



## Experimenting with approaches to common property forestry in China

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As the reform process towards a mixed economy proceeds in China, there have been a variety of approaches to local management of forested lands, including common property arrangements.

In China, incremental reforms towards a mixed economy began in 1978. The reforms have been carried out under the auspices of the communist party, but the party has allowed considerable local experimentation with organizational form and property rights for resource management. This has produced a rich body of experience that must be considered within the context of an unusual approach to law and social change where law is seen as the capstone of the change process by which the state finally approves and consolidates successful social and economic experiments.

In the reforms of rural production organization in China during the late 1970s and the 1980s, the agricultural sector was the main focus of attention. Large communes were broken into smaller units, often corresponding to the smaller cooperatives from which they had been formed in an earlier consolidation. The smaller cooperatives, in turn, had often been based on pre-revolutionary village units.

The reforms retained land as a public good, but they clarified the nature and locus of public ownership and management authority over land and associated resources. The 1982 Constitution (art. 10) and the National Land Administration Law which came into force in 1987 (arts 8 and 12) confirmed that the new "administrative villages" had succeeded to ownership of the land and that land might be assigned to smaller units or households for management. The land included all house sites, private plots of cropland and associated wasteland and mountain land.

There has been considerable village level experimentation with scale and institutional arrangements for resource management. Initially, the "production responsibility" reforms sometimes vested farmland in smaller, hopefully more easily managed groups of farmers, often old work teams or brigades from the former commune. Land was administratively assigned, often on an annual basis, but the teams were given significant management autonomy in return for an obligation to produce a quota of a specified crop at a fixed price. As the reform proceeded, however, most communities opted for the "household responsibility

system" in which land was assigned to households, still with quota obligations. With the exception of large state farms in the north of China, household farming has now become the almost universal form of production organization, encompassing 95 percent of all farm households.

### **Shifts in the legal basis for forest land management**

Household production, therefore, is clearly the emerging tenure pattern for irrigated agriculture in China, but there is continuing and intense experimentation with scale and production organization on mountain land. There are large areas of mountainous land suitable for forest production or orchards. These are within the territory of the villages, as divided at the breakup of the commune system, having been under the control of the communes. Under the commune system, these areas tended to be neglected and, as often happens in the absence of adequate social controls over natural resources, denuded. More than 60 percent of rural forest land is under the control of village economic cooperatives, rather than the state (Led and Sheng, 1993).

Forestation efforts in China are usually conceived in large part as reclamation of this hill and mountain land, involving land-use models ranging from timber monocropping to household agroforestry as part of a mixed farming system. The preparation of this land is very labour intensive and it is often organized by villages in a "campaign" mode, with substantial support from provincial government agencies. However, responsibility for management, based in the use rights over the land, is often vested in smaller units or in households, and villages and projects have experimented with both individual and common property forestry.

This has required a major shift in the legal basis for forestry management. The Forestry Act of 1979 virtually prohibited all forms other than collective or state forestry. Following the land tenure reforms of the late 1970s and early 1980s, and the 1982 constitution, a new Forestry Law was enacted in 1984. Art. 23 provides that trees planted by the cooperative belong to the cooperative and that "trees planted by rural inhabitants around their houses and on private plots and hills under their management belong to themselves". It goes on: "In the case of barren hills and uncultivated land suitable for forestation that are owned by the whole people and by the collective and that are contracted by the collective or individual for planting trees, the forest trees planted by the contracting collective or individual belong to themselves, unless otherwise provided for in the contract."

### **Distributing rights to forest land within the community**

From a policy standpoint, a key issue in the transition has been how the rights to forest land should be distributed within the community. For agricultural land, initial subdivisions of the farmland among households was rigorously egalitarian and resulted in small fragmented holdings. This has also happened to forest land in some communities and project contexts, but there have also been experiments with at least three types of larger management units as alternatives to simple household management. All three involve common property management. The first is direct management by the economic cooperative itself. The unit is public, functions as an owner/manager, institutes a unified system of resource management and can readily be considered a public common property I institution. It can run a forest as a single unit or as a number of decentralized operations, as may prove efficient, much as a corporation would run a production forest. Some village forests are still managed on this basis and it is still utilized as an approach in reforestation.

