008.

During this period, the area claimed under government administration increased in Cambodia and Indonesia, but decreased slightly in China and Thailand. The area designated for use by communities and IPs increased from 12.94 Mha in 2002 to 18.88 Mha in 2008. The overwhelming majority of forest area under this category remains in India, where the area designated for use by

¹ Total forest area in the Asia-Pacific region is estimated at 740 million hectares, accounting for 18.3% of global forest area (FAO 2010).

communities and IPs increased from 11.60 Mha in 2002 to 17 Mha in 2008. In Cambodia, Indonesia, Nepal, and Thailand, the area designated for use by communities and IPs increased, albeit only marginally. Likewise, forestland owned by communities and IPs increased from 141.7 Mha in 2002 to 158.85 Mha in 2008, but the area of forestland owned by individuals and firms decreased from 50.41 Mha in 2002 to 37.54 Mha in 2008 (Dahal et al. 2011, RRI/ITTO 2009).

Amongst Asian countries, China's forest tenure reform is considered by many to be one of the most progressive reforms in the region. This is not simply because of the scale of reform in China, but also due to the transfer of ownership rights from the state to forest collectives. The reform first took place in Fujian and Jiangxi Provinces, focusing on clarifying forest rights, expanding individual management rights, and regulating forestland transfers and reducing tax burdens.

There are five core areas of forest tenure reforms in China:

- Clarification of property rights
- Demarcation and certification
- Devolution of power management
- Implementation of disposal rights, and
- Protection of rights to earnings

For decades, 58% of the total forestland of China has been granted to local communities with complete ownership rights under forest collectives, whereas only 42% of forestland is owned and controlled by the state (Xu et al. 2010).

Collective forestland ownership in China entails exclusive rights to use, access, manage, exclude, transfer and mortgage forestland at least for 70 years with possibility of renewal. Interestingly, as an attempt towards privatization, the reform policy in China provides an option for individual households to own 'forest trees' as property within the collective.

In 2008, the Government of China and the Central Committee of the Communist Party of China formally published the "Guidelines on Fully Promoting Collective Forests Tenure System Reforms." This reform encourages collective forest owners to reassess and reallocate their forest use rights (not to be confounded with land rights) based on majority vote, defined as two-thirds vote either by the entire village assembly or by the committee of village representatives (Xu et al. 2010). However, forest (tree) ownership in China is divided into three categories: state, collective, and individual. According to the China State Forest Administration (SFA) (2005 and 2009), around 73 Mha of forestland is owned by state, whereas collectives and individuals own 68 and 35 Mha, respectively. There is an increasing trend of furthering this trend of transferring forest tenure from state ownership to more collective and individual household ownership in China with the increased economic benefits. By the end of 2009, tenure for 101 Mha of forest was verified, accounting for 60% of total collective forestland area. Some 48 million certificates covering 75 Mha were issued to hundreds of millions of farmers and 570,000 forest tenure disputes were settled (APFnet 2010).

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Forest Governance and Extent of Forest Cover

in South Asia

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Forest tenure in South Asia remains largely dominated by the State in terms of ownership over forests and forestland, and use of forest resources. Around 75% of forest and forestland is under direct government administration, whereas less than seven percent is designated for use by IPs and local communities. The remaining forests either are under private management and control or are unclassified.

In most countries, governments have expressed an intention to reform tenure from solely state-controlled to a decentralized framework, which creates more space for other non-government actors. For example, the government of Nepal has overseen community forestry since the 1970s, in which certain forestlands are designated for community protection, management and use by local community forestry user groups (CFUGs). In India, joint forest management (JFM) is a benefit-sharing scheme that has been in practice in for the last two decades, involving forest users in the protection and management of forests. The 2006 promulgation of the Forest Rights Act in India designated rights to tribal communities over their territory and use of resources to improve livelihoods.

In some cases, local governments have taken steps towards decentralized forest management practices. Bhutan is also moving, albeit slowly, in a similar direction of increasing the role of communities in forest management. However, in Pakistan, Bangladesh, and Afghanistan, forests are still entirely under the State control and local people are generally ignored in the whole process of forest protection and management.

In terms of coverage, forests in South Asia represent only 13.77% of total forest cover in Asia. Most of this forest exists in India alone, which comprises 84% of the region's forest. As a legacy of the colonial era, countries like Bangladesh, Pakistan, and India are still following the forest tenure policies that were in place during British rule. The colonial emphasis was in building cantonments and railways slippers using timber and feeding revenues generated from forest resources to the colonial masters. Other countries such as Afghanistan, Maldives, Sri Lanka, Nepal, and Bhutan are also following tenure policies that have colonial influence in which the State predominantly controls all forestland and forest resources. However, some pilot projects are being carried out in these countries to transfer control and

management roles from the State to other actors. In Nepal, the scale of transfer of management roles to local communities and CFUGs has been significantly high as compared to other South Asian countries. Moreover, concerned communities, civil society groups, and community forest champions in South Asia are advocating for change in South Asia's forest tenure systems.

The prevailing, centralized forest tenure system reflects the political history of various countries and interests of multiple stakeholders that have influenced the framing of these policies. Such interests range from commercial harvesting for revenue generation propagated by national governments to management of forest biodiversity conservation advocated by environmental groups. Likewise, forest-dependent communities and indigenous groups have a vested interest in forests for their subsistence farming, which is often the main source of their livelihoods. When the British colonized most South Asian countries, they installed forest management systems based on feudal ownership frameworks, which destroyed customary systems of forest management used by native peoples for centuries. Prior to colonization, South Asian forests were used as open access areas, as forest was abundant and people had a vested interest in its sustainable management, as it was often their only source of income. After nationalization of forests and forestlands, the state became primary owner of the land and resources,

and local people the de-facto tenant. In addition, the customary practices were replaced by statutory legal tenure controlled by the state. As a result, the colonial governments curtailed the rights of millions of IPs and local communities, to generate revenue for State profit.

