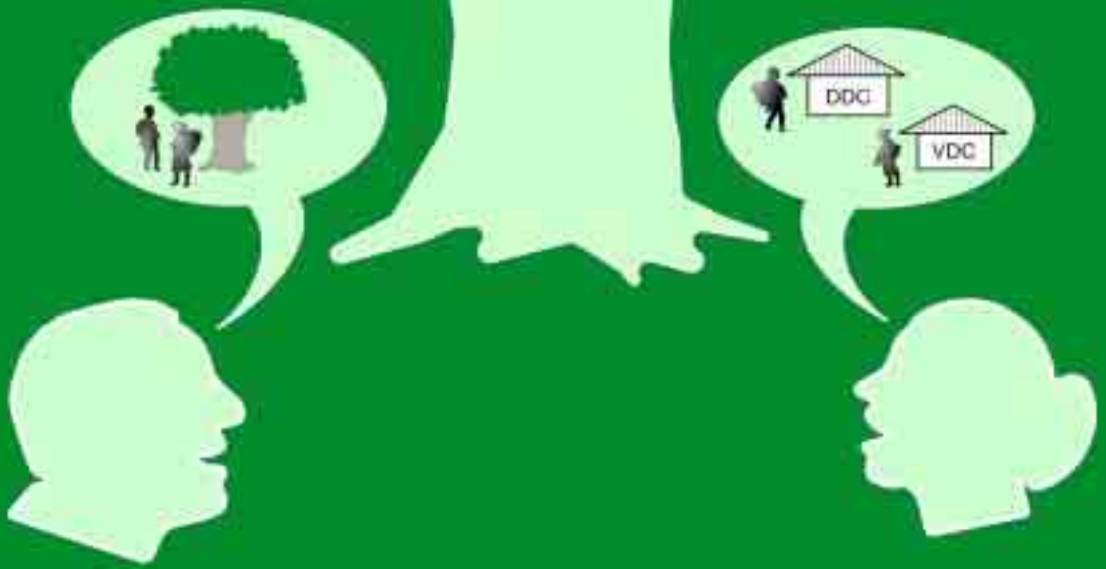
Potential for Conflict

Community Forestry and Decentralisation Legislation in Nepal



ICIMOD

Talking Points

1/02

about ICIMOD

The International Centre for Integrated Mountain Development (ICIMOD)is an international organisation devoted to development of the Hindu Kush-Himalayan region covering all or parts of eight sovereign states. Afghanistan  , Bangladesh  , Bhutan  , China  , India  , Myanmar  , Nepal  , and Pakistan  . The Centre is located in Kathmandu, Nepal. The primary objective of the Centre is to promote the development of an economically and environmentally sound mountain ecosystem and to improve the living standards of mountain populations.

'Talking Points' is a new series from ICIMOD that will contain short presentations of topical, controversial, or problematic themes, where general consensus has not yet been reached or where action may be appropriate. They are intended to stimulate thought and discussion, their contents should not be seen as definitive statements.

Potential for Conflict

Community Forestry and Decentralisation Legislation in Nepal

Narayan Belbase
and
Dhrubesh Chandra Regmi

February 2002
International Centre for Integrated Mountain Development (ICIMOD)
Kathmandu, Nepal

Published by
International Centre for Integrated Mountain Development
G.P.O. Box 3226
Kathmandu, Nepal

ISBN 92 9115 460 1

Editorial Team
A.B. Murray Shrestha (Editor)
Rosemary Thapa (Consultant Editor)
Dharma R. Maharjan (Technical Support and Layout)

Printed and bound in Nepal by
Quality Printers Pvt. Ltd
Kathmandu

Preface

The way in which Nepal's forests and other natural resources are managed is profoundly important for the well being of the people, given that a large portion of the population depend on the forests in their day-to-day life. It is now well recognised, that to ensure sustainable forest management the people most closely concerned — the forest users – must be actively involved and able to take decisions, carry out tasks, and also benefit. There has been progressive legislation in Nepal over the past decade designed to achieve this, in particular the Forest Act of 1993 with its focus on community forestry and handing over forest to user groups. However, 'decentralisation', the devolution of powers to local communities, is not just important for forestry, it is an approach being used for a whole range of management tasks in communities. The Local Self-Governance Act of 1998, which replaced three earlier local government acts, aimed to involve local people to the maximum extent in the development process. Under this act, local elected government bodies have powers and functions (and responsibilities) over eleven broad areas including such things agriculture, irrigation, soil erosion management – and 'forest and environment'.

The inclusion of local level authority over forests in different ways in there two acts opens up an area of contradiction and is a potential source of conflict. There are similar contradictions in the provisions of other acts like the Nepal Mines Act 1966 and the Soil and Watershed Conservation Act 1982, although these are possibly not as grave as the contradictions between the Forestry Act and the Local Self Governance Act.

ICIMOD, through its Natural Resources Division, has taken an active interest over the past years in the introduction of community forestry in various forms in countries across the Hindu Kush-Himaklayan region, and its contribution to enabling more sustainable use and management of natural resources. We have endeavoured to collect and disseminate information about different practices and to bring different groups together to exchange views and to develop partnerships that contribute to the success of community forestry. Community forestry has been particularly successful in Nepal, and we are concerned that this success should not be threatened by conflicts that simply arise form a lack of clarity in the legal provisions. For this reason, we are very happy to be able to publish this paper by two distinguished experts on environmental law, with a clear academically precise summary of the situation, and suggestions on the changes needed to ensure clarity in the provisions. It is a thought provoking document, and we hope it will stimulate discussion –and action – that will help facilitate the smooth working of the community forestry programme in Nepal.

Anupam Bhatia

Executive Summary

Over the past decade, the Government of Nepal has passed progressive legislation regarding decentralisation and the devolution of powers to local communities. These include the Forest Act of 1993 and the Local Self Governance Act of 1998 (LSGA). The following paper analyses the provisions of these Acts regarding the management and development of forest resources. It also considers legal provisions pertaining to other natural resources. In addition, the difficulties inherent in each Act and overlapping provisions between them are examined.

Community forestry, through which forest resources are developed and managed with the active participation of local forest user groups (FUGs), forms a major part of the Forest Act. However, in giving certain powers over forests and the environment to village development committees (VDCs), the lowest tier of local government, the LSGA opens up an area of contradiction and possibly conflict between these two institutions. VDCs, as elected bodies, have a broader mandate than FUGs, and could potentially seek to manage their own community forests or have local FUGs under their own control.

The paper makes several recommendations on how to improve the community forestry programme, and suggests the development of a legal framework to reduce the adverse effects of contradictions in sectoral legislation. The authors emphasise the need for consultation and serious dialogue between FUGs and local, elected institutions to address the concerns of local government, at the same time as maintaining the autonomy, powers, and functions of the FUGs.

Acknowledgements

The authors wish to express their gratitude to Dr. Pralhad Yonzon, Dr. K.R. Panday, Dr. K.K. Panday, Mr. Krishna B. Shrestha, Mr. Hari P. Neupane, Mr. Khagendra Sigdel, Mr. Nick Roche and Mr. Anupam Bhatia for the valuable suggestions so generously provided during the preparation of this paper.