The second is the private forestry concern, often developing out of one or more "specialized households" that have been given long-term management contracts by the economic cooperative. The "firm" may be a single family or may have management divorced from ownership, but it may also be a group of households that have pooled resources and manage

them in coordination. This is the predominant form of community forestry today in China, where there were more than 150 000 such farms by 1991 (Led and Sheng, 1993).

The third is the shareholder association, which may be public or private in nature but is generally organized by the village. Its private version is larger than most other private forestry structures and its public version is distinguished from collective management by the voluntary nature of participation and the large degree of management autonomy conferred on the association. Often it is not entirely clear whether such an association is public or private.

Within a given locality, a considerable variety of institutional forms, patterns of experimentation and change over time may be discerned. For example, beginning in 1981, households in Huaihua Prefecture in Hunan Province were given small plots on "responsibility mountains" in a pattern similar to that for grain production areas under the household responsibility system. Until 1984, only households with considerable excess labour were able to develop their forest holdings and only short-term contracts were available. Limited tenure security led to the cutting of standing timber by some households and thus to considerable deforestation. Planners discussed the possibility of wiping the slate clean of the smallholdings and reallocating the land to specialized operators, but they were concerned about the people's reaction.

Spontaneous developments rendered this unnecessary. A 1984 policy reform called for leaseholds from the village economic cooperative to agricultural users for a minimum of 15 years (Rural Work Document of 1984, Document No. 1 of 1984), and the maximum duration has been regularly extended. The same policy document recognized the need for longer contractual terms for "projects with a long production cycle, such as fruit-trees, woods and forests, denuded hills and wasteland...". Often, contracts in such situations have been written to run for 30 to 50 years (Bruce and Harrell, 1989; Prosterman and Hanstad, 1993). Under a 12 April 1988 amendment of art. 10 of the Constitution by the National People's Congress, leaseholds have become marketable, usually but not entirely within communities. In some communities, for example in Meitan County in Guizhou Province, the development of a land market in forested land has been actively promoted, with finances provided to facilitate transfers (Bruce and Harrell, 1989).

Since 1985, there has been a process of voluntary consolidation of these holdings. Roughly half the land has been involved in transactions. One pattern has involved consolidation of mountain land leaseholds in the hands of a limited number of households with larger holdings, specializing in forestry and the management of orchards. The other solution, affecting an almost equal amount of land, has been for households to pool their land in shareholding units. The government is now pursuing a policy of standardizing contract terms (Liu Shouying, 1992).

In another example, the Red Soils Project, a land reclamation effort spread over several provinces of southern China, has experimented with both common property and household organization of reforestation. The effort promotes the planting of orchards and other tree crops on hillside land that had been abandoned as overworked wasteland for generations. Approaches in Jiangsu and Fujian Provinces illustrate the different management strategies.

In Jiangsu, local villages mobilized efforts in land preparation and tree planting on the hills belonging to each village. Community forest managers were selected competitively and contracts were signed with them which included a level of income for the village as well as incentives for the manager. There were excellent results in the creation of large orchards (Zeng Hu, 1994).

In Fujian, by contrast, the hillsides were reforested as part of a major resettlement programme, involving the transfer of settlers from other areas on to smallholdings with 15 year leaseholds.

However, local paddy rice farmers were angry that they had been excluded from the programme, and holdings had to be rearranged, with priority given to locals. Terms of the new leases were extended to 30 to 50 years. Transactions in the leaseholds were permitted but few have occurred to date. The Fujian model has produced more modest and fragmented reforestation which is nested within a mixed farming system, as the holders pursue their food needs and tree production opportunities at the same time (Zeng Hu. 1994).

### **Development of shareholder unions**

Some villages have opted for the large-scale exploitation of their forestry resources but, instead of collective management on the old work brigade and team model, they have opted for a new institutional form called a shareholder union. A shareholder union involves all or a subset of the households in a village. Membership is theoretically voluntary. Management of the forest resource is vested by the village economic cooperative in the shareholder union, a separate legal entity similar to a share company. The union plans a unified forestry production process but each household has its own forestry farm and acts as a contract production unit of the village forestry shareholder union. Villages manage their forest holdings on a contract farming basis for their own union. When the forest shareholder unions were instituted, for example in Sanming City of Fujian Province, two types of shares were usually issued: basic shares and investor shares. Two-thirds of the basic shares were distributed to forest farmers, while the remaining third were turned over to the village economic cooperative to become part of the village's accumulation fund. Because the accumulation fund profits were not shared, this arrangement was later dropped. Now, basic shares have been divided into mountain land shares for those who hold mountain land and common shares for all members of the community. Investor shares are issued for investments of cash, technological innovation, labour and tree planting (Sun, 1990; Lei and Sheng, 1993).

