A Review of Forest Policies focusing on Fiscal Instruments in Community Forestry of Nepal

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Abstract

Fiscal policy instruments such as royalty, tax, subsidy and market systems are core components of forest policy and have significant consequences on the management of the forest resources and their benefits to local communities. In this paper, we have examined the legal provisions of the fiscal instruments employed in Community Forestry of Nepal mainly based on the review of current policy documents. In addition, interviews and group discussions were also conducted with government units, traders and forest user groups in Parbat, Baglung and Dolakha districts. Inconsistencies and contradictions are seen mainly in handing over of community forest to local people, controlling taxation system, ban to export NTFPs and sharing revenues between government units and forest user groups. Consequently, such inconsistent provisions have affected the promotion of sustainable and market-oriented management of forest resources, coordination between local and central government authorities, and the overall financial situation of forest user groups.

Key words: Economic policy instruments, local government, non-timber forest products, revenue sharing, forest certification

INTRODUCTION

Policy instruments are usually classified into three broad categories: regulatory, economic, and informational means or instruments (see also Gautam, 2006; Krott, 2005; Jann, 1981). Economic instruments are synonymously called financial (e.g. Bruijn and Hufen, 1998) or fiscal instruments (König and Dose, 1993). Fiscal instruments such as royalty, tax, subsidy and market systems for forest products are seen as a core component of Nepal's community forest policy, and have significant consequences on the management of the forest resources and their benefits to local communities. Although Community Forestry (CF) program in Nepal began in 1978 as an attempt by the government and aid agencies to provide an alternative way for the Forest Department to manage national forests by

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involving local people (Gilmour and Fisher, 1991), a legal and procedural base for local people to organize themselves into a community forest users group (CFUG) as autonomous forest management institution was provided by the Forest Act (1993) and the Forest Regulation (1995). However, the Act and the Regulation are less explicit in terms of fiscal policy compared to other policy instruments (Kanel, 2001).

The CF program is progressively handing over more national forests (during the last 31 years, nearly 1.23 million ha of forest have been handed over to more than 14,400 CFUGs -CFD, 2009). Many organizations have been involved to support the CF program. The Ministry of Forest and Soil Conservation (MFSC) is responsible for formulating forest policy in coordination with the National Planning Commission, while the Department of Forest (DoF) is responsible for its implementation. The Community Forestry Division (CFD), which is under DoF, is responsible for the implementation and facilitation of the program. The District Forest Office (DFO), also under DoF, formalizes the incorporation of users into CFUGs and hands over national forests to them. Besides, many civil society organizations, private institutions, CF networks, development partners or donors are also involved in supporting the program (Paudel and Vogel, 2007). However, the policy formation, implementation and field reality seem to be weakly connected in the forestry sector (Larsen *et al*., 2000). Field-level staff of DoF and non-governmental organizations (NGOs), who have experience in policy implementation, do not have much influence in its formulation. This situation has created inconsistencies and confusions in the provisions mentioned in policy documents and consequently raised several issues and challenge for their implementation. This paper gives a comprehensive overview on the fiscal policy instruments employed in CF and demonstrates the contradictory and unclear legal provisions.

MATERIALS AND METHODS

This paper is mainly based on a review of current forest policy documents: the Master Plan for the Forestry Sector (HMGN, 1989), the Forest Act (HMGN, 1993), the Forest Regulation (HMGN, 1995), the Forestry Sector Policy (HMGN, 2000), the Herbs and Non-timber Forest Products (NTFPs) Development Policy (HMGN, 2004), the Local Self Governance Act (LSGA, 1998) and its Regulation (LSGA, 1999), the Three-year Interim Plan of 2008-2010 (NPC, 2007), and CF Guidelines. In addition to the review of these documents, semi-structured interviews and group discussions were conducted by the first author in 2008 in Baglung, Parbat and Dolakha districts, Nepal. Interviews were conducted with individuals from DFO, District Development Committee (DDC), Village Development Committee (VDC) and FECOFUN. In addition, seven forest products traders comprising four from Baglung and three from Dolakha were consulted. Group discussions were conducted in 8 CFUGs (3 from Parbat, 3 from Baglung and 2 from Dolakha) that are being involved in forest product trade and/or in forest enterprises, and are therefore aware of the fiscal policy instruments. Checklists were used to track the discussions on given issues.