Acronyms and Abbreviations

BZMR	Buffer Zone Management Regulations
CBO	community based organisation
CF	community forest
CFUG	community forest user group
DC	district council
DDC	district development committee
DDCA	District Development Committee Act
DFO	district forest officer
DLSG	decentralisation and local self governance
DoF	Department of Forests
DSCWM	Department of Soil Conservation and Watershed Management
DWRC	district water resources committee
DWSO	district water supply office
FA	Forest Act
FUG	forest user group
HLDCC	High Level Decentralisation Coordination Committee
HMGN	His Majesty's Government of Nepal
LSGA	Local Self-Governance Act
MFSC	Ministry of Forest and Soil Conservation
MPFS	Master Plan for the Forestry Sector
NGO	non-governmental organisation
NPC	National Planning Commission
NPWCA	National Parks and Wildlife Conservation Act
SWCA	Soil and Watershed Conservation Act
UA	users association
UC	users committee
UG	user group
VC	village council
VDC	village development committee
VDCA	Village Development Committee Act
WCO	watershed conservation officer
WRA	Water Resources Act
WRR	Water Resources Regulations
WUA	water users association

Contents

one
historical overview

Over the centuries, local hill farmers in Nepal have established their own systems for managing local forests. These systems involved locally accepted rules, through which a clearly defined group of beneficiaries regularised forest use and excluded outsiders (Shrestha 1996). Such rural communities often kept a patch of forest as 'rani ban' (queen's forest). The use of such forest was permitted only for a few months each year, and the rest of the time it was left undisturbed to regenerate. This may be the practice that has evolved into Nepal's current community forestry system.

The rani bans were strictly indigenous. Breaches of the villages' set codes of conduct were punishable, and other villages in the locality were likely to have honoured the designation of a forest as rani ban. Today, many communities in Nepal's hills still manage their forests successfully, irrespective of laws and ownership (Joshi 1997).

Before 1957, the state exercised little control over the forests, and with the virtual absence of state regulation and control, local villagers themselves controlled forest use. Because the future of the forests was never considered, the question of incentives to regulate forest consumption and invest in forest resources did not arise (Palit 1996). The local population collected what it needed from the forest without paying any fees, and in return bestowed a gift ('theki') on the village functionary (Mahat et al. 1986).

In 1957, His Majesty's Government of Nepal (HMGN) enacted the Private Forest Nationalisation Act to nationalise all forests in an effort to prevent their destruction. Misperceiving the basis for the problem of countrywide deforestation, this Act inadvertently transformed all forestry activities into a constabulary. Indigenous communities' forests were appropriated and their traditional rights taken away. Villagers reacted angrily to nationalisation, fearing it would curtail their customary rights of access and use. The Act offered no compensation for soon-to-be deprived landowners, so many purposely deforested their holdings to avoid nationalisation (Khadka and Gurung 1990). Communal responsibility for forest management disappeared. Forests were converted into open access areas as a common property resource, with the communities having no stake in forest preservation. At the time of nationalisation, however, the state was unable to protect and manage the country's forests as it lacked the necessary institutional capacity (Palit 1996).

The Forest Act of 1961 entrusted administration and control of the forests to the state. The Act defined forest categories and covered the description, registration, and demarcation of forests. It also defined the duties of the Department of Forests (DoF), listed forest offences, and

prescribed penalties (Mahat et al. 1986). The Act sought to restore governmental control over what was now seen as the national forest patrimony by transferring some state-owned forests to the local level, while formalising village panchayat usufruct[1] rights over others (Talbott and Khadka 1994).

By the mid-1970s, policy-makers realised that the participation of local people was essential for the effective management of local forests. In 1975, the government sponsored a forestry management conference in Kathmandu. Forest officers from across the country met with senior officials of the DoF and related ministries in a 3-day meeting that stretched to 23 days, an indication of the issue's importance. As a result of the conference, the involvement of non-government organisations (NGOs) working in the forestry sector greatly increased. (Talbott and Khadka 1994).

The meeting was followed by a series of legislative enactments that brought Nepal incrementally closer to its current emphasis on community forestry. The National Forestry Plan of 1976 explicitly recognised the important role local communities play in managing forest resources. The 1977 and 1978 amendments of the Forest Act of 1961 categorised Nepal's forests into national, panchayat, panchayat protected, religious, leasehold, and private forests. The amendments provided for vesting forest protection in the 'panchayat', the lowest level of the political body, in the form of panchayat forests and panchayat protected forests, but not for vesting such protection in a forest user group (Kanel 1993). The Panchayat Forest Rules of 1978, the Panchayat Protected Forest Rules of 1978, and the Leasehold Forestry Rule of 1978 made some effort to mitigate the negative effects of the Private Forest Nationalisation Act of 1957, especially the disincentive to manage resources in a sustainable manner.

Success was limited, however, and the area of forest that was handed over represented only a small fraction of the total forest area, more of which was further degraded or lost during these years. A major reason for the disappointing results was the impractical nature of the rules, which failed to create an environment for the full participation of all users. They did not provide a clear procedure for the transfer of authority for the protection, management, and utilisation of forests to the real users (DoF 1997). The local political body was too large a unit to develop a genuine capacity to supervise and manage local forests. This failure is amply demonstrated by the decrease in forest area from 6.5 million hectares (ha) in 1965 to 5.5 million ha in 1990 (Shrestha 1996).

Master Plan for the Forestry Sector 1988

The forest sector policy of the government, first declared in the Sixth Five-Year Plan (1980-1985), emphasised community participation in the management, conservation, and use of forest resources. The Seventh Five-Year Plan (1985-1990) reiterated the need to 'hand over' government forests to the community. HMGN recognised the need to frame a policy that would provide a comprehensive framework for the systematic development of the entire forestry sector.

In 1986, the government initiated a formal review of forest policy that culminated in the Master Plan for the Forestry Sector 1988 (MPFS). The MPFS provided a policy background and planning strategy for forestry by setting medium- and long-term objectives into the next century (Palit 1996). The MPFS objectives are to meet people's basic needs for fuelwood, timber, fodder and other forest products on a sustained basis, and to promote people's

[1] The right to enjoy the use of and income from another's property; in the Himalayan region used to mean the benefits themselves (the income and produce)

participation in the development, management, and conservation of forestry resources (MPFS 1988). The third objective of the plan is to work towards community management of the country's forests.

The plan states that: "The principles of the decentralisation policy will be applied to the forestry sector by community forestry, which will have priority among other forest management strategies. Priority will be given to poorer communities, or to the poorer people in a community. If the availability of forestland exceeds the needs of the local communities, the excess will be allocated for forest management in the following priority sequence: people living below the poverty line, small farmers, and forest-based industries" (MPFS 1988).