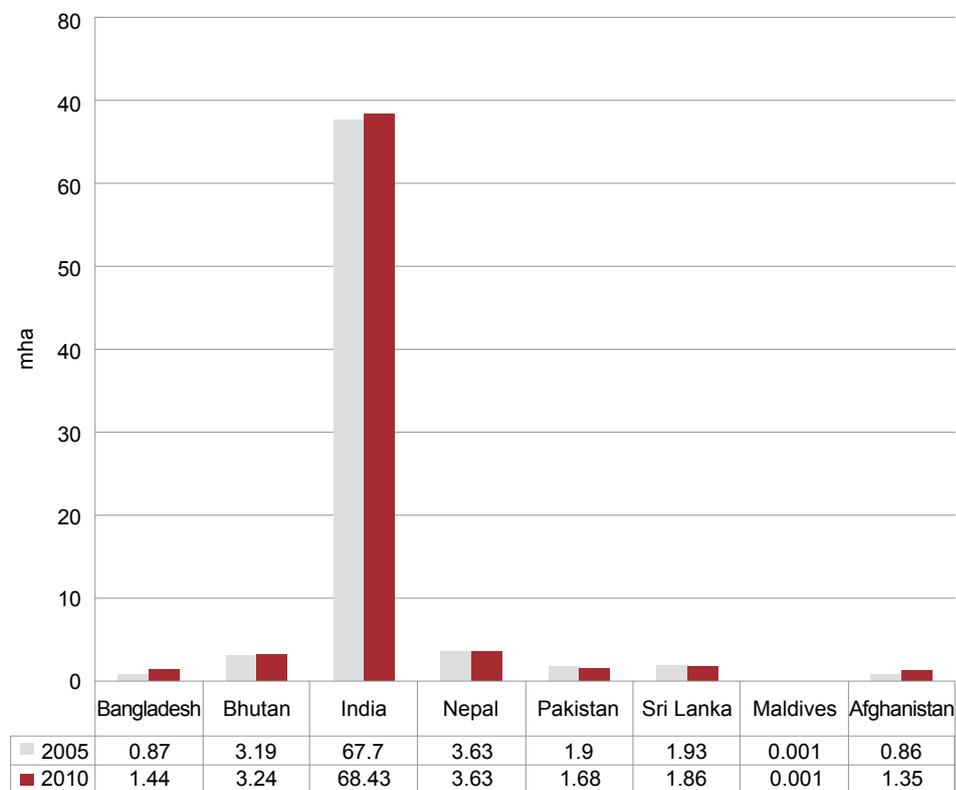
Table 3 shows that leaving India aside, forest area in other South Asian countries is very small in terms of size of coverage, ranging from one to four Mha. This does not mean that India has proportionately higher forest coverage than other countries in the region. India has both the largest land mass and population size in South Asia. Similarly, the forest cover in most South Asian countries in relation to total land area is also quite small, ranging from two to 25% of total land mass, except in Bhutan where forest cover occupies 69% of total land area². Recent data has shown that forest coverage in South Asia has decreased slightly (by around 1.6%) as compared to that in 2005. Forest cover in Bangladesh, Bhutan, India, and Afghanistan has increased slightly, but there is slight decrease in forest area in Pakistan and Sri Lanka. In Nepal and Maldives, there is no change in forest cover in the last five years. The increase in forest area is largely attributed to the plantations in barren lands, otherwise known as "wastelands" in Pakistan and India. In contrast, the decrease in forest cover is attributed to various factors such as illegal logging, over-harvesting, and conversion of forestland for other purposes such as farming.

² These figures change if we consider Bhutan's latest mapping of countries forestlands. In 2010 it was shown that the country had 70% covered by forest with 10% addition of bush lands.

TABLE 3 | Forest cover and forestland ratios³

Country	Total forest area Mha	Percentage of land area	Total forest area Mha	Percentage of land area
	2005		2010	
Afghanistan	0.86	1.3	1.35	2
Bangladesh	0.87	6.7	1.44	11
Bhutan	3.19	68	3.24	69
India	67.70	22.8	68.43	23
Maldives	0.001	3	0.001	3
Nepal	3.63	25	3.63	25
Pakistan	1.90	2.5	1.68	2
Sri Lanka	1.93	29.9	1.86	29
Total forest in South Asia	80.08	19.9	81.63	20.5
	14.01% of forest in Asia		13.77 % of Asia forest	
Total forest in Asia	571.57		592.51	

Source: FRA 2005 and 2010 published by FAO

FIGURE 1 | Forest area (Mha) in South Asian countries in 2005 and 2010

Source: FRA 2005 and 2010 published by FAO

Each country in South Asia has a unique political, social, economic, and historical background that has determined the presence or absence of tenure reform. However, as discussed above, the majority of countries in this study were influenced by colonial regimes and adopted policy to manage forest by

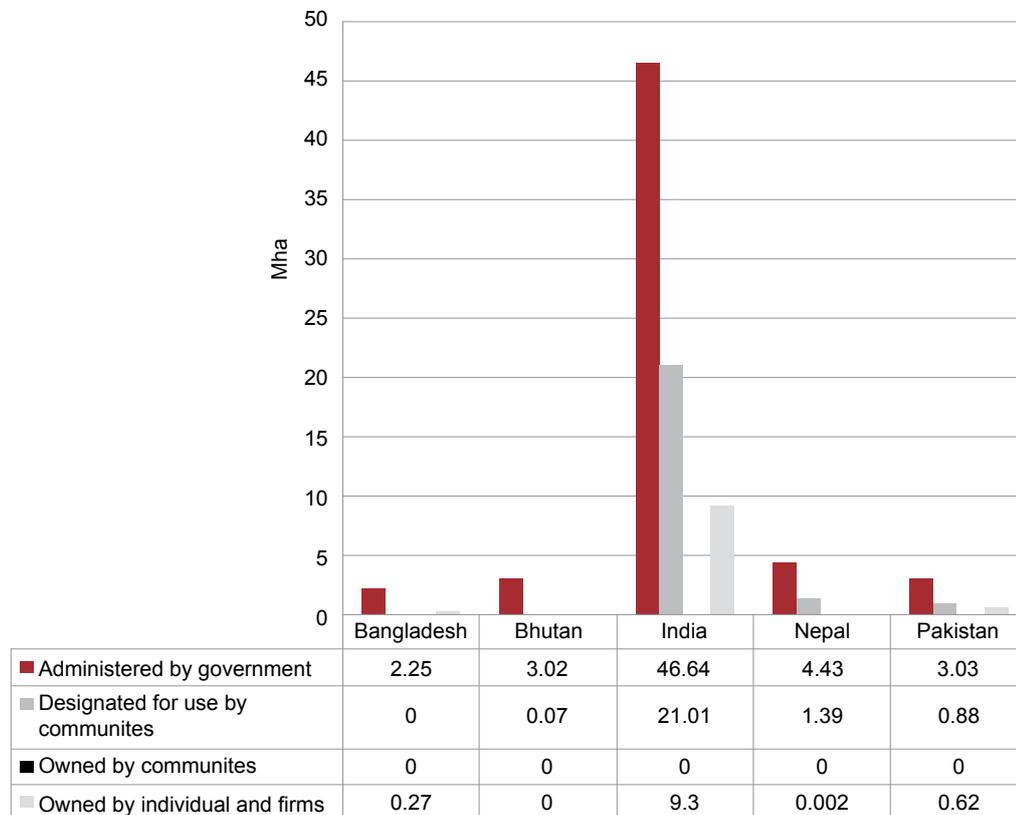
and for the state. Figure 2 shows that none of these countries has allocated forestland exclusively to community ownership. However, with the exception Bangladesh, all other countries have designated at least some portion of forest areas for use by communities and IPs.