RESULTS AND DISCUSSION

1. Master Plan for the Forestry Sector

National Forestry Plan (1976) provided a policy base for initiating forestry development work in Nepal (Acharya, 2002). It recognized people's participation in forest management and brought the concept of village *Panchayat (*administrative body in a local level during 1960-1990) forest. However, the provision of *Panchayat* Forest (PF) and *Panchayat* Protected Forest (PPF) were included in the amendment of Forest Act (1961) in 1977. Formulation of PF and PPF rules in 1978 led to the emergence of official CF policy in Nepal. The Decentralization Act (1982) empowered *Panchayats* to form people's committees for forest management (Springate-Baginski *et al.*, 2003). Later, in 1987 the concept of 'forest users group' was introduced by an amendment to this Act. After the a pressed recommendation of the First National Community Forestry Workshop held in the same year, the Master Plan for the Forestry Sector (MPFS) was declared.

The MPFS outlines broad strategies for sustainable management of the nation's forest resources in line with Nepal's economic, social and environmental goals. It provides a 25-year policy and planning framework for the forestry sector. The long-term objectives are related with meeting the basic needs of the people and consolidating to local and national economics. The plan has emphasized on meeting the basic needs of the people by sustainably managing the forest resources. However, it does not spell on research and scientific inventory which is utmost for sustainable management.

The MPFS has framed six primary and six supportive development programs, putting the largest emphasis on 'community and private forestry development' program. The plan has given this program a priority among other primary programs by allocating about 49% of the total investments within the forestry sector. Furthermore, it has stated that all the accessible forests in the mid-hills should be handed over to local people and the DoF staff should be reoriented and retrained to the priority. However, it remains silent in handing over of *Terai* (low land) forest to local people, and examining the sufficiency of DoF staff to implement CF program. The wood-based industries and NTFPs development programs are also listed as primary programs to contribute to the economic development through industrialization and to enhance distribution of medicinal plants and NTFPs to local and foreign markets. However, the plan does not mention anything about certification which is crucial to export the products to foreign markets.

2. Forest Act and Forest Regulation

The Ministry of Forest and Soil Conservation, with the recommendation of the MPFS enacted the Forest Act (1993) and the Forest Regulation (1995). These two are the main legal instruments that govern the functioning of CF. According to the Act and the Regulation, concerned DFO can handover any part of a national forest to a users' group in the form of a community forest to develop, conserve, use and manage the forest. The Act and the Regulation describe the type of services that should be provided by the DFO during CFUG formation and management of their forest. Some of these services are regulatory functions for group registration, demarcating forest area, assistance in development and revisions of operational plan (OP) and constitution, etc. However, they remain silent about providing financial support to CFUGs from the government. Although the Act and the Regulation have given rights to CFUGs in managing their forests, they do not have rights over the sale of the total stock of forests and the land on which the biomass stands. Moreover, though CFUGs can independently sell and distribute the forest products by fixing their prices, they have to inform the concerned DFO about the sale rate of the products. According to the amendment of the Forest Act in 1999, 25% of their fund collected from sale and distribution of forest products, grants or donations, membership fees and fines, and other sources must be spent for forest development activities. It seems that the amendment has restricted the CFUG expenditure.