The MPFS equally addresses the issue of women's participation by stipulating in its guidelines that one-third of any user committee's members should be women. The MPFS institutionalised the programme approach, introducing six major forestry sector programmes. Among the six, the Community and Private Forestry Programme is the largest (DoF 1997). Its policy supports the development and management of forest resources through the active participation of individuals and communities to meet their basic needs, and embarks on the phased handing over of all accessible hill forests to communities, to the extent that they are able and willing to manage them.

Following changes in the political system in 1990, the community forestry regulations were revised. As a result, it is now possible to hand over a particular forest to a user group (UG) for its management and use rather than to any political unit. The district forest officer (DFO) can form and hand over forests to UGs and provide technical assistance. The cost of developing community forests is partly subsidised by the government, although all tangible benefits derived from such development go to the UGs. Most development costs, however, are borne by the community.

Decentralisation Initiatives

Almost simultaneous with the development of community forestry policy in Nepal was an initiative towards decentralisation. Nepal's decentralisation policy evolved through different stages from 1965, emerging as the Decentralisation Act in 1983. The Decentralisation Plan of 1965 had four fundamental goals and objectives (Shrestha, 1997):

- mobilisation of local resources for economic development,
- growth of local leadership,
- democratisation of the administration, and
- enhancement of efficiency and effectiveness in administration.

The Act sought to enhance the government's outreach capacity by making use of the panchayat system and by strengthening the institutional capacities of local beneficiaries. It also gave local people control over local forest management with the help of government foresters, who were to serve as advisors and consultants.

The Decentralisation Act of 1983 represented an important milestone in the government's campaign to surrender resource management to local communities. This mission was established in the preamble to the Act:

> "…. it is expedient to decentralise authority in order to enable the people to take decisions and make arrangements themselves in matters relating to their day-to-day needs."

The Decentralisation Act specifically promoted the UG concept as the most effective approach to the development and management of natural resources in local communities and set the tone of legislative development in Nepal, particularly with regard to the government's willingness to devolve authority to the local level. Political sceptics however, saw the Act (especially its first amendment) as the national government's attempt to secure power by increasing the access of local political elites to development largesse. This Act became virtually defunct after the restoration of multi-party democracy, the promulgation of the Constitution of the Kingdom of Nepal in 1990 and the enactment of local government related legislation, and was repealed after the Local Self-Governance Act 1998 was passed (LSGA Section 270[1]).

To give impetus to the government's decentralisation initiative, a High Level Decentralisation Coordination Committee (HLDCC) was established in April 1996 under the chairpersonship of the prime minister. The committee's report, 'Decentralisation and Local Self-Governance' (DLSG), was made public. Its principal policies relating to decentralisation are as follow.

- To work towards participatory development and decision-making approaches at the local level
- To mobilise resources at the local level
- To institutionalise local self-governing institutions
- To make employees involved in local development responsible and accountable to the local people and local self-governing institutions
- To develop and use local technology and skill, mobilising user groups and NGOs
- To bring women and backward communities/ethnic groups into the mainstream of development
- To facilitate programmatic integration and coordination at the local level

The report also stated that contradictory provisions in the Forest Act and the Nepal Mines Act relating to the income of local government accruing from natural resources had led to various disputes. It recommended amending or repealing the provisions that are inconsistent with respect to use of driftwood (dahatar bahatar[2]), mines, stone, and sand within the area of local government. It also recommended repealing similar contradictory provisions in the Village Development Committee Act 1992 (VDCA) and the District Development Committee Act 1992 (DDCA) as well as in other legislation (HMG, HLDCC 1996). Although the LSGA has already repealed the VDCA and the DDCA, the LSGA itself contains similar provisions. It is also silent about the management and utilisation of the forest products from community forests.

The Ninth Plan (1997-2002) emphasised the appropriate management and utilisation of forest resources through maintaining a balance between the environment and development. It stipulated that in order to make forestry sector programmes employment and poverty alleviation oriented and to raise the productivity of the land, forest sector management will be modernised by adopting a liberal economic system to encourage the private sector. It clearly established many policies and work plans related to community forestry. The policy's essence is to fulfil the local people's subsistence needs through community forests and to enhance the DoF's capacity to hand over forests to local communities and to monitor their work.

[2] 'Dahatar bahatar' is officially translated as 'driftwood', it refers to wood of any sort that falls into flowing water and is transported naturally downstream.

two
the legal status of forest user groups

Developing effective management of natural resources in Nepal without involving the people is almost impossible, as it is the people who write the country's destiny. Development is only possible and successful when people and local authorities are empowered and involved. The Constitution of the Kingdom of Nepal 1990 envisages that decentralisation will empower the nation's people and requires the state to mobilise the nation's natural resources and heritage in a useful and profitable manner suitable to the national welfare (Article 26 [3]).

Similarly, Article 26(4) stipulates that the state shall give priority to protecting the environment, taking special measures to prevent further damage due to physical development activities and also must make special arrangements for the protection of rare wildlife, forest, and vegetation. Although Article 26 does not specifically mention community forestry, it provides the legal mandate for community forestry, as the programme revolves around local UGs for forest protection, management, and utilisation.

The latest forestry legislation is the Forest Act of 1993. It builds on the policy directives stated in both the MPFS and the Eighth Five-Year Plan (Lynch and Talbott, 1995). In enacting the Act and the Forest Regulations of 1995, HMGN has shown its commitment to the institutionalisation of Forest User Groups (FUGs) by recognising them as legal entities. The legislation acknowledges five categories of national forests: community forests, leasehold forests, government-managed forests, religious forests, and protected forests.

Procedure for Handing Over a Community Forest

The Forest Act of 1993 empowers the DFO to hand over any part of a national forest to a UG as a community forest, entitling it to develop, conserve, use, and manage the forest, and to sell and distribute forest products by independently fixing their prices as per the work plan (Section 25[1]). However, handing over part of a national forest as community forest does not change the land ownership of the forest land, and the land ownership of the community forests remains with HMGN (Section 67).

If local users or others have planted and protected trees on any public land outside a national forest area, or if local users wish to plant trees on such land after constituting a UG and after obtaining approval from the agency owning the land, the DFO may designate this to be community forest on the condition that the concerned agency itself retains the ownership of the land (Rule 26[2]). However, Clause 2.2.4 of the Operational Guidelines stipulates that such users are not entitled to a certificate of registration.

If a UG wants to take over any part of a national forest as a community forest, it must submit an application to the DFO (Rule 29[1]). When handing over any part of a national forest to a UG as a community forest (Rule 26[1]), the DFO must take into account the distance between the forest and the village and the wishes of the local users, as well as their ability to manage the forest. The DFO is required to conduct the necessary investigations into the application and the work plan submitted by the FUG for approval. If the DFO deems it necessary to alter the work plan, it must be done with the consent of the FUG.

After the group promises that it will comply with the conditions prescribed by HMG, the DFO must then hand over the forest area under the approved work plan to the UG as a community forest. The handover also involves issuing a certificate to the UG concerned (Rule 29[2]).