TABLE 4 | Statutory forestland ownership distribution in South Asia as of 2011

		Bangladesh		Bhutan		India		Nepal		Pakistan		Total	
		M ha	%	M ha	%	M ha	%	M ha	%	M ha	%	M ha	%
Public domain	Administered by government	2.25	89.47	3.028	97.52	46.64	59.31	4.43	76	3.03	66	59.38	63.87
	Designated for use by communities and indigenous group	0	0	0.077	2.48	21.01	28.5	11.39	24	0.883	20	23.36	25.13
	Sub-total	2.25	89.47	3.105	100	67.65	87.81	5.82	100	3.913	86	82.74	88.99
Private domain	Owned by communities and indigenous groups	0	0	0	0	0	0	0	0	0	0	0	0
	Owned by individual and firms	0.27	10.52	0		9.3	12	0.002	0	0.622	14	10.19	10.96
	Sub-total	0.27	10.52	0						0.622	14	0.89	0.96
Total forest area		2.52	100	3.105		76.95	100	5.822	100	4.58	5.22	92.98	100.01
Total land mass and forest percentage		14.84	17.1	3.839	80.89	328.85	23.4	14.43	40.34	87.74	5.22	449.59	20.68

Source: Country reports, 2011

FIGURE 2 | Forestland ownership distribution in South Asian countries



Source: Country reports, 2011

TABLE 5 | Recent policies and laws to strengthen community tenure in South Asia

Country	Key Policies or Laws- Legal instruments	Tenure security	Effect
Bangladesh	Forest Act 1972 grants power to the state for forest management, even limits the power of private forest owners. Environment Conservation Act 1995 allows government to declare any areas as ecologically critical zone and decide mode of operations in such areas. National Land Use Policy 2001 stops conversion of agricultural land to non-agricultural purposes	Government can takeover private and communally managed forest if they are not properly managed as described in the management plan. Therefore, there is no rights of other actors over forests and forestland	State becoming much stronger than before, and the rights of indigenous peoples and local communities over forest resources, and their role in management of forests in Bangladesh is ignored by all policies and laws promulgated so far
Bhutan	National Forest Policy of Bhutan 2011 emphasizes in empowering rural communities to manage forest for socio economic and environmental benefits. It also focuses on sustainable forest management and poverty reduction Land Act 2007 lifted the customary rights over the grazing land and land for leaf litter collection	All forests belong to government, but under new CF policy, local people have use and management rights over forest resources, but land ownership remains with the state. Anytime, government can withdraw given rights unilaterally without giving due compensation	Strengthens the rights, responsibilities, and capacity of local communities to regulate access and use of forest resources in and around settlements. Increase in the forest coverage, local communities with use and management rights of forest

India	<p>Forest Rights Act 2006 provides with a series of rights to scheduled tribal communities and other traditional forest dwellers to forestland including more decision making power over natural resources management</p> <p>JFM policy provides use and management rights to people on collaborative management basis</p>	<p>Under FRA titling of forestland provides all elements of bundle of tenure rights- so it is highly secured tenure arrangement</p> <p>In JFM, community are involved in protection and management of forests but no rights over land and resources</p>	<p>The area to be transferred to communities and households is still to be determined. Estimates range up to 10 million hectare</p> <p>JMF successful to some extent in conservation; JFM policy insecure as has no legal basis</p>
Nepal	<p>Forest Act, 1993 and Regulation 1995 provide legal ground for community forestry (CF) to be managed by forest user groups.</p>	<p>In CF, people have rights to access, use, manage but government's circular in 2000 and Finance Ordinance Bill of 2003 have limited rights on sale of forest products outside the user groups.</p> <p>In Leasehold Forest groups have tenure security for 40 years and renewable for another term, making this designation clearer and more secure</p>	<p>Increased rights of local communities over forest resources, improved forest condition. Has contributed to livelihoods of forest dependant people to some extent.</p>
Pakistan	<p>Forest Act 1927- legally divides forest into three categories- reserve forest, state managed protected forests, and Guzara forests (based on Hazara Forest Act 1936)</p> <p>Forest Ordinance of 2002</p>	<p>Land and trees belong to government. Some species, like pine and juniper, are considered government property even if they are grown in private land. Withdrawal permits are compulsory even in Guzara forest. Local people have no security of tenure.</p>	<p>There is no rights of local people over reserve forests even for grazing; however, little rights are given to use and manage Guzara forests. Provides protection of village wasteland that was set aside for settlement of lowlanders.</p>

Source: Authors' compilation 2011

Table 5 shows that most South Asian countries have forest policies and laws that were formulated prior to WWII. The key policies and legal instruments, level of security of tenure and their effects on forest condition and people in these countries presented in the table are discussed below.

Land tenure in Bangladesh is generally divided into four categories: state, private, communal, and open access. The State owns and administers almost 90% (2.25 Mha) of total forestland (2.52 Mha) in Bangladesh. Due to large-scale plantation schemes, the forest area has increased from 1.42 Mha in 2005 to 2.52 Mha in 2010 (BFD 2011). The Land

Policy of 2001 prohibits the conversion of forestland to other uses but in practice, district administrations are still leasing the land for various purposes. The recent decision of the government to release 50% of coastal forestland for agriculture directly counters the prevailing land use policy.