#### **The Albanian pattern a contrasting case**

**Albania represents the 'big bang' version of reform. A non-communist government came to power in 1992 and embarked on a dramatic land reform. First the collective farm sector and now the state farm sector are being subdivided into smallholdings with full private ownership as part of a government programme land registration and titling to promote a land market (Stanfield and Raco, 1994).**

**The forestry sector, while affected by these changes, has remained closely controlled by the state at least in theory and law. Until 1994, a 1968 Forest Law (Law No. 4470, 25 June 1968) regulated forest management. All forests were controlled by a State Forestry Administration, consisting largely of production forests organized as localized 'forest enterprises' and managed directly by the state. Collective forestry was theoretically possible: a collective could have a forest of up to 1 000 ha and manage it without financial obligations to the State Forestry Administration, but subject to its regulations. Such collective forests were in fact, very- limited because the collectives had been built up out of farms and forested land had been excluded. Even before the communist dispensation, forests had largely been owned by the state and members of the nobility (FAO, 1993).**

**In the virtual hiatus in state control at the fall of the communist government, rural people moved against the state forests to which they had always been denied access. With a failure in delivery of other fuels, villagers depended on fuelwood for heat in winter, and large areas were deforested. The government's reaction has been to reestablish forest policing.**

**A new law has now been prepared on Forests and Forest Service Police and a draft, identified as Law No. 7623 of 13 October 1992, has been circulated. The new law provides that trees planted on privately owned land belong to the landowner, and so provide a legal foundation for private forestry and agroforestry.**

**The law also provides a basis for common property forestry. Art. 4 provides for 'forests which are state-owned but are donated for communal use (to villages or collections of villages).' A**

"collection of villages", perhaps four to five, is a *comuna* in Albanian, now sometimes translated as a "county" but based on the earlier commune boundaries. The article continues: "By agreement between the local authorities and forest service, the communal forest can be partitioned among individual villagers in holdings of 0.4 to 1 ha, as prescribed in regulations issued by the Ministry of Agriculture and Food".

A 1993 FAO report has offered alternative wording which would facilitate common property forestry management by local communities: "The forestry administration may identify areas of the forest estate which are suitable for management for the benefit of people of one or more specified village communities. Such areas shall be managed on the basis of a communal management agreement to be entered into by the forest administration, the local council or councils which have jurisdictions over the areas involved, and local residents wishing to participate as individuals or families".

The FAO report and a recent Land Tenure Center memorandum identify a more fundamental shortcoming of the new law. The concept of "tenure" and its incentive effects for communities is hardly a concept in the new law. Moreover, the law lumps all private forests and communal forests together with state forests in a "forest estate" over which the Forestry Administration is given extensive control.

In discussion with foresters, one hears the full range of possibilities mentioned, but most favour continued state management or the contracting out of forests for management by commercial firms. Foresters who have left government are creating such firms and seeking business from their former colleagues. Some argue that common forest management is problematic, in part because there are still no adequate laws defining the structure and powers of the *comuna* and village levels of government.

The potential for common property forestry in Albania, therefore, is somewhat constrained both by institutional limitations and prevailing attitudes of officials at this point in time. On the other hand, it is a concept that merits consideration and experimentation if the villages in the mountains are ever to achieve economic viability. A visitor to these impoverished areas is told by officials that food subsidies for these resource-poor communities have been required for many years. Looking up at the surrounding mountains, with their forest and mineral resources, it is apparent to the visitor that these communities are resource-poor in the midst of wealth, in the sense that they have been denied access to and control of the resources that surround them.