In establishing a UG according to the Forest Regulations, actions have to be taken on the basis of consensus so that the boundaries of wards, villages, towns and districts have no effect on the groups (Rule 27[4]). If any forest area lies within two or more districts, the DFO of the district where the application has been submitted may hand over the forest area with the consent of the DFOs of the other district(s) (Rule 29[4]).

FUGs are empowered to impose and claim appropriate penalties from any FUG member found working contrary to the operational plan. If the breach of the operational plan has led to any loss or damage, the FUG is empowered to recover such loss or damage from the offending member (Section 29). The first amendment of the Forest Act includes sub-sections in Section 27 of the Forest Act which empower the government to penalise elected executive committee members of an FUG if they are found working contrary to the Forest Act and Regulations.

Notwithstanding anything contained in the Forest Act the government is empowered to permit the use of any part of a community or other forest for projects of national significance where no alternative exists, on the condition that the implementation of such a plan is not likely to affect the environment in an adverse way. (Section 68 [1]). If any person or community is likely to suffer loss or harm as a result of the permit granted to use a forest area under this Section the government is required to make the appropriate arrangements.

Formation and Registration of Forest User Groups

Those who wish to develop and conserve a forest and use its products for their collective benefit may form an FUG by fulfilling various procedures prescribed in the Forest Regulations (Section 41). For the registration of an FUG, an application must be submitted to the DFO together with the FUG's constitution. On receipt of an application, the DFO is required to conduct the necessary investigations, register the FUG, and issue a certificate of registration (Section 42[2]). An FUG registered under Section 41 of the Act is an autonomous and corporate body with perpetual succession. Every FUG must have its own separate seal. It is entitled to acquire, use, sell, transfer, or otherwise dispose of movable or immovable property, and may sue or be sued in its own name, like any individual (Section 43).

Forest User Group Funds

FUGs are entitled to have their own separate funds. The fund may consist of grants received from the government or others, donations or assistance received from any individual or institution, money received from the sale and distribution of forest products, amounts collected through fines, and amounts received through any other source (Section 45[2]). The

expenses incurred on behalf of the FUG must be met from the fund. After spending funds on the development of the community forest (Section 45[3]), FUGs are permitted to spend money on any public welfare activities.

However, Section 30A of the Forest Act, included by the first amendment of the Act in 1998, requires FUGs to spend a minimum 25% of their fund for the development, conservation, and management of the community forest. Only the remainder may be spent for other development activities.

FUG funds must be operated by the joint signatures of two members of the FUG designated by the FUG itself (Rule 36[1]). The annual accounts of FUG income and expenditure must be audited by any person or institution designated by the FUG (Rule 36[2]). An FUG is obliged to submit a copy of the audit report to the relevant DFO and an authorised officer is required to inspect the accounts of income and expenditure maintained by the FUG from time to time.

Work Plan (Operational Plan) for Community Forests

FUGs must prepare a detailed operational plan for the community forest which must contain the following:

- the forest name and details of the boundaries, areas, condition, and types of forest;
- a map of the forest;
- block divisions and their details such as name, boundaries, areas, aspects, slope, soil, type of forest, main species, useful species, age, and situation with respect to natural regeneration;
- objectives of forest management;
- methods of forest protection;
- forest promotion activities: thinning, pruning, cleaning, and other forest promotion activities; nursery, tree plantation, income generating programmes, and time schedules;
- details of areas suitable for cultivation of herbs, types and species of such herbs, cultivation programmes, and time schedules;
- provisions relating to the use of income accruing from the sale of forest products and other sources;
- provisions made for penalties which may be inflicted on users pursuant to Section 29 of the Act;
- provisions relating to the protection of wildlife; and
- other matters prescribed by the Department (Rule 28[1]).

The operational plan must also contain information on any plans the FUG might have to plant any perennial cash crops other than food crops in the community forest. This is permissable only if the crown cover and production of the main forest product remains unaffected. The DFO itself is required to provide technical and other cooperation that may be required by the FUG in order to prepare a work plan (28 [2]). The FUG may amend the work plan if need be, but must inform the DFO accordingly (Section 26-1).

Activities Prohibited in the Community Forest

An FUG must not take any of the following actions in the community forest, in addition to those activities prohibited by the work plan:

- destroy the forest, mortgage or otherwise transfer the ownership of the land under the community forest,
- clear forest areas for agricultural purposes,
- build huts and houses,
- take any action which may cause soil erosion,
- capture or kill wildlife in violation of prevailing laws,
- extract or transport rocks, soil, boulders, pebbles, sand and so on (Rule 31).

Some perceive these prohibitions as limiting the broad powers given to FUGs by the Forest Act. Some experts believe that this and similar other provisions have been deliberately included in the Regulations to limit the scope of FUGs' powers and functions as entrusted to them by the Forest Act and that these rules are contrary to the principle of delegated legislation.

However, loans may be obtained from financial institutions by pledging the forest products of the community forest as collateral for the purpose of developing the community forest, and houses or huts needed for security may be built with the approval of the DFO (Rule 31[2]).

Collection, Sale and Distribution of Forest Products

FUGs can only collect, sell, and distribute forest products according to their operational plans. After collecting timber, firewood, and other forest products, the FUG must arrange for reforestation or rehabilitation in the forest area concerned as soon as possible. The FUG must inform the DFO concerned about the rate at which forest products are being sold. If in accordance with the work plan the FUG is capable of running an industry based on forest products, it may run such an industry outside the community forest after obtaining the approval of the relevant agencies on the recommendation of the DFO (Rule 32).

FUGs are also supposed to register hammer marks with the DFO.

In the past, questions arose about whether the objective of the community forestry programme was only to fulfil subsistence needs for forest produce or also to encourage income generation or even commercialisation. This debate has been positively resolved by the incorporation of provisions that allow FUGs to install wood-based industries with the permission of the DFO, and to farm non-timber forest products and other cash crops that do not affect the growth of the forest. This must be mentioned clearly in the FUG's work plan. These provisions settle an issue which caused conflicts in the past (Amtzis 1995).

Taking Back the Community Forest

The DFO may cancel the registration of an FUG if it finds that the FUG is unable to work according to the operational plan, or if it is undertaking activities that are likely to impact the environment in an adverse way, or is unlikely to comply with the conditions required under the Forest Act or Regulations (Section 27[2]). The DFO is, however, required to give the FUG in question an opportunity to state its case. If the FUG has been unable to work according to the operational plan, has done anything that has had a substantial, adverse effect on the environment; or has not complied with the Act, the Regulations, and the conditions prescribed by HMG; the DFO is required to depute an employee as soon as possible for an on-the-spot inspection. If his/her report substantiates the case an explanation must be demanded from the FUG within 15 days. If the explanation submitted by the FUG is not satisfactory, the DFO may cancel the registration of the FUG, and take back the community forest if the on-the-spot

inspection report indicates that this is appropriate. The FUG concerned must be informed of the decision within 15 days. The FUG has the right to appeal the DFO's decision to the regional forest director within 35 days of the date it receives notice of the DFO's decision. The decision on a complaint filed by an FUG must be given within 90 days from the date of filing (Rule 37). The decision of the regional forest director is final. Where the regional forest director endorses the decision of the DFO, the DFO is required to form another FUG and hand over the community forest to the newly formed FUG in accordance with Section 25 of the Act.