Bangladesh is particularly vulnerable to natural disasters, mainly flooding and landslides, displacing millions of people every year. Forestland remains an easier alternative to provide shelter for displaced populations. Squatters occupying forestland is also common practice and evicting them is politically sensitive; hence, governments often refrain from removing settlers. In the end, the

forestland occupied by disaster victims will be converted into home garden or agricultural land. In order to overcome such problems and involve local people in plantations and rehabilitation, the government has initiated a Social Forestry program and has achieved significant progress in recovering some forestland. Participatory forest management practices were introduced in the mid-1980s, implementing community forestry, social forestry, and benefit sharing co-management systems. However, the scale of such schemes is insignificant and rights vested to local communities are limited only to protection and use of some of the forest products as agreed by the Department of Forests.

The forestland in Bangladesh controlled by the Department of Forests is classified into eight legal categories: reserve forest, notified forest, protected forest, acquired forest, vested forest, unclassified state forest, homestead forest, and tea estate forest. Of the eight categories, the government allows slash-and-burn agriculture by ethnic groups only on unclassified state lands. However, the Land Use Policy of 2001 imposed restriction for any conversion of forestland to other uses.

In Bhutan, the government owns all forestland. The State administers 97.5% of forest and forestland (3.02 Mha), and designates only 2.5% (0.07 Mha) for community-based management. There is no private forest owned by individuals and firms as all forests belong to the State. Forest in Bhutan is divided into four categories based on use and function: protected forest, production forest, community forest, and other forest including plantation. In recent years,

community forestry in Bhutan has gained considerable momentum, and 0.03 Mha of forestland within the vicinity of local villages is designated as community forests, where local communities have rights to use and manage forests and own the forest products, but not the land itself.

The recently passed National Forest Policy of 2011 provides an impetus to increase participatory forest and other natural resource management. This policy has been instrumental in shaping and aligning the perceptions of decision makers and other stakeholders who have begun to realize the economic and ecological significance of community based forest management. Besides having the backing of new policy, communities themselves have shown great interest in engaging with management of forests in their territory, evident from the increase in number of CFUGs from 24 in 2004 to 313 in 2011. Simultaneously, the amount of forestland allocated to communities has also increased from 2635 ha in 2004 to 36,649 ha in 2011. The government in Bhutan has planned to allocate at least four percent of total forest area under community management by the end of 2020 (SFD 2011). Despite contribution of local people in the management and protection of forests in Bhutan, the State still maintains ownership rights to all forestland, as per Article no. 1.12 of the Constitution of Bhutan. Interestingly, in Bhutan the forest coverage has increased from 2.9 Mha in 1995 to 3.10 Mha in 2011 (DoFPS 2011).

Forest tenure regimes have made considerable progress towards community management in India. In the pre-colonial period forest were managed mostly by village communities as common

property with no private rights. Everyone had access as per their individual or household needs (Behera and Engel 2006). All forests were converted to the state forests in 1865 with by mandate of the British Raj colonial government, declaring the State to be the absolute owner and *de jure* manager. This move usurped people's rights over forests including that of the customary rights of tribal communities (Das, Gupta, and Symlieh 2006).

After India's independence, the newly democratic government continued with the policies adopted during the colonial time and further consolidated them through a series of legislative measures. For example, the State abolished existing Zamindari rights, based on a provision of the Private Forest Act of 1946. Later on, the government developed a National Forest Policy in 1952, which attempted to bring private forests under government control. The policy clarified that private owners should be given the opportunity to manage their forests in accordance with an approved working plan. This policy classified Indian forests into four categories: protection forests, national forests, village forests, and private forests and tree land. With the exception of village and private forests, the ownership of all forests remains with the State, whose overall management objective is to conserve forest and generate national revenue from commercial sale of timber. In 1988, the government formulated a new National Forest Policy to ensure environmental stability through preservation and restoration. Forestland or land with tree cover is treated as a national asset and must be protected to have sustained benefits. Under the provision of National Forest Policy of 1988, the concept of Joint

Forest Management (JFM) emerged. JFM attempts the following specific measures:

- Ensure partnership with people living in and around forests, particularly customary rights holders, and tribal communities.
- Explore the potential for NTFP income generation together with local people for their economic benefits.
- Involve local people in the protection and management of forests and have their share from forest product sale. So far, there are 106, 479 JFM committees, overseeing 22 Mha of forests on which 23 million people live.
- Complementing JFM with other plan such as the National Afforestation Plan, which was launched in 2002-2003 and covers 924,000 ha, managed by 23,750 JFM committees in 28 states.

Total area under JFM has increased from 17.33 Mha in 2004 to 22 Mha in 2010, whereas the forest area under government administration has decreased from 53.60 Mha in 2002 to 49.48 Mha in 2008 (Dahal et al. 2011, FSR 2011, RRI/ITTO 2009)

The Forest Rights Act of 2006 is considered a milestone in India in terms of recognition of rights of scheduled tribes and traditional forest dwellers. This mandate empowers them to sustainably use and manage forests, wildlife, and the environment in their respective forest area. By granting these communities secure rights over forestlands, the Forest Rights Act will not only provide them the resources for their livelihoods, but also strengthen conservation of the forests and biodiversity. The Ministry of Tribal Affairs (MOTA) is responsible for

implementation of this Act, and at the time of this writing has received 3,112,993 claims and distributed 1,177,403 titles to tribal people across 27 states in India (MOTA 2011). Unlike JFM, the Forest Rights Act allows the reallocation of land titles to ensure full ownership over forest and forestland to tribal and traditional forest dwellers in their territory. Therefore, the Act is considered more progressive in terms of transferring rights over forests and forestland from the state to local people than previous systems.

Similarly, in Nepal, all forest is divided into two main tenure categories: national and private. However, in terms of management, national forest is divided further into two sub-categories: community-managed and government-managed. There are four types of such community-managed forests: community forestry, collaborative forestry, leasehold forestry, and buffer zone community forestry. In all cases, the ownership over forestland belongs to the State, whereas local communities are given rights to protect, manage and use the forest products at various levels. In the last two decades, the trend toward shifting tenure from the State to community management has been rapid, albeit with some slowdown in recent years. As of now, there are 16,937 forest user groups managing 1.57 Mha of forests, covering 2.1 million households. Communities now manage approximately one quarter of Nepal's forests. Earlier studies have shown that the forest condition in Nepal has significantly improved under community forestry, but the economic benefits to local communities are yet to be realized (Kanel 2011, Dahal et al. 2010). The forest area under government administration has decreased from 4.71 Mha in 2002 to 4.43 Mha in 2010, whereas

forest designated for use by communities and indigenous people has increased from 1.12 Mha in 2002 to 1.4 Mha in 2010 (Dahal et al. 2011, RRI/ITTO 2009).

