

**Government Intervention and Use Rights Dynamics in Community Forestry in  
Nepal**

**Learning from Case of Palpa District**

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2003

Key words: Community forestry, land rights, conflict, intervention, indigenous rights, indigenous communities, indigenous technologies, social relationships, social norms.

## Abbreviations/Acronyms

CF	: Community Forest/ry
CFDP	: Community Forestry Development Project
CFUG	: Community Forestry User Group
DFO	: District Forest Office/r
DoF	: Department of Forest
HH/s	: Household/s
HLFDP	: Hill Leasehold Forestry Project
HMG	: His Majesty's Government of Nepal
LFP	: Livelihoods Forestry Project (HMG/DFID collaboration)
NARMSAP	: Natural Resource Management Sector Assistance Programme (HMG/DANIDA collaboration)
NGO	: Non-governmental Organisation
OP	: Operational Plan
PFC	: Production /cum Financial Co-operative
TAL	: Terai Arc Landscape (HMG/WWF collaboration)
UG	: User Groups
WRFD	: Western Regional Forestry Directorate
Ha.	: Hectare
Rs.	: Nepalese Rupees

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## **What is this report all about?**

This report is about use rights dynamics set in motion by government intervention in some selected user groups in Palpa district of Western Nepal. It is argued that intervention fails to insure precise allocation of use rights which translates into a dynamics for the re-adjustments. This is attributed both to the erroneous intervention and to the nature of use rights, which is intrinsically a contestable phenomenon. As a consequence the post-intervention scene is generally dominated by a series of claim, counterclaim followed by negotiation leading to acceptance or rejections of the claims. Naturally enough, the use rights situations change over time.

The dynamics is, however, impeded mainly due to the fact that the policy does not adequately recognise the contestable and dynamic nature of use rights. The Operational Guidelines, which do not explicitly acknowledge the contestable nature of use rights. They fail to guide the interventionists through the ways that such issues related to potential contests could be properly addressed. Both the legislation and the guidelines require precisely writing down the names and addresses of the user group households (HHs) but do not speak of what needs to be done if new claims arise after the handover. The Operational Guidelines although requires a review of the technical matters of the operational plans through their periodic revision, does not at all mention whether the constitution (and hence the constituent members) are to be modified based on new claims.

Failure of the Operational Plan to explicitly acknowledge contestable nature of use rights may be interpreted by the field interventions in a way that use rights are absolute and have either a 'yes' or 'no' answer. It could be erroneously assumed that clear use rights were 'out there' and the interventions were required to objectively pick the 'right' users from the 'wrongs' ones.

The implications of impeded contestability are more on the weak than on the powerful. This is attributable to local socio-economy and socio-culture that tends to undermine the weak.

The work is based on case studies in seven connected or nearly interconnected CFUGs. The concerned CFUGs are located in distances ranging from two to nearly half a day walk from Tansen, the district headquarters. The research methodology incorporated a mix of action research and participant observation principles. It followed essential principles of action research in that the outcomes of interventions that had been carried out while the first author worked as a DFO (1990-1992) was looked more seriously when he carried out more formal piece of research leading to Ph.D. at the University of Western Sydney, Hawkesbury (1994-2000). This work draws on to the above-mentioned research.

## **Background**

### **Community forestry from blueprint to a social process**

The later half of 1980s witnessed a paradigm shift in community forestry (CF) intervention modality in Nepal. This shift was essentially to do with intervention as a social process from the concepts that had prevailed, which saw the same as a blueprint. An inevitable need had been realised to handover the local forestry resource to the people who have had an indigenous system of use rights compared to an earlier system which provisioned such handover to village councils. Important prerequisite for such handover has been a broad-based consensus for ensuring equity in benefit sharing, compared to the prevailing system which essentially failed to have such thrusts. The role of the District Forestry Office (DoF) staff also differed in significant ways in the two paradigms so did the decision making mechanism. The new paradigm acknowledged the role of the local community in a way that they were free to make all-important decisions about sustainable forest management and benefit sharing. The DFO staff restricted themselves to facilitating the overall process. The outcome thus is a consensus based simple *Operational Plan (OP)* and the accompanying *User Group (UG) Constitution*. This sharply contrasted with the earlier paradigm in which DFO staff essentially prepared a technical management plan on behalf of the people. *Operational Guidelines* (HMG, 2001) are now available that guide the intervening staff through the overall field process. The new policy required rangers to change their traditional policing role in favour of devolution and empowerment. The concepts have been backed by legislative arrangements through Forest Act 1992 and Forest Rules 1995 (HMG 1995a)

### Learning based on the past experience

The shift is actually the eventual outcome of the implementation experience of the earlier mode in which people's participation was severely lacking. In response some more serious practitioners had attempted to look for an alternative (Gilmour and Fisher 1991). This resulted in two parallel streams of activities. One related to the study of indigenous systems of forest management so as to see what had actually worked in the village settings (see Fisher 1989, Baral 1991 and Baral and Lamsal 1991). The other was trial activities at a number of sites to see for sure what intervention modality would be appropriate (Gilmour and Fisher 1991). Based on the overall learning, draft *Operational Guidelines* were prepared in 1989. By now the guidelines have witnessed a number of revisions, the most recent was in 2001 (HMG 2001).