The DFO and the FUG may obtain assistance from national and international governmental and non-governmental agencies to discharge the various duties entrusted to them (Rule 38).

The number of community forests (CFs) handed over to FUGs has increased annually. By the end of December 1998, some 7,000 FUGs had been formed in Nepal; with 640,000 households in 59 districts involved (MFSC 1998). By the end of December 2000 there were 9,700 FUGs managing more than 650,000 hectares of forest with the involvement of over one million households (ICIMOD 2002).

Many believe that the progress of handing over community forests is likely to increase in view of new legislation and intensive training programmes. But the targets fixed by DFOs are decreasing yearly, because demands for post-formation support are so high that existing personnel cannot cover them all (Joshi 1997).

Perhaps one of the greatest constraints to the effective implementation of the new community forestry laws is bureaucratic resistance, especially from those government officials charged with implementing and overseeing forestry policies (Talbott and Khadka 1994). As in many other developing countries, few government foresters in Nepal believe in the unqualified rights of local people to own or manage forest resources. Traditional forestry training emphasises the role of the enforcer, which itself was reinforced by Nepal's earlier forestry legislation.

Buffer Zone User Groups

The Buffer Zone Management Regulations of 1996 (BZMR), promulgated under the National Parks and Wildlife Conservation Act 1974, comprise yet another instrument that could help promote FUGs in buffer zones, which surround protected areas in Nepal. Under Rule 5 of the BZMR, the warden is obliged to prepare and submit buffer zone management work plans to the Department of National Parks and Wildlife Conservation for community development, environmental conservation, and the balanced utilisation of buffer zone forest resources. The warden is empowered to form appropriate user committees (UCs) in coordination with local authorities (local government) to assist community development, to help achieve the balanced utilisation of forest resources, and to conserve the natural environment, natural resources, biodiversity, and forests.

User committees formed in this way must have a president, vice president, secretary, treasurer, and at least five members elected by the users themselves. After the formation of a UC, an application for registration must be submitted to the warden, who, after making necessary enquiries, is then obliged to register the UC and issue a certificate of registration. It is not certain whether UCs become legal entities after formal registration. UCs have their own general body that elects the executive committee, which is accountable to the general body.

The BZMR clearly specifies the power and functions of UCs, which are, *inter alia,* to carry out or to have work carried out as prescribed in the approved work plan of the area; to properly implement the project work; to mobilise people's participation and labour for the completion of the project; to annually prescribe the type, quantity, area to be used, method, time, and fees for forest resources necessary for local people's daily use; to undertake reforestation in its area of responsibility; to carry out programmes to control floods, landslides and soil erosion; to operate the UC fund; and to carry out other necessary work (Rule 10).

Rule 15 of the Regulations provides for the establishment of a UC fund, which must be made up of:

- income received from the sale of forest products prescribed by the buffer zone community forest work plan;
- money received from the National Park Authority under Section 25 A of the National Park and Wildlife Conservation Act, which empowers the Department of National Parks to invest 30% to 50% of the money earned by national parks, conservation areas, or protected areas in community development activities around national parks, conservation areas, and protected areas;
- fees received from hunting licenses under Rule 35;
- donations received from donor agencies or individuals; and
- any other miscellaneous funds received.

The BZMR empowers the warden to hand over buffer community forest and buffer religious forest to a UC or religious authority respectively. Under Rule 37, UCs are required to maintain up-to-date records of immigrants and migrants into and out of their area and to give notice of such records to the warden. Local administration, police, NGOs, UCs, and all relevant individuals are obliged to assist the warden in the management and conservation of buffer zones.

The BZMR has been in effect since 1997, and it has already been effective in reducing local people's hostility toward national parks and protected areas. Local people now care for protected areas and a sense of ownership is slowly developing.

Irrigation User Groups

The Muluki Ain (Civil Code) was promulgated in 1963, repealing the Civil Code of 1854. Its chapter on 'Jagga abad garneko' (land utilisation) has some basic provisions in respect of irrigation systems, recognising people's rights over traditional patterns of water distribution. However, the Code does not provide any legal measure for establishing UGs or defining the powers, functions, and responsibility of a UG.

The Water Resources Act 1992 (WRA) provides a legal framework for the registration of water users' associations (WUAs). Section 5 of the Act stipulates that individuals willing to use water resources for collective benefit on an institutional basis may form a WUA as prescribed in the Water Resources Regulations 1994 (WRR). Users who wish to utilise water resources on an institutionalised basis are required to form a consumers' association consisting of at least seven individuals acting as officials and members. The WUA must be registered with the District Water Resource Committee (DWRC). Section 6 of the WRA states that any WUA registered with the DWRC will be an autonomous and corporate body having perpetual succession with a separate seal of its own. It is entitled to acquire, enjoy, sell, dispose, or arrange by any means movable and immovable property and is empowered to sue or be sued as a legal person.

At least seven individuals from among the consumers who wish to register the WUA must submit an application to the DWRC. Rule 5 requires, among other things, that the rules governing the WUA and submitted to the DWRC must contain the WUA's full name and address, objectives, working area, claim of title, transfer of entitlement or nomination of successor, formation, and conditions as to termination of directors, funds, and auditing, and amendment procedure of the statute.

After conducting the necessary examination of the application, the DWRC is required to register the WUA and to issue a certificate of registration (Rule 6[1]). DWRC members may visit the water source site to make sure that the particulars provided in the application are appropriate. Where the DWRC deems registering a WUA improper, it must notify the applicant of the reasons for the decision within 30 days from the date of receiving the application (Rule 6[2]).

Rule 6(3) stipulates that a WUA registered under prevailing law before the commencement of the WRR shall be deemed as registered under the WRR. By providing legal status to WUAs registered before the commencement of WRA or WRR, this legislation not only avoids unnecessary work, but also encourages the WUA's registration by providing relatively clear legal provisions (Sharma et al, 1997). Registration legalises the user committees and empowers them to work for a common cause. WUAs not registered as institutions which charge fees to the beneficiaries are not legally valid unless and until they obtain a license or are registered under the WRA/WRR (Khadka 1996).

Irrigation Policy 1992

Just as new legislation has allowed local communities to take on the management of their forest resources, so recent policy regarding irrigation aims to do the same.

The main objective of the Irrigation Policy is, *inter alia,* to optimally develop irrigation services through cost-effective investment in development and extension programmes, while ensuring their technical, financial, institutional, and environmental sustainability. Its objective is also to ensure greater returns in the short run by meeting farmers' requirements for water in their fields to increase agricultural production; and to decrease government involvement in the construction, maintenance, and operation of irrigation schemes. This will be achieved by gradually increasing the participation of organised users without adversely impacting the effectiveness of the different stages of implementation of irrigation development. Other objectives include maintaining the Nepali farmers' tradition of constructing and managing irrigation systems as autonomous entities in the private sector by making the systems more stable and extensive. The Irrigation Policy will continue the necessary reforms regarding institutional structure and management to promote the credibility and effectiveness of available services by increasing the efficiency of governmental and non-governmental institutions involved in irrigation development.