Community forestry has been implemented according to the Forest Act the 1993 and the Forest Regulation of 1995. However, these legal instruments have not fully guaranteed the terms of tenancy; as a result, the government has attempted to curtail community rights. These attempts of reversing tenure rights have met with opposition of civil society groups. The Federation of Community Forestry Users, Nepal (FECOFUN), in collaboration with civil society organizations, has repeatedly protested against any possible rollback of community rights. There is a greater realization among the users and their institutions that community tenure should be well protected with strong legal instruments and ultimately a Constitutional guarantee, so that the government cannot reverse them. This realization is timely as Nepal is in the process of restructuring its overall governance and institutional structures through promulgation of a new Constitution.

In the eighteenth century, British colonial regime in the greater India started a process of land settlement in Pakistan based on the Indian Forest Act of 1878, which nationalized a large forest area and restricted the access and use of forest products by the local villagers and peasants. Currently, State ownership remains the predominant tenure category in Pakistan, with little sign of government interest to undertake tenure reforms. The State owns and manages 66% (3.03 Mha) of forestland, whereas 20% of forestland (0.88Mha) is designated for use by local communities and IPs.

Similarly, a small amount of forest area (around 14% of total forestland, or 0.62 Mha) is under private ownership (Fisher and Khan 2009). The government legally owns all forests, except trees grown on private land. However, the government owns some tree species, such as pine and juniper, even in the private land. According to the Forest Act of 1927, the forests in Pakistan are legally divided into three broad categories: state-owned reserved forests, state-owned protected forests, and state-managed Guzara forests. There are no rights given to local communities in the reserve forest even for grazing livestock and collecting fuel wood. However, in the protected forest local people are given some access and use rights but with restrictions imposed on certain species and types of forest products. Protected forest category in Pakistan also includes Resumed Land, which was surrendered by property owners who possessed land area in excess of the ceiling imposed by the Land Reform Act in 1959.

It is clear from the above data from these five south Asian countries that the State continues to own, manage and control land and forests and is thus the predominant possessor of forest tenure. However, there is an emerging call for forest tenure reform by ensuring balanced distribution of forest ownership across all four tenure categories. However, policymakers in most countries advocate a limit the scope of tenure reform since many are reluctant to transfer management and use rights to other actors, including local communities and IPs due to the traditional conservation discourse that prevails in State bureaucracies.

The long history of colonial regime in India, Bangladesh, and Pakistan left an enduring legacy that all forests should belong to the state and that management of forest is the responsibility of technical State-appointed foresters only. In addition, this legacy holds that as the property of the state, forests should be a source of national revenue generation where people have no share in profits, and that as potential drivers of forest degradation, local people should be kept far from forest management affairs. This view is particularly far-reaching in places where forest cover has reduced to a marginal level. Despite constant advocacy from national and international civil society organizations and the contemporary emphasis on participatory development discourses, the efforts of involving people in forest management have failed in countries like Pakistan and Bangladesh. While India has departed to some extent from the colonial notion of the State as sole natural resource owner, overall, forest policies in the post-colonial countries in the region are in principle still guided by this colonial legacy.

Amidst the state antipathies, the above analysis suggest that in South Asian countries forest ownership is in transition, as tenure is increasingly shifting from the state to local communities and to individual households. Current trends of privatization and community involvement in forest management have been accompanied by rapid changes in resources, tenure patterns, and increasing complexity of stakeholder relations. These additional changes have social, political, and economic implications in the way in which forests are managed.

As discussed above, the majority of South Asia's forest area is under the formal jurisdiction of governments and forest management is still primarily a state affair. The region is characterized by excessive deforestation and forest degradation, which has resulted from population pressure, agricultural expansion, escalating demand for timber, illegal logging, industrial development, and rapid economic growth. This has triggered a debate not only on the effectiveness of government administered forest management, but also on the relevance of overall state ownership.

In the last two decades, a transition in forest tenure is taking place in most of the countries in South Asia. This is mainly due to a greater realization that successful delivery of key forest management objectives, such as sustainable forest management, poverty reduction, improved livelihoods and rights of community and IPs, is possible only through a diversification of forest tenure that makes local people and other actors responsible for achieving those objectives.

With globalization, governments in developing countries have realized the need to involve markets and the private

sector in addressing the national agenda and increasing economic benefits from forest resources. This realization is also driven by the neoliberal ideal, which maintains the primacy of private and market forces in the governance of state affairs. The growing emphasis on democratic governance also seeks people's increasing involvement in both community and national affairs. In South Asia, political instability and lack of good governance is seen as major cause of State failure, and there is a growing demand for people's involvement in the aspect of government that directly affect their lives and livelihoods.

Increasing pressure on forests from rapid population growth and consequent increase in demand for food, fuel, and fibre has ultimately forced governments to think about alternative tenure arrangement to cope with the unfolding economic crisis. In South Asia, Bhutan is the only country where forests are still plentiful and the population remains small. There too, the need for better forest management, particularly in areas where population remains high, is being realized and the government is attempting to scale up local people's involvement in forest management. However, the case of countries like Pakistan and Bangladesh

and several parts of India is very different: forest cover, if it remains at all, is rapidly diminishing. The population is rising exponentially, putting severe pressure on limited forest resources, coupled with parallel demand for agricultural land. The full state control of resources in the past has resulted in unsustainable extraction of forest resources leading to rapid desertification. This situation calls for different methods of forest and land management in these countries and, consequently, policy makers are under pressure to reform existing tenure frameworks.

Greater organizational connectivity, influence of forestry sector champions on participatory approach, and social movements amongst forest-dependent people have increased pressure for State tenure reform. These stakeholders are

seeking more rights and benefits from forest resources to be realized at a local level. These pressures and demands are not limited to conventional means, as some have gone out of proportion resulted in violent conflict. As a result, some governments in South Asia have adopted tenure reform as a means to curtail the spread of violent conflicts, both political and resource-related. For example, in India, the Forest Rights Act of 2006 became an instrument in mitigating violent insurgency in the northern regions.