The new CF policy has been popular amongst a number of donor agencies that are extending helping hands for facilitating community forests handover. By now over a million hectares of forests have been handed over to some 13,000-community forestry user groups (CFUGs) (MIS data, CFDP 2003) who are managing those as per agreed OP and UG constitution.

### **Contestability under-acknowledged**

The new policy, though dynamic and innovative, I argue, does not fully acknowledge the contestable nature of use rights. No forest act, by law or the operational guidelines explicitly mention that forest use rights are contestable. Those obviously fail to illustrate a specific mechanism by which such contestability related issues are to be dealt. Consequently the responsible staff may often oversimplify the field intervention in a way that the claim issues are not adequately addressed. The impending claims also tend to remain unsorted so readily partly due to the lack of adequate degree of recognition of the matter. The implications of these obstructed contests are more on the weak than the powerful.

### **Contestability in natural resource management**

Contestability issues in the field of natural resource management, though under-acknowledged by community forestry interventions in Nepal, is not surprising given that both the natural system as well as the social systems which nurture it (or depends on it) is dynamic. Fisher (1989) in the context of indigenous systems of forest management in Nepal, for example, points out that 'indigenous use-rights are not fixed for all time'. Talle (1991) in the context of Tanzania remarks that tenure is a 'fluid' and is in process of constant change. Ridell draws a similar conclusion pointing out that tenure arrangements 'are always in a state of dynamic change' because of ever changing social systems (quoted in Talle 1991). Fingleton (1992) argues about the dynamism of customary land tenure and suggests that the systems are ever changing unless government interferes with the systems by what he calls 'legal codification'. Berry (1993), with reference from Ghana, Nigeria, Kenya and Zambia argues that land tenure in Africa is full of ambiguity and contests. This is so much so that even transactions related to privately owned land remained 'subject to multiple claims, and the power of land holders (including governments) over access to land is less than optimal.'

## Case studies

### *Mahajir Salleri CFUG (case 1)*

This relates to 84 ha. of forestland handed over in 1991 to 90 HHs (68 from Ward 5 of Bhairabsthan, 18 from Banjha and 4 from Siru Kharak). The user groups mainly consist of Pokharel Chhetris and Thapa Chhetris. While local interests for conservation had preceded the handover, it got further intensified after the handover. The forest regeneration is quite noticeable.

The group normally opens the forest once a year in winter when cleaning is done and the products are distributed equally amongst all participating HHs at a subsidized rate. Construction timbers are provided on requests in a case-by-case basis. Initially a watcher had been employed but was discontinued at a later date. They now observe self-discipline, which is found to be very effective for stopping unauthorised activities.

The number of HHs has grown to 104, which is mainly to do with new entry. The reasons for new entries are inspired by a mix of interests; that of the official group to take in and of the new HHs to join there. While the land-less people consider themselves as qualified membership candidates, it may be debated. Two land-less people (Punaram Neupane and Govinda Sharma) were initially left out presumably because of their land-lessness. They subsequently managed to join after brisk controversy. This, however, was not the case with some others who were, instead, approached by the group and asked to join. This was either because of their perceived role in protection or because of their social affiliations with the group or the both. At least a couple of individuals managed to join the group on the basis of having their rice fields within the territory of the user group. Apparently, Bir Bahadur, the elder brother of the CFUG chairman, managed to join without paying any fees. However, the fact had to be concealed for fear of having objections from the general group members. Property inheritance though important, might not guarantee an entry. The entry claim of Tilak Bahadur on the ground of property inheritance did not succeed apparently because his relation with the key persons of the group was not so congenial.

The account above should not be interpreted as if there is always a unilinear tendency of getting into the group. There was at least one case where the acquired use rights were adjourned. This was partly due to 'superiority complex' or due to the alternatives available. Siru Kharak people virtually failed to be persuaded to join the group. This was despite a series of attempts on the part of the official group, which had seen their potential role for contributing to protection system if incorporated into the group. The Siru Kharak's indifference in this case was due to their feeling that the group has been essentially limiting the use of forests in procuring fuelwood; a product they are not in need of.

Controversy for use rights prevails. Several people, particularly from Banjha, claim that their traditional use rights have been ignored. They would like to join the group but difficulties are insurmountable. The group does not generally like to add up new members. Even if they would, the level of demanded entry fee often deters new entry. Thus there tends to be a deadlock.

***CFUGs extending from Banjha to Pokhal Danda (Case 2:Banjha, Case 3:Joge Pani, Case 4: Chilaune Pani, Case 5: Pokhal Danda)***

This long tract of forestland is associated with five CFUGs (enumerated in the heading) spanning from Banjha village in the northeast to Hatiya in the southwest. These groups share major characters with Mahajir Salleri. The nature of controversy, however, differs at least in one major respect. Unlike in Mahajir, here the controversies do not limit themselves on use rights for forest products but extend to control of land. The conflict is proliferated at the ends of the continuum [i.e. in Chilaune Pani (Case #4)- Pokhal Danda (case 5) section].