The Ninth Plan also recognises the importance of users and their mobilisation for the sustainable development of the irrigation sector. It stipulates various policy and work plans to assist farmers and UGs. Clause 3.3 of the policy and work plan states that shallow tubewells and surface irrigation systems presently under user management will be maintained and rehabilitated. Similarly, Clause 3.5 states that small and medium irrigation projects now managed by the government will be handed over to farmer users. Arrangements will be made for the participation of users in large irrigation projects as joint management systems, and users will be involved in the planning and implementation of the projects.

three
decentralisation and the status of local government

After the democracy system was introduced in Nepal in 1990 and during the subsequent process of planned development, policy makers and planners have stressed the need to involve the citizenry and to solicit their cooperation in the country's development. Consequently, local government institutions have been created to promote such popular participation.

Article 25(4) of the Constitution of the Kingdom of Nepal 1990 provides a basic framework for decentralisation, emphasising that, 'It shall be the chief responsibility of the State to maintain conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralisation….' However, the weakest part of the Constitution is the omission of an effective infrastructure for local government and a clear-cut scheme for decentralisation. There is no specific provision made regarding the form and shape of local government institutions and the involvement of the people in them, although the preamble does underscore the need for 'the widest possible participation of the Nepalese people in the affairs of the State.'

The Local Self-Governance Act

Three local government Acts, viz., the VDCA 1992, the Municipality Act 1992 and the DDCA 1992 were enacted to implement constitutional directives. These have now been repealed by the recently enacted Local Self-Governance Act 1998 (LSGA). The LSGA provides for two-tier local government bodies, one at the grass roots level and the other at the district level, thereby laying the foundation for participatory democracy and local development in Nepal through decentralisation and devolving power to locally elected bodies. The main aim of decentralisation, it was said, was to involve the local people to the maximum extent in the development process and to speed up development (Martinussen 1995). In line with the VDCA, Municipality Act, and DDCA, the LSGA also establishes local government bodies throughout the country to strengthen the base of democracy at the grass roots level and hand over power and responsibility to the people so they can manage their affairs through popular participation.

Among many other things, the preamble to the LSGA stipulates that it exists to make provisions conducive to the enjoyment of the fruits of democracy through the utmost participation of the sovereign people in the process of governance by way of decentralisation. The preamble further states that the LSGA aims to,

> "Institutionalise the process of development by enhancing the participation of all the people including ethnic communities, indigenous, and down-trodden people

as well as socially and economically backward groups in bringing about social equality in mobilising and allocating means for the development of their own region and in the balanced and equal distribution of the fruits of development.''

Village Development Committee

The village development committee (VDC) is the lowest tier of local government. At present Nepal has 3912 VDCs. Under the LSGA, HMGN is empowered to demarcate village development areas from any rural 'ilaka' of the Kingdom of Nepal by specifying its boundary. The government is further empowered to divide each village development area into 9 wards, as far as possible with equal populations. If changes must be made in the area of any village or ward area, HMGN may set up a committee of relevant experts to make changes in the boundary on the recommendation of the committee and with the approval of the Election Commission.

The village council (VC), consisting of 53 members, is the general body of a village development area. The VDC, the executive body of the VC, has thirteen members, including an elected chairperson, vice-chairpersons, nine ward chairpersons (one from each ward), and two members nominated from the VC, including one woman. VDC members' terms run to five years. The VDC is an autonomous body with perpetual succession and a seal of its own. It may, like an individual, acquire fixed or floating assets and use or sell them, and can sue other bodies or be sued itself.

VDC meetings, presided over by the VDC chairperson or the vice-chairperson in the chairperson's absence, must be held once a month. VDC decisions are based on a majority vote. The ward committee meets at least twice a month, its meetings presided over by the ward chairperson, and its decisions also based on a majority vote. The VC normally meets twice a year, the meetings being convened by the VDC chairperson.

Section 27 of the LSGA empowers a VDC to form a three to nine member advisory committee with representation from social workers, intellectuals, and persons with technical knowledge to assist the VDC in its work. Ironically, it does not mention the background of the people who might be selected for the committee itself. On the basis of current practice, it can be inferred that women and representatives of FUGs and NGOs get the least priority.

The powers and functions of VDCs under the LSGA are divided into 11 broad areas: agriculture; rural drinking water; works and transport; education and sports; irrigation, soil erosion, and river control; physical development; health services; forest and environment; language and culture; tourism and cottage industries; and miscellaneous. The powers and functions under the rubric of 'forest and environment' require and empower VDCs to launch afforestation on fallow lands, hills, slopes, and public land; and to prepare and implement programmes with regard to forests, vegetation, biodiversity, soil conservation, and so on in the village development area. They are also required to formulate and implement various programmes for environmental conservation, with the VDC and DDC being obliged to give priority to projects that help protect the environment.

According to the LSGA, VDCs are required to construct and implement village level projects through user committees (UCs). If the UC requires any training, such training must be provided (Section 49). UCs are entitled to collect service charges from users who use the services of a project. The new legislation has strengthened the position of UCs, who are responsible for implementing and maintaining projects and creating environmental awareness. Nevertheless, the newly enacted LSGA has not clearly specified the rights, duties and functions of such UCs, nor their relation to the local government bodies.

Section 58(d) and (e) of the LSGA 1998 provides the VDC with the right to sell dried timber, fuelwood, twigs, branches, and bushes from the VDC area, as well as grass, straw and so on to generate income. Section 68 1(c) and (d) stipulate that the property of the VDC includes forests granted by the prevailing laws and HMGN, and the natural heritage of the VDC, respectively. These two Sections are inconsistent with each other, particularly Section 68(d), which includes natural heritage as the property of the VDC. Natural heritage as defined or interpreted covers forest, rivers, wetlands and so on. It is unclear if community forests would also be considered as VDC property, as the legislation appears to imply (by explicitly stipulating that the VDC has full rights over the forest granted by the prevailing forest laws and HMGN).

Similarly, the legislation provides a role for NGOs to enhance public participation and serve as links between the local government bodies and development activities. The VDC is obliged to encourage NGOs to identify, formulate, inspect, evaluate, and maintain village development projects in each VDC area (Section 51[1]). NGOs are required to implement the projects in coordination with the VDC. However, the rights, duties, and functions of NGOs are not defined.

Rule 89 of the Village Development Committee (Working Arrangement) Regulations, 1994 requires the VDC to prepare a list of users prior to constituting a UG[3] . The VDC is required to constitute a UG under a chairperson selected by the users. The VDC member of the ward is empowered to attend UG meetings and advise them. The UG has to invite the chief of the relevant district level office or its representative to UG meetings. Rule 90(1) requires the UG to:

- implement the project in an appropriate manner,
- make arrangements for the operation and maintenance of the project,
- mobilise public participation and labour required for completion of the project,
- maintain account records and inform users,
- follow the directives issued by the VDC in relation to the project, and
- convene the meetings of the UG at least once every month.