The establishment of shareholder unions has also taken place in the wake of unsuccessful attempts at smallholder forestry. In Huaihua, much of the scaling up from economically unviable units is taking place through transfers to specialized households, but the creation of shareholder unions is also reported by Liu Shouying (1992): "One common method is that a collective, an enterprise or a government institution works as an organizer; farmers become shareholders by contributing their own mountainous areas and the finance for development comes from the state forestation fund. Therefore, the shares of a forest farm can be classified as land share, labour share, capital share and accumulated share, among which the land and labour shares account for the larger percentage." This gives some sense of the extraordinary mix of public and private initiatives involved in these development efforts.

Similar arrangements can develop out of state farms, in a process of decentralization of management which does not affect the state's property rights. In the Weihe State Bureau of Forestry in Heilongjiang Province, reforms maintained state ownership but allocated parcels of forest land to households from the farm's labour force. The households practice multiple uses, including production of a wide variety of non-timber forest products (e.g. medicinal herbs), and their incomes have grown substantially. Enterprises for purchasing and processing timber and a variety of non-timber products are being organized as autonomous profit and loss centres (Weihe Bureau of Forestry, 1987).

Between household agroforestry and the shareholder unions there are, however, a considerable variety of institutional options for private enterprises specializing in forestry. Some operations are begun by households that have received leases to substantial holdings

of forest land from their collectives and/or accumulating forest land through the market in such leaseholds. When the scale of operations expands, the enterprise may hire labour or group a number of households, the latter being the more common case. The households may be very loosely organized, collaborating on activities as needs arise, or they may pool resources and different households may be assigned different tasks. The partnership as a form of organization is also known (Howard, 1987). These arrangements and their operations are an important area for further study

The wide range of institutional forms available under Chinese law today is a result of the promulgation by the State Council of Regulations for the Registration of Industrial and Commercial Enterprises (7 July 1982) (Rui Mu, 1983). Forms of organization are being created by "charter", an agreement of those concerned which is made a matter of public record. These enterprises are created by registration. As a minimum, the registration must record the name(s) of the founder(s) of the enterprise, the scope of the enterprise's business, the capitalization of the enterprise and the number of employees. Interesting efforts are under way at the provincial level to derive models from the practice experience with these charters, while more general legal frameworks for the various types of rural enterprise are being developed based on this experience (World Bank, 1988).

## Conclusions

What can be learned from the Chinese experience with common property management? On the public side, the well-defined legal framework of the village economic cooperative and its clear ownership of land have made rapid development of mountain land under forestry possible. As regards private entities, the legal position is not clear. However, the "lack of law" in China's legal culture does not prevent but rather facilitates experimentation, and that experimentation appears to have been very valuable during this time of profound transition. The local experimentation with share holding units, for instance, contrasts favourably with experiences in more formal legal systems in which the state will not acknowledge the validity of local action unless it fits comfortably into a few generalized and perhaps unsuitable forms of organization recognized by law. Contracts have played a major role in filling gaps in both the law of property and the law of associations, with charters and agreements used to define institutions and leases used to customize tenure arrangements.

On the other hand, those participating in the experimentation in China have often had their expectations upset by political vacillation and confusion over the permissible limits of experimentation (Zeng Hu, 1994). Project managers have had to work in an uncertain context in which political shifts within the party may suddenly constrain and then encourage experimentation. Such an atmosphere in the end can act to discourage collective action and common property arrangements, which are more complex to manage than a household operation including agroforestry. There is a need now for greater legal formalization, both to consolidate organizational forms and property rights and to buttress them against policy fluctuations and attempts at excessive regulation by government which undermine the new autonomy and incentives.

Moreover, the development of new organizational forms and expanded tenure options have not affected the government's desire to regulate economic undertakings closely. Forestry activities are often tightly regulated on the basis of both national law and by local decision. The 1982 Forestry Law does not require a permit for cutting scattered trees on a holding, but a cutting permit must be obtained for land contracted for forestry (art. 28). This requirement applies to both households and community management. Permit requirements are set out in greater detail in the 1986 Implementing Regulations of the Forestry Law of the People's Republic of China. Forestry operations require approval at the country level or higher, and those of more than 2 000 mu (1 3.4 ha) in size require design approval by the State Council

(art. 1). Tree felling, beyond fuelwood cutting on the "peasant's privately managed mountains", also requires permits (art. 8, pases 17-18). These permit requirements and other regulatory measures have been cited as possibly undermining the theoretical management autonomy gained through the creation of new forms of enterprise and new property rights (Menzies and Peluso, 1991).

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