Apparently, the ones who were intervened first had taken the leverage of claiming land they had wished. The ones that lay at the end of the continuum, on the other hand, failed to get such options and were naturally involved in conflict with their 'next door' neighbour. More conspicuous conflict appeared between Chilaune Pani and Pokhal Danda which nearly resulted into a violent clash. The latter group found little options and resorted to knocking at the door of the DFO for mediation when the case had failed to be resolved locally. Eventually some solution was found but no 'win-win' solution was attained. The situation at least compelled Chilaune Pani to incorporate as many as 22 HHs from Pokhal Danda but that the latter continued to lose the exclusive use rights over the forests under debate.

***Purnakot CFUG (Case 7)***

While this CFUG might share several characteristics with the other groups, noticeable differences are found in some important respects. The group members are predominantly low-caste Sarkis. A mere 4.5-hectare plot has been handed over to as many as 50 HHs. This presents an example of a place where allotted use rights were forgone and later individuals found difficulty in re-gaining the same. Some Pokharel Chhetris had forgone their rights for some time, partly because they had difficulties in mixing up with lower caste Sarkis, and partly because they had alternative forest where they could go (Mahajir Salleri case 1). Their later attempts to re-join the group faced serious resistance from the group, which denied their entries unless they were prepared to pay very heavy fees. Serious controversy persisted and the persons joined after they paid the negotiated fees.

### ***Jherdi-Nindhara CFUG (Case 6)***

This case presents an example of how the people, during intervention, try to take control of areas where some other group had a genuine claim. A section of Aamtari forest was claimed to have been invaded by this group and the affected people from Siru Kharak insistently fought for re-gaining the control. This involved several complaints initially lodged right within the official group followed by complaints to the DFO.

This case also presents an example of how the primary group takes a decision and the people who are left out find it hard to re-gain the lost rights. The ones who had migrated from elsewhere and resettled in the disputed areas had found it harder to join the group compared to the ones who settled within the undisputed territory. This applied both for deciding whether to accept at all and if so, to determine the applicable fee structure. It was reported that the required level of fees could often deter people to join. This is not to suggest that high fees would necessarily translate into refraining from buying membership. The poor were found keener to join the group even though they had to pay an exorbitant level of entry fees. To meet the costs they had to go as far as selling their pre-mature livestock or to borrow money locally at formidably high interest rates. This is inspired by their desperate desire to secure their own future and that of the generations to come.

### **Analysis**

Obviously, in the cases presented intervention failed to adequately address the use right issues. This resulted in conspicuous degree of contests leading to some readjustments of rights during the post intervention phase. The nature and extent of contests varied depending upon the types of rights that were perceived to have been lost and upon the people-to-people relationships and the people-to-resource relationships. Every single entry by and large incurs fees. The fees tend to increase every year thus leading to a higher and higher entry barrier for new entrees. Poor are often the ones who are affected most by such barrier. This is not to suggest that contests would invariably involve conflicts to gain the lost rights. While in some situations rights tend to be extended by a virtual default phenomenon, in others those may be offered owing to their reciprocal interests. Beginning active management and benefit sharing seem to have been mainly responsible for triggering the contests. The following paragraphs will furnish more detail.

### **Use rights types**

Intervention and the post intervention dynamics witnessed emergence of two major types of rights. One may be called *land rights*, which relates to *exclusive control* of rights over the forest resource under consideration. These rights do not limit themselves on the use of products and services, which the forest/s might offer but to the ultimate control over the

resources. Control includes decisions regarding how the forests are to be managed and how the accrued funds are to be utilised. The other is more simple *use rights* which limit themselves to the use of products and services. The holders of these rights essentially follow the decisions made by those who have exclusive control.

The first group of communities thus consider themselves as *core*, which, though sometimes sees the role of the other category of people (e.g. in surveillance against unauthorized use), often see them as an *adjunct* or even unnecessary 'headache'. The funds generated from CF, almost exclusively, get used in the development of areas from where the *core* community comes.

Gilmour and Fisher (1991) refer to these two types of rights as *primary rights* and *secondary rights* respectively. The alternative terminology has been used here because the *secondary rights*, in particular, may have a negative connotation at least from the viewpoint of intervention. *Secondary rights*, in Nepali, would translate to 'second class rights'- a terminology that would signify a rather reclusive meaning.

The *core* community tends to come from within one ward unless there are specific reasons to deviate. Ward # 5 of Bhairabsthan form the *core* for Mahajir Salleri forest and so do wards # 7 and # 8 of Bandipokhara VDC for Chilaune Pani and Joge Pani forests respectively. There is a deviation in Jherdi where wards #2, # 3 and part of # 9 in combination had initiated a protection system beforehand. This was because they shared complementarity in terms of insuring a protection system and in terms of benefit sharing.

Intervention seems to have resulted into loss of use rights of both types and with variable extent. Virtually all of the CFUGs have tended to miss at least some HHs that had used the forests until then. Loss of *land-rights* in Banjha-Pokhal Danda forest tract and that in Jherdi Nindhara are evidence of loss of *exclusive rights*. In these cases a section of forest patch on which a group had a genuine claim, to their dismay, had been erroneously handed-over to some other group altogether.