Locally grown resistance movements have particular significance in bringing about the enactment of several pro-people, and pro-poor, tenure reforms. For example, the Chipko movement in Uttarakhand, India was a landmark event in preserving traditional rights of local people over forests, as described in Box 1.

BOX 1 | Chipko movement in India

The Chipko movement or Chipko Andolan (literally “to cling” in Hindi) is a social-ecological movement that started in the early 1970s in the Garhwal Himalayas of Uttarakhand, with growing awareness towards rapid deforestation. The landmark event in this struggle took place on 26 March 1974, when a group of peasant women in Reni village, Hemwalghati, in Chamoli district, Uttarakhand, India, acted to prevent the cutting of trees and reclaim their traditional forest rights that were threatened by the contractor system of the state Forest Department. Their actions inspired hundreds of such actions at the grassroots level throughout the region. By the 1980s the movement had spread throughout India and led to formulation of people-sensitive forest policies, which put a stop to the open felling of trees in regions as far reaching as Vindhyas and the Western Ghats.

The Chipko movement was primarily related to livelihoods rather than forest conservation but it went on to become a rallying point for many future environmentalists, environmental protests, and movements the world over and created a precedent for non-violent protest. It occurred at a time when there few environmental movements in the developing world. Its success meant that the world immediately took notice of this non-violent Tree-hugging movement, which in time inspired many such eco-groups by helping to slow down the rapid deforestation, expose vested interests, increase ecological awareness, and demonstrate the viability of people power. Above all, it mobilized existing civil society in India, which began to address the issues of tribal and marginalized people.

Source: Country report, India

As discussed above, tenure reform can be viewed as a move toward a more democratic system of governance. The more democratic and accountable the government, the more likely it is to institutionalize pro-people forest tenure frameworks. However, democracy is defined as more than simply the system of government where people elect representatives, as even free and fair elections often result in corrupt and self-serving leaders. These kinds of ironies are common in South Asian 'democracies', which would explain why despite being labelled as democracies, many governments fail to adhere to their citizen's expressed interests. This "pro-people" governance is not only vital for devolving right to a local level, but also in securing and realizing them. A truly responsive government is expected to be more democratic, transparent, and participatory by devolving rights and bringing development actors together. This is particularly important for achieving tenure security, also seen as is a precondition of sound investment in natural resources, which is required to respond

to major challenges such as commodity demand, growing food insecurity, REDD investments, and adaption to climate change.

There are many other interconnected sources of motivation for strengthening forest tenure including recognition of human rights, upholding dignity, defending cultural survival and helping secure forest dependent people's place in the world. In addition, tenure reform has been seen as a means to other greater developmental goals advanced by governments and development organizations. These include poverty reduction, conflict mitigation, improved forest management, and conservation. There is general agreement in the development community that secure property rights are central to achieving equitable social, environmental, and economic goals.

Therefore, tenure reform is one of the first steps towards addressing imminent and emerging challenges in South Asia in the economic, ecological, political, and social spheres.

8

Challenges and opportunities of forest tenure reform

in South Asia

While there are different levels of tenure reforms across South Asia, in almost all countries, the legal basis of tenure reform is weak. For example, JFM in India does not include legal sanction as it is operating under executive order, which is vulnerable to unilateral government veto at any time. Very few states have endorsed this with a legislative provision. Similar systems exist in Pakistan, Bangladesh, and Bhutan. However, Nepal's Forest Act is relatively stronger but recent government attempts to roll back the rights given by the Act indicate that the legal basis of tenure reform in Nepal is still not secure enough (see Box 2).

Tenure rights under community-based forest management are often limited to the management of forest resources with strict compliance requirements to follow the agreed forest management plans. These plans are mostly conservative in terms of harvesting of timber and demand adherence to still more complicated procedures for use of forest products. The technical complexity involved in preparing management plans increases the dependency of active forest users on foresters.

Although some governments in South Asia have made positive attempts

BOX 2 | Retaining Rights in Nepal's Community Forestry

The movement of 1990 served as a vehicle to provide many rights to local communities as is evident from the Forest Act of 1993. However, government compliance with the Forest Act remains weak. In addition, taking advantage of the on-going constitution-building process, many anti-community forces are conspiring against the community forestry regime, causing the handover of forests to local communities to slow. The restriction created by the requirement that CFUGs need to conduct environmental impact assessment (EIA) in order to get more than 200 hectares of forests handed over has presented an often-insurmountable bureaucratic hurdle. Moreover, there are constraints in commercial use of forests, which has hampered the contribution of forests to poverty reduction, and the private sector remains uninterested in investing in forest-based enterprises and employment-generating business in the forestry sector. The unequal power relation between the state bureaucracy and forest users has created a tenant-landlord relationship between forest communities and the State. Given these conditions, merely retaining existing rights remains a challenge.

Source: Country report, Nepal

towards reforming forest tenure, there is still widespread reluctance to recognize fully the rights of IPs and local communities. Regulatory barriers imposed by the government in harvesting and sale of forest products combined with a lack of enabling institutional structures further limit the economic potential of forest resources, which otherwise could be beneficial to the livelihoods of local communities under reformed tenure arrangements. Weak systems of political and resource governance associated with rampant corruption and illegal logging, and vested interest of those benefiting more from current chaotic institutional arrangements, are continually blocking the process of tenure reform implementation in South Asia

Moreover, most of the countries in South Asia are the recipient of climate change funding from various international agencies and donors including REDD+. However, the question of who benefits from carbon market schemes is still unclear, and this debate is perpetuated by the lack of clarity on tenure arrangements over forests and forestland. In addition, there is a lack of mechanism to guide the carbon credit scheme and ensure equitable benefit sharing amongst stakeholders.

Due to South Asia's increasing population, there is a burgeoning demand for

agricultural land and housing, coupled with increasing industrialization in the region, which increases demand for commodities, which are primarily derived from the forestry sector. As a result, South Asia is facing challenges of forestland conversion, and both domestic and international "land-grabs" for these increasingly scarce resources are posing a threat to IPs and local communities and to their traditional system of access and use of forestland and forest resources.

Although there are a number of challenges in the South Asian forest landscape, there are some opportunities unfolding in the region, which are instrumental in advancing tenure reform. For example, the growth of civil society networks in India, Nepal, and Pakistan provides an opportunity to amplify the voice of civil society for balanced distribution of forest ownership across state, private sector, and local community.

