Community Forestry Note 14

Legal bases for the management of forest resources as common property


This publication concerns legal issues that arise in cases of common property forestry, that is, when the right to use the forest and its products is vested in a community rather than individuals. Usually (though not necessarily) the trees are held by the community as a part of the 'land' on which they stand. The use may be carried out by members in loose or tight coordination, or even by individuals acting independently, using the resource serially or simultaneously, and within only very general limits set by the community.

This publication explores the experience of local communities and those who work with them to provide secure access to resources for community forestry, and focuses on the question of how best to lay solid legal foundations for common property forestry. It attempts to respond to the needs of communities such as Endagwe in Tanzania. It asks what the role of common property is in community forestry, and what we can learn about its utility from the experience to date. An attempt is made to examine these issues not just from the viewpoint of policy-makers and law-reformers, but from the viewpoint of local communities and of those who work with them, who must often make difficult choices in legal milieus over which they have little control.

The publication attempts to incorporate three different but legitimate perspectives. One is the pragmatic approach of many foresters, who are searching for a realistic strategy for getting local people behind efforts to conserve forests and afforest degraded areas. Another is that of the institutional economists, who have brought considerable rigour to our thinking about what makes common property work. The third reflects the hope of many communities that access to, and especially ownership of, forest resources might help them conserve their cultural values and achieve greater political and economic autonomy.

Chapter 1 of this publication describes a problem: the legal vulnerability of common property arrangements. It is often difficult to provide legal security of expectations, including security of tenure, to communities managing land resources under indigenous common property regimes or seeking to construct such regimes.

Chapter 2 examines indigenous common property regimes, and in particular attempts to understand their evolution and how they nest within community-based land tenure systems.

Chapter 3 turns to national statute law, and reviews the diverse national situations, seeking to understand why they differ so substantially with regard to the management authority vested in community forestry institutions and the degree of security of tenure in which the forest resource is held.

Chapter 4 supplements these examinations of substantive law with a look at disputes arising under common property regimes and their resolution, in recognition that no tenure system can provide security unless there are adequate structures for dispute resolution.

Chapter 5, the final chapter, drawing on the earlier material, attempts to suggest guidelines on:

- how policy-makers and legislators can best limit the vulnerability of common property by improving the national statutory law and rationalizing its relationship to customary law;
- how local communities and those who work with them can best legally secure common property regimes, both customary regimes and regimes being created anew by communities and government; and
- how dispute settlement arrangements can be framed to effectively manage conflict concerning common property.