### **Use rights contestability**

It is natural that the loss of *Exclusive rights* and the more simple form of *use rights* tend to be contested in differing ways. *Exclusive rights* are fought more sternly than the simple *use rights*. It is plainly because it is hard for the loser to bear the pain arising from the loss of sovereignty of land to the irrelevant group. The loss has a far reaching influence as it affects not only the use of forest products but affects all areas of control which include technical forest management decisions and the use of the accumulated funds. The funds generated out of forests are nearly exclusively controlled and used by the *core group* and that rest of the segments have little say. No wonder Pokhal Danda and Siru Kharak people fought so sternly for re-gaining the control over the lost land. They wasted no time to knock at the door of the DFO when their internal reconciliation attempts failed.

The fight for simple *use rights*, unlike the case of *exclusive rights*, might often take the form of requests to the *core* group for their incorporation. The request normally ends at the CFUG committee or the assembly and tends not to reach the DFO or the authorities higher up. The reasons for the more simple form of contests in the later case are not difficult to trace. The numbers of HHs who are left out tend to be the minority. They may not chase the matter so seriously partly because they lack strong leadership for pursuing the matter further. The matter may be further tempered in situations where the contesters have alternative forests with *exclusive rights*.

When said use rights are contestable, it does not mean that fighting for rights is a **universal feature** in community forestry. Rights held by a member of the community are transferred to the respective heir after death or when family splits. This is virtually a default phenomenon for which one might not even have to apply or have to pay fees except for a nominal entry registry toll. **Such transfers if happened within the *core* would result into *exclusive use rights* and that if happened outside would result into *simple use rights*.**

### **Use rights recoverability**

While both types of lost rights may have recoverability elements, in neither case is there a guarantee for success. Where rights are recoverable, they could be costly and might be full of hassles. However, recovery in certain situations may be easier than in the others for both types of rights. Below I illustrate how recovery for certain groups of people is easier than for the others. First, more *simple use rights* will be dealt with followed by *exclusive rights*.

#### *People within the territory of the 'core' group*

People within the undisputed territory of the *core* group find it much easier to recover the lost use rights compared to the ones who are outside. The ones who are left out due to recording error while writing an operational plan might not even have to make requests for the inclusion and might not incur any fees. However, the land-less residents might find a relatively higher degree of difficulty for such incorporation as they might have been left out for the very reasons of land-lessness in the first place. The case of Punaram Neupane and Govinda Sharma (case 1) indicates this. The ones who had forgone use rights that had already been acquired might have to struggle harder particularly if their relations with the group members were weak (case 1, case 7). The intensity of struggle could be even harder if their potential contribution to the protection system is less direct.

#### *People with property*

People who have property in the territory of the *core group* have a strong case for inclusion, but may not be guaranteed. Bir Bahadur was able to join the group owing to the fact that he had some rice terrace in ward #5 (case 1). On the other hand Ramji in

Banja (case 2) and Tilak Bahadur in Mahajir (case 1) failed to be offered membership despite the fact that both owned properties in the respective territory of the CFUG.

### *In-migration*

Migration into the territory of the official group forms a robust qualifying case. However, they are often asked to pay a sum of money as an entry fee. Migrants within the territory of *core* group might find it easier to get entry compared to areas where rights are limited to a simple form. In-migration within the *core group* would entail more *exclusive land rights* and the same within the area where *simple use rights* persisted would result into rights of conformable effects. Migration into the disputed boarder regions would result in disputable claims. Thus, in such cases the claim status of the new migrants and those who were there beforehand might not differ significantly. Obviously both would have to struggle in equal footings if they wished to pursue a membership. However, it appears that if such migration had an origin in the *core* area, the extent of incurred dispute could be modest. But this might apply to the migration of male members. Women from the *core* if married to a HH in the disputed territory might not be considered for extension of membership.

### *Potential protection contributors vs. the others*

Post intervention dynamics show that the CFUGs tended to incorporate people who could potentially contribute to the protection system. This is for the pragmatic reason that unauthorized forest entries might not be controlled unless they create a workforce with vested interests upon the forest from areas all around it. Such people are incorporated some times for free or with subsidised fee owing to their reciprocal interests.

People with a less conspicuous role in contributing to the protection system find it hard to join. In such situations kinship or other societal relations might play a decisive role. Those who have some relations with the dominant figures of the *core group* tend to find it relatively easier to join compared to the ones who do not have such relations. The former category may get concessions on the entry fees over the latter category.

The *exclusive rights* related to forestlands, unlike the *simple use rights* issue dealt with above, does not have a conspicuous claim typology. People who perceive themselves as indigenous heirs of the resource tend to claim back the resource from anyone the resources might have been erroneously handed over to. Ward people, who (sometimes intra-ward or inter-ward if they have specific reasons to do so) tend to be considered as the valid heirs, are likely to fight with those to whom the resource might have wrongly been allocated. Though severe fighting is involved, the ones who have had indigenous *de facto* rights are likely to win **eventually**. This is essentially due to weak morale associated with those who had unduly claimed the area in concomitance compared with higher will power of the loser party who are determined to regain their lost control. While this tends to be the most likely scenario, this might not be quite the case where the errors are accumulated at the end of the continuum (Tract of land from Banjha to Pokhal Danda, Case 2, 3, 4 and 5). The complications met in such cases are due to complexities

dispersed into number of linked cases. Consequently such cases are very difficult, if not impossible, to solve.