Growing trends of shifting ownership from state to other actors is significant in achieving the goal of forest tenure reform. For example, land titling in tribal areas in India, issuance of leasehold and community forestry certificates in Nepal, and providing use and management rights to local communities in Bhutan are considered progressive attempts towards transferring rights from state to other actors.

9

Key lessons from current forest tenure reforms in

South Asia

There are several key lessons that can be drawn from on-going tenure reforms in South Asia, as illustrated below. The relative proportion of forestland allocated for communities and individuals remains insignificant and most of the forestland given to communities is degraded and unproductive. Examples include forest area given under leasehold forestry in Nepal, government wasteland given to tribal people in Rajasthan in India, and Guzara forestland given to local communities in Pakistan (as explained in Box 3). In all cases, local communities are unable to harness properly the economic benefits from the forestland, while the governments are able to meet their rehabilitation objectives to some extent by involving local communities in plantation and protection of forest species.

Unlike in China and Vietnam in East Asia, none of the South Asian countries has granted expanded ownership rights over forests to individual and households. It is realised that achieving ownership is a credible incentive to make investments for increasing benefits from forests and forestland.

Most cases in South Asia show that transferring rights to local communities and indigenous groups offers both economic and ecological benefits. For example, in Nepal and India, forest coverage has increased after handing over government forest to local communities.

The recognition of IPs' ancestral territory could substantially reduce

BOX 3 | Guzara Forest in Pakistan

Guzara forests are individually- or community-owned wastelands, which have been brought under the management of Forest Department under the Hazara Forest Act of 1936. The owners of these forestlands are entitled to use rights to any forest products, but do not benefit from the right to sell any trees growing on such lands, except with the permission of the Forest Department. According to the North West Frontier Province (NWFP) Forest Ordinance of 2002, Guzara is the protected village wasteland that was set aside at the time of settlement to meet the needs of landowners and right holders.

forest conflict, as exemplified in India, where issuance of land title to tribal and ethnic minority groups helped reduce the incidents of conflict.

Lack of political will to advance the community ownership, on the one hand, and government preference for protected area expansion, on the other, are limiting the scope of forest tenure reform and potential benefits from forest resource management. For example in Nepal, the government is still expanding conservation areas and national parks across the Terai region where *Sal* forests present potential economic benefits.

Organized community networks such as the Sungi Foundation and SAFI in Pakistan, Orissa Jungle Munch, and

Vasundhara in India, and FECOFUN in Nepal remain instrumental in strengthening and protecting rights of forest communities (see Box 4) through lobbying and advocacy.

When new regulations are established, a disregard for traditional and customary management systems can lead to severe and seemingly irresolvable conflicts. For example in Pakistan, customary law practices by forest communities throughout the nation are frequently in conflict with formal forest regulations. In the absence of state control, collaborative management with customary law can help balance the lack of secure tenure by fostering a sense of community ownership, which engenders a commitment to conservation.

BOX 4 | Role of FECOFUN in Nepal

In Nepal, civil society organizations and networks of grassroots communities have been playing a significant role in advancing the agenda of forest tenure reform by creating greater awareness and demand for the rights of individuals and communities over natural resources. For example, the role of FECOFUN and other civil society organizations in suspending the Forest Act amendment bill proposed by the government in January 2010 was vital. This bill was introduced to curtail some of the rights given to local communities to manage a patch of forests as community forestry.

10 Ways forward

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In most countries in South Asia, community forestry has proved to be a viable option to contribute to advancing the agenda of ecological sustainability and economic benefits. Therefore, there is a greater need to scale up and realize community forestry models at a national level. It is important to extend lessons learned from the community forestry systems in Nepal, collective forestland management in China, and JFM in India to expand pro-people forest governance within and outside the region.

As discussed above, in many cases tenure security is weak. Countries lack a strong legal and institutional basis for reform, such as the JFM in India, and in some cases tenure security of local communities and IPs is completely absent, such as in Pakistan and Bangladesh. It is increasingly realized that secure tenure is a foundation for preserving social identity, personal security, and cultural survival of IPs and ethnic minorities.

Networks of grassroots community organizations in South Asia are emerging over the last decade. Organizations like Orissa Jungle Munch in India, FECOFUN in Nepal, Nursery Association

in Bangladesh, and SAFI in Pakistan are examples of emerging civil society networks of grassroots communities that have played a strategic role in retaining the rights of local people over forest resources. However, the capacity must continue to build capacity and strength in order to advocate for community rights, to expand community ownership across South Asian countries, and to generate broader awareness of the importance of granting rights to communities and IPs

In most countries in South Asia, forest tenure diversification is in progress; however, the institutions governing the reform process have not changed for many decades. The process of tenure reform is hindered or halted in some cases by weak institutional capacity and limited understanding and motivation of the stakeholders and policy makers about the true significance of forest tenure reform in achieving environmental and economic goals. Hence, the process of tenure and institutional reforms should be addressed simultaneously.

Similarly, tenure reform does not necessarily yield better results for poor forest-dwellers until associated issues are addressed to distribute benefits

equitably, rectify the power balance by recognizing roles of all stakeholders in forest management, and have supportive policy environment and system of good forest governance in place.

State ownership remains the predominant tenure framework in South Asia, while at present, the level of community and private ownership over forests and forestland is insignificant. Therefore, reforming forest tenure by transferring ownership rights from state to other actors, particularly

to communities, the private sector, individuals, and households could better contribute to achieving ecological, social, and economical objectives of forest management.

In sum, tenure reform should not be considered a panacea to all issues surrounding natural resource management, but it is a key precondition to equitably addressing emerging economic, environmental and development challenges facing South Asia.