The Act authorises the central government to regulate and raise taxes on forest products. Accordingly, the government collects royalty for the commercial collection of forest products from the government managed forest (GMF) and imposes tax on their trade while CFUGs collect royalty for products from their community forests according to OPs, which are approved by the DFO. Although, the Forest Bill of 1990 provides right to CFUGs to sell forest products irrespective of the government royalty (Shrestha, 1998), they usually sell the products in the same royalty rates while selling outside their user groups (Paudel *et al*., 2009). Royalty rates for forest products and species are fixed by the government and are prescribed in the Forest Regulation. After the enforcement of the Regulation, the rates have already been revised two times and then published on Nepal gazette, dated on September 26, 2005 and July 8, 2008, respectively. Royalty for timber is prescribed in amount per cubic feet (e.g. Nepalese Rupee (NRs) 200.- per cubic feet of timber from *Shorea robusta*) and for non-timber in amount per kilogram (e.g. NRs 10,000.- per kg of *Cordyceps sinensis*). Besides, the government has formulated financial regulations that need the payment of Value Added Tax (VAT) on the trade of goods and services. A CFUG that sells surplus forest products has to pay 13% of royalty as VAT on products sold, excluding medicinal and aromatic plant products (MFSC, 2005). In addition, they have been paying NRs 5.- per cubit feet of timber, sold outside the user group to concerned DFO as forest development fund (personal communication with DoF staff). Land tax is not applicable for community forests because the land is held by the state and only the usufruct rights are given to CFUGs, and also the income tax is not imposed to them as they are considered as non-profit making organizations.

The Forest Act and the Forest Regulation are inconsistent with the declared long-term policy objectives of CF to improve rural livelihoods (Olsen and Helles, 1997). The government has imposed a ban on collection, use, sale and export of *Juglans regia* and *Dactylorhiza hatagirae* with a view to help in conserving these species from a threat of extinction. Furthermore, a total of nine species are banned for export in unprocessed form which include *Cordyceps sinensis, Nardostachys grandiflora, Valeriana jatamansi, Parmelia* species*, Taxus baccata, Abies spectabilis, Rawolfia serpentine, Cinamomum glaucescens* and Silajit (a mineral exudates). This shows that government policy with regard to NTFPs seems to be inclined toward regulatory control in the name of maintaining ecological balance (USAID, 2006). However, the ban is not successful in conserving these species, rather illegal trade and smuggling has taken place instead (Subedi, 2006). Although, the government has authority to impose ban on only the products from GMF (HMGN, 1995), in practice the NTFPs managed in and harvested from community forests are also banned to export in unprocessed form. Due to this, CFUGs are compelled either to do processing themselves, or find processing industries to sell these NTFPs, both of which seem to be difficult for them. This seems to discourage CFUGs as was observed in Bongadovan Range Post, Baglung for marketing of *Parmelia* species (discussion with CFUGs). This has created difficulty in CFUGs to generate income from NTFPs trade and improve their livelihood.

3. Local Self Governance Act and its Regulation

The Local Self Governance Act (LSGA, 1999) pursues the devolution of powers, responsibilities, and means and resources to make local government units (VDC, Municipality and DDC) capable and efficient in local self-governance. According to the LSGA, the local government is responsible to prepare plans and programs on forests and implement or cause to implement them. The LSGA provides legal authority to the local government to control forest resources within its boundary. This has contradicted with the Forest Act according to which DFO can hand over any part of a national forest to a user group in the form of a community forest without consulting local government. Likewise, a contradiction is also observed in controlling taxation system between the Forest Act and LSGA. The Forest Act allows the central government to collect tax on forest products while the LSGA provides authority to DDCs to levy a tax on forest product of their jurisdiction. Although the tax rates are prescribed for few forest products in the Local Self Governance Regulation, for the most of products the Regulation has provided authority to DDC to collect tax based on quantity and quality of products, and royalty prescribed in the current Forest Regulation. However, in practice different DDCs are collecting varying amounts of tax for the same product. For example, for 1 Kg of Lokta (*Daphne* spp.) paper traders have been paying NRs 5, 10 and 20, respectively in Solukhumbu, Ramechhap and Dolakha district (personal communication with a trader from Dolakha). In addition, VDC can also charge up to NRs 1,000.- per person/company/enterprise that uses the forest resource of its village for commercial purposes (LSGR, 1999). Concerning revenue sharing, the LSGA provides authority to the concerned DDC to receive the amount to be obtained by the government as royalty from forest, but the LSGR has declared that the DDC gets only 10% of revenue obtained by the government as royalty from forest products. However, in both the documents, the type of forest (government managed or community forest) is not specified that has created confusion in revenue sharing between government units and CFUGs.