It may even be argued that attempts to solve such issues on the part of the DFO might be philosophically inconsistent. How can a DFO intervene in reallocating the resource when it is no longer a matter under his control? A decision to intervene in such affairs might be labeled as intrusive.

### **Use rights 'evokability'**

'Evokability' unlike 'recoverability' discussed above, refers to re-activation of the use rights that had already been acquired/allocated. People may relinquish the acquired use rights sometimes temporarily or at times permanently. Those who out-migrate permanently may decide to relinquish their use rights forever. It is striking that such relinquishment does not get anything in compensation irrespective of what potential asset the HH concerned might have had in its share; out in the forests or; in the CFUG funds. Migrated HHs that decide to come back to the original place might find it easier to regain membership. While there is not evidence to be conclusive (there are actually few cases where people who migrated out of the area had actually returned), there are reasons to believe that people show flexibility in incorporating such members. Apparently such cases might require a formal application and payment of prescribed fees in order to be considered. The ones who out-migrate temporarily for employment elsewhere (in-country and abroad) reserve their rights, which are invoked when they return. However, they may be required to pay back their part of the contribution as arrears when rights are sought after their return. This may happen especially in situations where considerable investments have already been made in the matters of forest development or that of broader community development.

In exceptional cases, the ones who already have had a membership might decide to stay away from the CFUG activities thus leading to a situation whereby their use rights get adjourned. Such cases may get relatively less sympathy compared to the case of 'out migration' when trying to rejoin. Similarly, the defaulters' use rights may be adjourned unless they pay back their outstanding dues.

Someone rich HHs might decide to reserve their use rights even though they might not use the forests for the moment due to other alternatives available. However, this may require continued fulfillment of common liabilities just like any body else in the group.

### **Basis of entry fees**

I have noted that the new entry into the CFUG often incurs fees. The basic premise is obvious. The newly joined member like all the ones who were there beforehand, would hold a share in the common property (the forests as well as the funds) and hence needs to pay for the same. While every group tends to conform to this basic premise, they are likely to deal with this matter rather differently.

The ones who had been left out due to recording error would not be charged fees provided that the person had immediately drawn attention of the group about the error and he had an intention to be a part of the group. Hesitation, however, may have a serious consequence. **This may be indicated by at least four cases in Purnakot (case 7) where** the concerned HHs, despite their initial membership had decided to stay away and did not fulfil their liabilities. While one of them eventually managed to re-join with a great deal of struggle, at least a couple of others had failed to succeed despite a serious attempt on their part.

The new migrants into the clear boundary of the *core group* though are strong candidates for acquiring use rights, may have to pay certain fees. The group may decide to subsidize the entry fees if they feel that the new entry has a potential for reciprocity in social or conservation matters.

The ones who can contribute to the protection system owing to their strategic location are often encouraged to be a member and the entry fee for them may be free or heavily subsidized. However, in a multiethnic area discriminatory treatments on part of the executives might result in an objection and consequently **the reality** may have to be concealed (Mahajir, case 1) or concessions might not at all be applied. (Jherdi, case 7).

The ones who are neither within the clear boundary of the CFUG nor have much protection potential find it hardest to buy membership. Such people might be denied a membership and, even if accepted, are asked to pay an exorbitant fee. In such situations, they may be asked to pay the proportionate share based on what might have already been commonly invested into the system. This actually tends to create too big a barrier for a new entry particularly if the group can succeed in demonstrating that it has made substantial common investments over the years. The official group thus might find good excuse in annulling the claims, specifically of those to whom they would like to keep out. It is for certain that the entry fees tend to be cumulating every year and at one point in time the fee might be too huge to be paid. This obviously would mean that CFUG is likely to become more and more impervious all the time and the weak tend to be the ones to suffer most by it.

### **Regulating Membership**

A widespread interest to buy a membership means that the official user group would resort to a variety of means by which the numbers of entries are regulated. The prime basis, as mentioned earlier, is the existence of farm or allied property the HH holds in the territory of the *core* group (which also means in the proximity of concerned piece of forest). The logic is based on the premise that the concerned HH has a dependency on the forest and thus would deserve a membership.

However, it is likely that there are too many people meeting these qualifications and the group might resort to apply some additional qualifying conditions. This, as has already been discussed, takes the form of an entry fee. The entry fees are normally fixed in such a way that the less enthusiastic would be discouraged thus leading to an automatic drop

out. The cumulative investments made by the group that tends to be the basis for calculating the entry fee structure. Sometimes they may even decide to evaluate the entire forest resource as a common investment so that the equivalent cash figure becomes too high to afford and the applicant decides to drop out.

The rights are almost invariably attached with liabilities. The prime idea here is to sort-out the undue claims. The rights holders not only enjoy their rights but are also required to fulfill a number of obligations. These might include activities like taking turn in the forest, putting the fire out in the event of forest-fire and a voluntary contribution in development works (like school/village track/drinking water/forest plantations etc). Annual forest tending though sound like liabilities to be fulfilled, are actually considered as 'rights'. This is owing to the reason that a number of products like fuelwood and poles are the things that come out of such operation which are normally distributed amongst the participating HH at heavily subsidised rates. However, in situations where the group intends to discourage extra membership, it might account for all such activities as liabilities. This would certainly help deter the new entry interests.