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Annex: Summary of key Issues related to forest tenure in South Asia

Issues	Bangladesh	Bhutan	India	Nepal	Pakistan
Political History	16th-18 th Mughal India 1757-1947 British India 1947-1971 Pakistan 1971- Bangladesh	Feudal society	Feudal rulers; Colonial regime of British Raj Independence in 1947	Feudal society- few people occupying most of the land	16th-18 th Mughal India 1757-1947 British India 1947- Pakistan
History on land forest tenure	Mughal- cultivators with rights on forest; but Dewani no PR. 1797- Permanent settlement- Zimindari (tenant no PR). Bengal pvt F Act 1945 abolished per. settlement, tree felling fast, and zamindar giving away for settlement fast.	Feudal society, scientific forestry and nationalization imposing restriction to free access.	DOF 1942, private forest nationalization act in 1957	DOF 1942, private forest nationalization act in 1957; The forest act 1961 (harvest 4 hh use required permission), forest act in 1967 one person court; amended 1977-Panchayat- Forest and Panchayat Protected Forests Rules 1978.	British nationalized informal community arrangements in SA (conflict, enmity, open access). Forest Act of 1878. Commercial timber of cantonment and railway sliper. Hazara FR 1872.
Legal instruments	Indian Forest act 1878. Forest act 1927 amended in 1989 to allow social forestry, rules 2004; forest policy 1994. Rules amended 11 times to give power to forest rep at lower level. Private forest act 1959, Environment conservation act 1995.	Forest Act 1969. The National Forest Policy 2011. revised Land Act 2007	National Forest Policy 1988 Forest Rights Act 2006	Master Plan of the Forestry Sector 1988, Forest Act 1993, Forest Regulations 1995; Community Forestry Guidelines;	Forest Act of 1927, 1959 Land reform act and ceiling, Forest act 1927, the North West Frontier Province (NWFP) Forest Ordinance of 2002, Guzara. Hazara District Protection Forest Rules 1973, the Wildlife Preservation Act 1975. forest policy of 1884, 1955, 1962, 1982 1990
Community	No community forest; despite the ideas of community social forestry. Government could use reserved land for village forest but never implemented. PA does not have buffer zones.	Since nationalization-access to timber to be permitted, privilege of grazing rights. Recent 11, no harvest without science-based mgmt plan. Customary rights of grazing lifted (2007) and ban on shifting cultivation. CF started and F in the vicinity of interested settlement handed 1.19% F set for this. In PA outside of core zone, access allowed with no relocation like elsewhere. Focus expanded timber to NTFP. 333CF, 14653HH, 36649H . 4% F target 2020	Joint Forest Management as benefit sharing scheme between state and local communities FRA provides title over forestland to tribal and ethnic communities, and traditional forest dwellers	Originally community access; nationalized; Panchayat 1977; CF begin in 1995; Leasehold Forest; BFCF; CF began in 1988 peaked in 93 slowed in 2004 (conflict); 17000 CFUGs, independent autonomous, deemed successful; 5-10 yrs mgmt plan; LF:6000 LHF groups with over 62,000HH, 38tho Ha; 40yrs tenure; CFM in Tarai 14 gr 38 th HH 33th Hec, 25% benefit; Buffer zone, 500 gr, 177 th Hec, 25-50% benefit;	Alarmed by depletion pressure from INGOs, but not real work. No community forest, no access to reserved, but PA access given. Guzara- managed by individual, families or community- required working plan approved for CH 80% owners, 20 gov as mg charges. Pakistan National Conservation Strategy (NCS) suggested CP but never implemented. Hill Guzara forest coops in 1990 but abolished due to depletion and elite control. NGOs and CBOs lately helping. Lack of C interest since ban on TH in 1993.

Private	Idea of village forest: are private ones. Forged claims and encroachment-but failure to remove due to political sensitivity.	None	Only 12% of forest allocated as private forest	Very small registered or un registered; land owned but sale requires written permit; pay land revenue and VAT.	Private pine and juniper are gov properties. Resumed land-out of ceiling land by zaminders; PA rules apply and right holders get 80% precede. Guzara pvt no rights to sell trees without permit,
Security	Private forestland- Government can take over the management of improperly managed; management plan required.	Forest belongs to government. New CF people have use and management rights and ownership rights over the resources	For JFM- community are involved in protection and management of forests but no rights over land and resources FRA titling of forestland with all elements of bundle of tenure rights	CF-Access, use, manage sell but circular 2000 and Finance Ordinance Bill 2003 limited rights, LF more clear and secure;	Land and tree belong to gov. Private pine and juniper is gov properties. Guzara forest WP required, no auction, no penalty rights.
10 yrs reform	Not much	CF programme	Significant move because of enactment of FRA 2006	Community based forest management	Not much small scale
Types	Social forestry- participatory forest management	Community forestry as pilot	Joint forest management Distribution of land title	Government managed, Pas, National parks, CF, LH, Pvt	Reserve, PA, Resumed, Guzara
Challenges	Mindset of foresters. Large population small	Expansion of mining, forest industries and infrastructure development; state control science based FM in conflict with people's need; CF limited tenure; livelihood and poverty	No legal sanction of JFM operating under an Executive Order Distribution of title deed under FRA how to balance between collective and individual title	Retaining existing rights; incorporating additional rights; Oppr: Political transition and state restructuring process; CF requisite for REDD;	Top-down; no clear PR, corruption, unable to enforce. Large population small forest. Conflict between users, royalty holders and gov, climate risk, REDD (CMD?). Decentralization failed-due to no deliberation
Way forward	Data; pro-people forest for livelihood. Forest	Strong tenure database; amend rules to fit 2011 policy to decentralize, CF viable; enhance mgmt capacity (both); meet needs and conserve; participate	Transfer JFM to CFM, Provide legal sanction to JFM	More than 35% of the existing forests which are close to settlements can be handed over to local communities; focus on safeguarding rights and gaining more in new constitution	Mapping existing tenure; national w/s; seek international aid on review; revise old Guzara and PA policies; Malakand conflict

Civil society	Put pressure	No mention	Local communities in JFM committee known as JFM Protection committee	FCFUG" which has set its image as an influential civil society advocating for the rights of local communities"	Continue pressure for community participation, NGOs helping CP in some areas, but small scale.
Size	See another table	See another table	28% of total forestland of India		11% of land under PA-focused on wild life not forest
Deforestation		None- of little but reversed with some bans on shifting cultivation, grazing, etc.	Stable but still increasing slightly each year	None after CF	1.1 In 1990-95, lowest in the world- because no forest. PA and Guzara degrading like open access
Drivers for change	Current policies and increasing population pressure and problem of food security	Overall policy change; policy on CF; NWFP; conversion of land for other use, policy on mining	Social movement Civil Society Organization advancing tenure agenda Movement of tribal communities	Champions; New policies of late 80s and 90s; impact of top-down system; land grabbing; vocal civil society	Deforestation, Deterioration of the Forest Services

Source: Author's compilation



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