4. Forestry Sector Policy

The Forestry Sector Policy (2000) provides a framework for the systematic implementation of various development programs in this sector. The policy has put priority for CF program especially in case of hill forests, while for *Terai* it has emphasized the collaborative forest management. The policy mentions to streamline the pricing policy of products from national forests (which also includes community forest) in order to generate revenue for forest development and management. It mentions share of revenue between government and CFUG based on gross income from timber sales, but does not indicate the cost for community forest management. Moreover, the policy remains silent about the sharing of revenue between local government units and CFUGs.

For example, in case of *Terai* CFUGs, 40% of the earning from surplus timber must be deposited in the government account (HMGN, 2000). This policy was strongly opposed by FECOFUN and after a long debate between the government authority and FECOFUN, this amount was reduced to 15% (after July 2004) and applicable only for the sale of two timber species (Sal-*Shorea robusta* and Khair-*Acacia catechu*) in *Terai* (personal communication with FECOFUN leaders). Whatsoever, the local government units do not get any share of this income (Kanel, 2006).

The policy has emphasized to promote the commercialization of NTFPs and export them to foreign country after value-adding. However, nothing is mentioned about forest certification, which is crucial for exporting forest products as many foreign countries hesitate to buy uncertified products. Besides, it focuses on providing livelihood opportunities to poor and landless people in forestry-related activities and pays immediate income to the rural poor who use to collect raw materials like medicinal and aromatic plants for industries. The policy also talks about encouraging local communities to grow commercial forest crops where appropriate growing conditions exist and to establish forest-based processing enterprises outside of the community forest. However, it does not mention about the management of financial and technical resources required to CFUGs to establish such enterprises.

5. Herbs and NTFPs Development Policy

The government has developed Herbs and NTFPs Development Policy (HMGN, 2004) with the long-term goal to substantially contribute to Nepalese economy by conserving and preserving high value herbs and NTFPs. The key features of the policy include commercialization, certification, simplification of the tax system and people's participation, ensuring due benefits of appropriate technologies to the people based on sustainable management of the NTFPs and medicinal plants. Though the policy mentions simplification of tax system for privately grown NTFPs, it is silent in case of community forest. Furthermore, though it has stated that NTFPs cultivated in private land can be exported even in unprocessed form, nothing is mentioned about NTFPs cultivated in community forest land.

6. Three-year Interim Plan

After the completion of Tenth Five-year Plan (2002-2007), the government has formulated Three-year Interim Plan (2008-2010) of Nepal. It has long term vision of supplying timber, fuelwood, fodder and other forest products regularly, by formulating and implementing a sustainable and balanced forest development program with people's active participation.

One of its objectives is to develop internal market and promote export by focusing on forest based industries and entrepreneurship. It has prioritized 'community and private forestry development' as a major program with a plan to invest about 20% of its budget in it. It has also stated that the annual program formulation, implementation and evaluation will be carried out in accordance with the provision of the LSGA and its Regulation. The working policy has put priority for establishment and promotion of forest industries through public participation and developing forest certification framework. Though the plan has addressed the issues of certification and action research for high value NTFP, it has not stated about the financial arrangement for both of these aspects.