Some groups (for example Joge Pani: case 3) prohibit members from sending a hired labour for the purpose of forest tending. This is to dissuade the profit oriented business people who otherwise would hoard the products for the future or sell them for profits. The described conditions, at least in some situations, seem to have deterred the potential contestant from buying membership. There was evidence in which already acquired membership were given up because the members failed to fulfill too many liabilities. **This was particularly in situations where memberships existed in a number of CFUGs.**

While the aforementioned qualifications tend to be the agendas of more open nature, others are rather hidden. Kinship and other societal relationships and potentiality for procuring a contribution to the effective protection system (through social influence and locational vantage benefits) could be the agendas of latter category. These actually determine whom to give priority when the group is trapped in a situation where the claims are too many.

Quotas may be fixed in situations where kinship or societal relations are less clear or when they see a danger of being blamed for having taken sides. This is what the Jherdi group (case 6) did when it saw that as many as 30 HHs desperately sought a membership. The group thought that the number was too big to accept. They eventually approved a quota for 10 HHs and passed on the responsibility to the local ward chairman to decide who would receive membership.

### **Pseudo-consensus**

The text above should not give an impression that the decisions regarding the new entries are made by the whole group in a democratic way. Executives (or some influential individuals) might make the actual decisions and the rest of the CFUG members find no options but to give their consent. This can be done by some manipulative means.

The committee meetings, which often happen prior to assembly meetings, might virtually decide whether new entries are to be entertained and if so, how many, which ones, and under what fee structure. During the assembly meetings they tend to float the impending issues but in a way that their pre-conceived ideas are simply ratified rather than being openly discussed. Closed or leading questions are essential means through which such ideas get approved through assembly. Sometimes they even declare their decisions but pretend people to have given members a chance to express their reservations. The outcome is that people do not dare to challenge the proposed ideas and thus the proponents succeed in getting their decisions ratified. Thus the case tends to be a pseudo-consensus rather than a genuine one.

### **What leads to a claim?**

Fisher (per. com.) observes that people might not bother to start contesting for their rights when a resource has no great value, but may make claims if the potential value changes.<sup>1</sup> In fact such instances are of common occurrence in the Nepal's rural areas where people do not show much interests in ascertaining their private claims on lands until it gets touched by a road access, which tends to increase its value by many folds.

Control and management by the official group could actually stimulate contests from those who perceive to have been alienated. The forests had remained to be the source of varieties of products and services before the handover. Previously the use of smaller products like forage grass, twigs, leaf litter and deadwood were not subject of any actions either by the DFO staff nor by the members of the local communities. The post hand-over situation changed the scenario so that all such products were for the exclusive use of the official groups. The official groups while using the forest products in relatively liberal ways within themselves impose a heavy ban on all types of products to the outsiders. Breaching of the rules is liable to heavy fines. This situation can be contrasted with the earlier one in which products like grasses, twigs and litter could be collected free of costs all the year round.

These actually would translate into lodging of a claim by those who suffered. While claims generally are prompted by current needs, some try to secure their own future or that of the coming generations by procuring the membership now. They are aware that a failure to buy a membership now would mean increased difficulty to do the same in the future. This is both due to possible reluctance on the part of the *core* group to accommodate the new members and to the increasing level of potential fees. In some situations, the interest to join may not necessarily be prompted by their requirement of forest products but by their interests to be a part of community.

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<sup>1</sup> His remarks relate to a land in a remote area in Papua New Guinea suddenly being valuable when a radio tower was constructed on it, leading to potential claim for compensation from the government and disputes between different groups about whose land it was

The case of claims for lost *land rights* may be even more conspicuous. It is certainly not easy to bear the pain arising from the total loss of rights over land they perceived was theirs. As mentioned earlier the loss does not necessarily limit itself to the use of forest products but to the loss of overall control over the land thus instigating an even more robust form of claim.

### **Need-Supply dynamics determining use rights claim**

What is currently required to join and what the forest in question can offer is the primary calculus to apply in deciding whether to tender a claim. This however, does not mean that this is the sole basis. Sometimes they calculate the overall worth of getting a membership by applying cost: benefit ratio. While time, money and labour are accounted as costs (or liabilities), products and services the forest is likely to give is accounted as benefit. Claims are tendered if and when benefits outweigh the liabilities. One man grumbled in Purnakot against the decision of the committee for not having opened the forest for grazing. This man would deny joining even if the chance had been given because he did not see the benefits in taking a membership. This however, would not apply everywhere. Many people would still like to join even if the liabilities overtake the benefits. Two things tend to help shape the decisions: i) wide spread unemployment and underemployment in the rural area ii) future potential of the forest in question.

The prevailing unemployment situation would mean that people might choose to join even when liabilities are higher. This is because liabilities often take the form of labour contributions rather than cash. So, the larger liabilities do not necessarily translate into extreme financial stress. Likewise, one might also anticipate his/her own future product demand (not necessarily quantitatively) and the likelihood of fulfilling it through the forest under consideration. While making a decision the primary interests are on timber, which is followed by other products like fuelwood, grasses, twigs and leaf litter.