Under Rule 90(2), UGs are liable for punishment pursuant to prevailing laws if they do not fulfil their obligations or if they misappropriate funds. Rules 89 and 90 of the District Development Committee (Working Arrangement) Regulations 1994 contain exactly the same provisions.

District Development Committee

The district development committee (DDC) is also an autonomous body with perpetual succession and a seal of its own. It is entitled to acquire movable or immovable property, and use or sell it like an individual. It can be sued and may sue others. The district council (DC) is the general body of the DDC. According to the LSGA, the DC consists of all the chairpersons and vice-chairpersons of each VDC within the district, all the mayors and deputy mayors of each municipality within the district, members of the DDC, members of the House of Representatives and the National Assembly from the district, and six persons nominated by the DC itself. The main functions of the DC under the LSGA include approving the budget, plan, and programmes submitted by the DDC, approving proposals relating to taxes, fees, tariffs,

[3] The interchangeable use of the terms User Group and Users Committee appears in the legislation and has therefore been maintained in this document.

loans or borrowings, and internal resources submitted by the DDC, and providing the necessary directives with respect to district level projects being implemented by the DDC.

DDC powers and functions are classed under 17 headings, and include agriculture; development of rural drinking water and settlements; forest and environment; irrigation, soil erosion, and river control; language and culture; and health services and tourism. Under the forest and environment heading, the DDC is required to develop a plan for the conservation of forests, vegetation, biological diversity, and soil, and to implement it or cause it to be implemented, as well as promote conservation of the environment.

Section 190 of the LSGA empowers DDCs to constitute different sub-committees to assist the DDC in its functions. Such sub-committees may have representation drawn from various sectors, including women and backward classes. Rule 84 of the DDC (Working Arrangement) Regulations 1994 requires the DDC to constitute four different committees: agriculture, industry, forest, and the environment.

In accordance with Section 202 of the LSGA, DDCs must select those projects which can contribute to the protection of the environment and which have the maximum participation of the local people and labour force. While fixing priorities for the district development plan, first and second priority must be given to programmes that assist in raising agricultural production as well as programmes that help to protect the environment. While formulating the district development plan, the DDC is obliged to follow a participatory planning process. It is required to constitute UGs from the district beneficiaries while implementing projects under the district development plan. UGs and NGOs are required to implement such projects in coordination with the DDC. However, it is not clear whether the UGs include FUGs. Although UGs and NGOs are repeatedly referred to in the LSGA, the legislation does not provide a definition. This lack of clarity, whether deliberate or unintentional, reflects a weak law-making process and leads to ambiguities and conflicts.

B.K. Shrestha argues that the UGs, once seen as the mainstay of devolution and community participation, are formed only on paper, more to fulfil the requirements of the rules than to ensure sustained local development. Creating and strengthening UGs within communities is an exercise in institution building, and sustained support is therefore needed for their proper institutionalisation. However, in addition to lack of support from the government bureaucracy, non-beneficiaries are included in the UGs to provide benefits to political workers of local political parties and local leaders (Shrestha 1996).

Section 215 (2) of the Act empowers the DDC to levy taxes on wool, resin, herbs, slate, and sand; on animal products such as bone, horn, feathers, and leather; (except those prohibited by prevailing law); and on other goods as prescribed at the rate approved by the district council, not exceeding the rate specified in the district development area. Section 218 empowers the DDC to sell the sand in the rivers and canals, as well as boulders, stones, soil, and driftwood found in its area.

The High Level Decentralisation Coordination Committee (HLDCC) report entitled 'Decentralisation and Local Self-Governance' (DLSG) recognised that the contradictory provisions of the Forest Act and the Nepal Mines Act relating to local government income accruing from natural resources have periodically caused disputes to arise. The report, therefore, recommended repealing those provisions of the Forest Act and the Nepal Mines Act which are inconsistent with the mobilisation of resources from driftwood, mines, stone, and sand within the area of local government (HLDCC 1996).

Decentralisation will bring procedural dilemmas for which solutions are elusive. Administrators experience a lack of information and professional respect in relationships with politicians. Bureaucrats are accustomed to being in control, and better informed than their 'citizen' counterparts. Another dilemma will arise from a lack of clarity regarding the functional boundaries between the roles of parliamentarians and district level politicians. Local politicians will want parliamentarians to 'stay out' of local politics and to focus their energy on legislation, policy, and Kathmandu (Shrestha 1996).

Attitude of VDCs Towards FUGs

Community forestry is more successful when the VDC and FUGs work together with confidence and in good faith Experts believe that, with some exceptions, VDC members generally feel they can cooperate with forest user groups. VDC representatives know that community forest is common property and that FUG income is used for community development. Moreover, VDC members are also members and users of community forests themselves. Recognising the importance of coordination between the VDC and FUGs, the DoF has planned orientation/training programmes to teach VDC members more about community forestry. Some VDCs have already started cooperating with FUGs. For example, one VDC in Palpa District provides a guard at its own cost to protect a community forest.

Some VDCs, however, view FUGs as institutions that in the long run should not be promoted. Such VDC members believe either that the VDCs should manage community forests or that the FUGs should be under the control of VDCs. This problem should be resolved soon by close consultation between members of the Federation of Community Forest Users of Nepal and members of the Federation of VDCs.

Undoubtedly the VDC is an elected body with a larger mandate than the FUGs. The VDC mandate includes the overall development of its area, but the two institutions both work to benefit local people. If linkages and mechanisms for coordination between the VDC and FUGs are developed, these institutions would complement each other well. Unless such cooperation develops, a sizeable gap is likely to develop between the management and sustainable use of natural resources as well as with regard to development activities at the VDC level. This could thwart the principles and policies of decentralisation and local autonomy, which include directing efforts to create a civil society based on a democratic process, on transparency, on accountability to the people, and people's participation in the process of planning work for the local authorities, as well as developing an effective mechanism for making local authorities responsibile towards the people in their area, with a view to developing local leadership.

four
contradictions and conflicts

A conflict arises when two or more people or groups perceive their values to be incompatible, whether or not they propose, at present or in the future, to take any action on the basis of those values (Tillitt 1991). Tillitt argues that values are incompatible if they contradict or oppose each other. Conflict can also be defined as involving non-negotiable issues, such as human needs and values, they occur in developing situations. People who make new rules and regulations should realise that they lack field experience. Problems will arise and policy makers should be prepared to tackle them and to learn from experience to anticipate what new problems might occur. What is needed is a mechanism that can quickly respond and take initiative in conflict resolution.

In relation to community forestry, conflicts can be within an FUG, between FUGs, between an FUG and a forest office, or indeed between various other institutions. Conflicts can arise at several different points, for example, during the identification of users, in participation, concerning leadership, location of the forest, forest use patterns, deviation from the operational plan or objectives, sharing of benefits, or unclear and contradictory legal provisions. This chapter focuses on conflicts arising from contradictory legal provisions.