7. Community Forestry Guidelines

The Community Forestry Development Program Guideline (DoF, 1995) and its revisions (2001 and 2009) aim to support users, forest technicians and facilitators to implement the CF program. The second revision of this guideline mentions that 35% of the CFUG' fund must be spent for poor users, either in terms of money or good, for improvement of their livelihood. This is considerably higher amount as compared to the actual amount spent by CFUGs, which was about 3% according to a survey conducted by Kanel and Niraula in 2004. Such provisions seem to be favorable for poor. This guideline has also specified that DFO should assist the CFUGs for the implementation of governance, livelihood, and sustainable forest management related activities. Similarly, the CF Inventory Guideline (DoF, 2000) and its revision (2004) aim to support the user groups to monitor species, growing stock, annual increment and the harvestable amount of forest products, which are necessary for preparing the OP. Although the guideline of 2000 strictly mentions that only the qualified forest technicians could do the inventory, the revised guideline allows social workers at local level to perform community forest inventories. With this provision, CFUGs now can hire the social workers or local resource person (LRP) and perform the inventory, and revise OPs which were backlogged due to limited forest technicians. Such a practise is seen in the CFUGs of Parbat and Dolakha districts, with the help of FECOFUN and/or other NGOs who have trained LRP in this field. Both the revised guidelines (CF Inventory Guideline of 2004 and CF Development Program Guideline of 2009) seem to be compatible with field reality as it was prepared by DoF, involving NGOs, FECOFUN and CFUGs.

CONCLUSION AND RECOMMENDATION

The review of the forest policy documents shows some contradictions and inconsistencies in their provisions and procedural weaknesses. Contradictions are observed between the Forest Act and the Local Self-Governance Act, regarding handing over of community forest to local people and controlling taxation system. Such provisions for the forest resource management can bring an unhealthy working environment between DFO and DDC in community forest management. Therefore, it seems that there is an urgent need of amendment in these acts, defining clear legal responsibilities of central and local government units regarding the forest resources management. Furthermore, inconsistency is also observed between provision mentioned in the Forest Regulation and its implementation about the ban to export some NTFPs in their crude form. Though the government has authority to impose such ban on the products from GMF only, the ban is also effective for community forests. Such a situation hinders CFUGs to collect revenue and consequently discourages them in NTFPs management, even the recent policy of the Herbs and NTFPs Development (2004) states that NTFPs cultivated in private land can be exported in unprocessed form, but it mentions nothing about NTFPs cultivated in community forest land. Therefore, it is suggested to develop such policy instruments that aim at sustainable management systems of NTFPs, and provide optimum benefit to forest users.

Royalty, tax, subsidy and market system are important tools regarding income generation for CFUGs. However, the legal provisions are unclear about taxation system and sharing of revenues with government units on different levels. There is no clear provision in policy documents about the revenue sharing mechanism between government units and CFUG. Although LSGR has declared that the concerned DDC gets 10% of revenue obtained by the government as royalty from forest products it has not specified the type of forest (government managed or community forest). Forestry Sector Policy (2000) mentions about the revenue sharing between the central government and CFUG, but is silent about the local government units. To avoid such unclarity in revenue sharing, a thorough discussion among the CFUGs, government units and other concerned actors is needed to come to a common agreement.

Though some of the policy documents have given priority for commercialization and forest certification issues, none of them have spelled on the financial resources required for that process. Targeting NTFPs, 14,086 ha (of 21 CFUGs) community forest land from Dolakha and Bajang districts were certified in between 2004 to 2006, with the financial support from USAID, Nepal. Calculations show that the certification cost in Nepal is US$ 35.5 per ha, which is higher in comparison to other countries (Kandel, 2007). As CFUGs do not have adequate finance and there is a lack of financial support from the government, the forests which would have the quality to be certified, may not be certified in time. Even after certification, high cost is involved in auditing, monitoring and management of certified forests (according to CFUGs of certified forest, Dolakha). Therefore, it can be said that without the financial aid to CFUGs from government and/or donor agencies, certification could not be progressive, but continues to be a challenge for the commercial trade of valuable forest products in Nepal.

Nepal, with its CF program, is one of the best examples in the world for people-oriented forest policy; however the actual CF policy is practically still rather oriented at conservation than rural development goals. It does not optimally support the sustainable and market-oriented management of the forest resources. Local communities therefore do not benefit from their forests as much as they could. Recently, the government has made few favourable provisions, upon consultation with NGOs, FECOFUN and CFUGs. These include an option of revising OP with the help of social workers, and allocation of 35% of CFUGs fund (interms of money or goods) to be spent for poor users' livelihoods improvement. Such a participatory policy making process brings a good coordination among government units, CFUGs and NGOs, and also helps to make policy consistent and unambiguous.

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