It may be hypothesised that, if unobstructed, the interest to use rights claims might change over time. Interests not shown now do not necessarily mean that indifference is maintained in the future. However, the new entries are likely to be obstructed by restrictions the group might apply. The ones who desperately want to secure their future would like to join now to escape the danger of permanent alienation. However, not all are able to join for one reason or another. While smaller entry fees tend to appeal both to the rich and the poor alike, larger fees might stop some of the rich people who have alternative source of forest products of their own. The poor with little alternatives might choose to join even with the higher level of entry fees, no matter how high economic costs it might entail. This, however, is not to suggest that the poor are sure to join. The ones who fail to arrange money (the source is often a loan from local money-lenders for which the interest rate turns out to be as high as 48 per cent per annum) may only be heavily distressed for having failed to buy a membership.

### **Contest situation for the weak vs. influential**

I noted that though of varying extent and nature, contests might be considered as nearly a universal future. It may, however, be mentioned that claims and contests are less spontaneous than what potentiality actually exists. The powerful are normally the ones who may have already succeeded in acquiring lost membership. The chances of being successful are enhanced if the concerned ones have a vantage location for overseeing unauthorised activities.

Just on the contrary, the ones who are socially weak find it too difficult to join. Recoverability tends to be hindered both because of their social and financial powerlessness. The group tends to prefer the more influential people in their groups compared to the weaker ones. This is mainly due to the fact that more influential people on top of their bargaining power are considered to help insure more effective form of compliance in the forest. This is not to suggest that the poor would never succeed in regaining the lost rights. The Malmul case suggests that the poor managed to join despite the fact that the entry fees were fixed at a very high level and they had no option but to resort to borrow money at a formidable interest rate. Though it may sound surprising, a rich *Lahure*<sup>2</sup>, decided to stay out of the group as he thought that the required fee was too high. The poor on the other hand chose to join the group even in an economically formidable situation. The economic cost of joining is too big for the poor who are often forced to borrow money from the local lenders at exorbitantly high interests or sell their livestock prematurely at a meager price for paying the same.

### **Intervention and contestability**

Contestability is certainly a common feature in CF. In all of the study sites contests exist, though of differing nature and extent. This is in fact a matter of common occurrence all over Nepal. For example, ICIMOD conducted a workshop, which concentrated on conflict: 'community-to- community level conflict' (Banko Jaankari, vol 5 No. 3). Praksah Lamsal (pers. comm.) points out an interesting case from some parts of Myagdi District where people did not consider the forests to have been handed over until a community procession walks around the forest with loud traditional music consisting of drums. The practice shows how some communities well acknowledge the contestable nature of CF.

It may be noted that the sites with more careful intervention seem to have a lower degree of conflicts and contests compared to sites where intervention had followed more of a 'blueprint' approach. The Mahajir and Purnakot cases witnessed more careful intervention. The major contest cases were addressed prior to the forest handover. In contrast, the CFUGs in the Banjha<sup>3</sup>-Pokhal Danda section as well as in Jherdi, the forest handing-over was done with relatively little homework and many conflicting issues remained un-addressed by the intervention. No wonder in these cases the section of forestland under genuine claim of one group had gone to some other group altogether.

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<sup>2</sup> A man who worked in foreign country at certain point and time of his career.

<sup>3</sup> Banjha case, in fact differs from the rest of the forest tract where the problems may have roots in biases made by two local forest guards (who are also the CFUG members) who seem to have taken some lands under the claim of adjoining CFUG (i.e. Joge Pani).

### **Hindered use rights: some Implications**

The hindered use rights may have both biological as well as social implications. The biological implication is pretty straightforward. Those who fail to join may not cooperate in conservation, which is bound to have an impact in the forest condition. The implications of lost *land rights* may be even starker where the losers are large in number and high in will power. In these cases the reaction to the failure to procure the resource can result on an attack on the forests. Evidence is available from Pokhal Danda group and Jherdi group. In Pokhal Danda, the fierce struggle continued between the official group and those who hitherto claimed rights. This culminated into a virtual war between the official group and the rebelling party. This effectively stopped the official group from entering into the disputed section when it had scheduled a thinning operation there. At this particular juncture a compromise was reached between the two parties. The rebelling party would console itself of the loss provided that the other party was prepared to give entry to as many as 22 of their HHs. There was strong evidence to suggest that if they had not found a mediating solution, the rebelling party would have attacked the forest resource leading to its virtual elimination. This is, however, is not to suggest that the mediated solution was perfect. It was in fact less than legitimate solution for the loser party who was forced to compromise for the *use rights* of a few with the *land rights* of the whole community. The Siru Kharak people in Jherdi had also planned similar actions if Jherdi group was not prepared to surrender the land.

The social dimension is of a more sentimental nature. It is not moral for the intervening agency to perturb the use rights in a way that the weaker sections are the losers. Many writers see the value of equity in cost and benefit sharing of community forests and argue that this is a fundamental question community forestry needs to address (Malla 2000, Timila 1999). Many Nepalese forestry projects now rightly perceive that the community forestry programme of Nepal has to go beyond the forest-to-community realm and embrace the broader livelihoods dimension. But it is apparent that if forest use rights were lost people would actually lose the very basic platform from which to make their livelihoods and bargain for better equity in cost and benefit sharing. Thus insuring secured use rights should precede the intra-group livelihoods and equity issues.

### **Why things went wrong?**

It appears that people take undue advantage of weak intervention and do not necessarily limit their claims to lands on which they have had a sole control over. Territories of the others are also claimed sometimes knowingly and sometimes unknowingly. Even in situations where HHs exert precise claims over lands, they are not likely to accommodate the use rights situation in absolute form. They intend to maintain low membership, has the consequence of use rights alienation for various HHs. Gilmour and Fisher (1991) rightly emphasise that people would like to take advantage of intervention to strengthen their social positions.

There are reasons that tend to hinder the claims from those who perceived to have had use rights on the resource previously. The first and foremost reason is in what may be called the level of maturity of use rights. It is apparent that use rights were evolving and were far from being fully developed at the point when interventions were made. Ceasing of *Chitedari*<sup>4</sup> system in the post-1950s had of course helped develop use rights to some extent (Baral 1999). However, the mere presence of DFO machinery until recently must have hindered the development of a clear form of use rights. Prior to the intervention, of course, they could quite freely use primary products like grasses, twigs and leaf litter. The products like fuelwood (particularly from live trees), on the other hand, were restricted and still worse were the restrictions on timber. No wonder people bothered ascertaining use rights in the forest resource. The less precise use rights situation opened up avenues for undue claims. The claims were sometimes false (with mal-intention) and sometimes just imprecise (not necessarily with bad motives).

We saw that except for Mahajir, Purnakot, and Banjha the user group formation process, against what is the theory, had the characteristics of a blueprint approach. The problems brought about by an underdeveloped form of use rights seem to have been complemented by the way the ranger had intervened. The processes in Joge Pani, Chilaune Pani and Jherdi Nindhara were virtually blueprints where handing over were done simply by organising a couple of large meetings where people did not really have had a chance to 'churn-out' the potential claim issues. In fact, many who perceived themselves as genuine use right holders were not invited to the meetings. No wonder they have had no chance to tender their claims, let alone getting their issues discussed or resolved.

There are other factors, which prevented people from claiming. One could be the problem that lingered after the PF/PPF mode of community forestry, which was actually withdrawn, before the assignee had exercised control. Though terminated the programme contributed towards a state of confusion in the local community. Some people seemed not to have taken an interest to join because they had an impression that the current CF system, like its antecedent (PF/PPF system), might be simply a transient step and they might not have to really worry about ascertaining use rights. This held true particularly for basic products like dead wood, grasses and leaf litter which were never restricted during the earlier CF system.

Of course the products of day-to-day use had never witnessed a ban either when the forests were under official control of the government or when it came to the hands of the *Panchayat*. No wonder they believed in history and failed to come forward with claims. This is especially true in the context that intervention had failed to explicitly make the people understand the real implication of the current form of handover that proved to apply stringent rules against all types of uses. The current community forestry system of course lacks versatility in letting the people use the resource by creating a situation of either 'get a full fledged membership and a full fledged use rights' or 'refrain from using at all'. There are logical reasons why such rigidity has been observed. However, the point is that such inflexibility might have serious implications particularly on the poor.

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<sup>4</sup> Chitedari is a system in which the Ranas employed guards to have a surveillance over the local forests

Sometimes the people were reluctant to be a part of the group on their own accord because they feared that such a move might create a situation leading to what can be called a *compliance trap*. The fear is associated with the inference that should they decide to formally join the group, they would be forced to comply with the set rules, which might have implications on their access to the forests.

## Discussion and policy implications

Intervention may not necessarily allocate resources to all those who perceive to have a genuine claims over the forest and the related products and services. No wonder the post intervention dynamics has been characterised by claims and counterclaims of lost use rights in many cases and adjournment or evoking of the already acquired rights in the others. Thus use rights are essentially an evolving process perpetuated by on going contests. Beginning of active control/management and subsequent benefit sharing and use of the funds by specific group sets contests in motion. The more influential groups or individual HHs are often the ones who tend to gain and the weaker are the ones to lose in the overall phenomenon. Even when the weaker section manages to buy membership, the economic price they may have to pay tends to very formidable. The root causes of erroneous allocation of use rights during the handover are attributable both to 'erroneous intervention' and to 'underdeveloped use rights'. This tends to have the following policy implications:

- Promote indigenous systems (by allowing *de facto* control and restricted use). [Clearly, the purpose is to allow the use rights to take shapes when official handover would begin]
- Follow a more rigorous social process. [The obvious purpose is to try sorting out genuine claim issues]

Resorting to above stipulations might help allocation of use rights in much more precise way than what the situation stands today. However, given that the use rights are contestable by nature, there is a need to acknowledge this reality and open up the avenue for more spontaneous contests during the post handover phase. This would necessitate an added policy requirement.

- Keep the door open for contests. [A close-door policy might affect the weak more than to the powerful. The more powerful may be the ones to make their way into the group anyway and the victim of the closed-door policy thus might be the weak]

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