Contradictions within Forestry Legislation

Handover of the community forest – Forest Act 1993, Sec 25(1)

"The District Forest Officer may hand over any part of a National Forest to a User Group in the form of a Community Forest as prescribed, entitling it to develop, conserve, use, and manage the Forest and sell and distribute the Forest Products independently by fixing their prices according to the Work Plan. While so handing over a Community Forest, the District Forest Officer shall issue a certificate of alienation of the Community Forest."

Talbott and Khadka maintain that the tenurial rights of FUGs illustrate how legal ambiguities can impede community forestry initiatives. Strong arguments based on the Constitution of 1990 can be made for handing community forests over completely to the intended beneficiaries: the legitimate and responsible communities of local forest resource users. Indeed, the preamble clearly states that the source of all legal authority in Nepal is "inherent in the people." On the other hand, the Forest Act 1993 implies that community forestry rights continue to emanate from the state, which in turn hands them over to FUGs.

Current forestry laws clearly stipulate that FUGs do not have direct ownership rights to the land, only usufruct rights of management over the trees and the forest products derived from the land. Lynch and Talbott maintain that:

> "[G]overnment sponsored community forestry programs based on public grants that can be cancelled don't provide adequate incentives for sustainable community based forest resource management. Wherever local people are striving to protect and sustainably manage forests, the best way to establish and secure these incentives is to get appropriate government agencies and officials to recognise existing community-based rights and to consider them as being private. This way, holders of such rights would have the same protection as owners of other private property rights. Governments can express this commitment through national laws and policies prior to any on-the-ground activities, although the spatial perimeters of community-based management systems should be delineated as soon as possible." (Lynch and Talbott 1995)

Talbott and Khadka argue that contradiction apparently exists in the Forest Act's delegation of authority over the decisions and actions of FUGs. According to Forest Department hierarchy, ultimate authority rests with the Ministry of Forest and Soil Conservation, not with the people as stipulated in the 1990 Constitution. Rectifying such inconsistencies in language and the resulting uncertainties in delegated authority is an essential pre-requisite to community forestry's success.

Under Section 26(2), the DFO is empowered to veto any operational plan if it is likely to adversely affect the environment, and Section 27 (1) and Rule 37 allow the DFO to "take back" the community forest if any activities other than those specified in the operational plan or any activities that affect the environment are carried out. However, what constitutes an "adverse impact on the environment" is not specified, leaving it open to the whim of the DFO.

Section 72 of the Forest Act empowers the government to frame the necessary rules for fulfilling the objectives of the Act. The Forest Regulations promulgated by the government exercising Section 72's power seem to be impeding the objectives of the Act itself. For example, under Rule 27(g), the DFO is obliged to issue a certificate of registration to an FUG only after having a bond to comply with the Act, the Regulations, and 'the conditions prescribed by the government'. The Act does not give authority to the government to impose or prescribe any additional condition except those mentioned in the Act, the Regulations, and the operational plan. It is apparent that every person, whether natural or artificial[4] must comply with prevailing legislation. Therefore there is no logic in having a bond to comply with the Act and Regulations. The latter part of Rule 27(g) is deliberately included simply to impose unnecessary conditions and to control FUGs.

A similar provision is found in Rule 29(2) which states that the DFO shall hand over the community forest area only after having a bond to the effect that the FUG will comply with the conditions prescribed by the government. The Forest Act does not give power to the government to impose such conditions on an FUG. Rule 29(2) is against the parent Act. How fair is it to have such a bond signed by FUGs, who have no idea of what those future conditions might be? Further, Clause 2.2.6 of the Operational Guidelines states that the operational plan approved along with conditions added by the DFO as per Rule 29(2) of the Forest Regulations will be considered to be a contract.

[4] An 'artificial' person is a legally created 'person', that is a body like a VDC or FUG treated legally in the same way as a person.

The Forest Act prohibits the removal of forest products from the forest area and the transportation, sale, and distribution of forest products (Section 49[d]) from national forests. Similarly, Section 49(g) prohibits the extraction of boulders, pebbles, sand, or soil; the burning of charcoal or lime; the manufacture of finished products from these materials; or the collection of such materials in national forest. Section 25(1) of the Act, however, entitles FUGs to independently fix the price of forest products and sell them. In practice, this has not caused much conflict, but the Act needs to be amended to remove this inconsistency. Likewise, Section 49(e) prohibits the cutting of trees and plants, the trimming of branches, the extraction of bark or resin, or otherwise causing damage to national forests in any other way. The broad provision of Section 25(1) has given all this power to the institution of the FUG subject to operational planning. However, in practice, it is the DoF which issues the license for extracting resin in community forests as well.

Rule 31(f) of the Forest Regulations 1995 curtails the rights of FUGs by prohibiting the extraction or transportation of rocks, soil, boulders, pebbles, sand, and so on from community forests. This clause is apparently inconsistent with the definition of forest products under Section 2(c) and Section 25(1), which gives absolute rights to the FUG with regard to forest products.

The notice issued by HMG following Rules 12 and 13 of the Forest Regulations 1995 prohibits the cutting, transportation, and foreign export of 'chanp' (*Michaelia champaca*,) 'khair' (*Acacia catechu*) and 'sal' (*Shorea robusta*). As the cutting of these forest products is prohibited by government notification, many FUGs will have to wait for a government decision permitting the cutting of these trees in community forests. The government's power under Rules 12 and 13 is too broad and is not subject to any conditions. Once a notice prohibiting the cutting, collection, selling, distribution, or transportation of forest products is issued, FUGs will have no option except to comply with the notice. Rules 12 and 13 need to be amended to make them consistent with Section 25 of the Forest Act. As they currently read, they are apparently beyond the legal authority of this section.

The Act provides a penalty provision for FUG members who violate the operational plan (Section 29). The FUG is entitled to penalise its members. However, where encroachment or illegal work is carried out by non-members, the Act seems ambiguous and leaves room for debate about the legal implications. Some legal experts argue that offences and penalties related to national forests provided for in Section 50 will apply.

If the DFO withdraws a community forest from an FUG, FUG members can appeal to the regional forest director and his decision will be final. No provision has been made for access to a court of law. As the DFO and the regional forest director are both employees of the MFSC, it is very unlikely that their decision would be unbiased. This perhaps violates the principle of natural justice as well. Provision for appeal at a court of law is necessary. This issue needs to be considered because the DFO takes the decision to withdraw the community forest based on a report prepared by his/her junior staff member. Thus, the investigation is carried out by a junior, usually non-gazetted, staff member whose technical expertise could easily be questioned. Finally, the regional forest director, an employee of MFSC, hears the appeal. This is a very good example of a situation where sectoral biases could easily take priority over FUG concerns. The DFO's authority to withdraw a community forest needs to be made fair, impartial, and above all consistent with the principles of natural justice.

Section 27 of the Act empowers the DFO to withdraw a community forest from the FUG if, among other things, the FUG takes any action that affects the environment to a significant

degree. The Act and Regulations do not define "significant effect on the environment." This condition seems to have been included in the Forest Act simply to give more power to government officials to control the FUG in an unreasonable way. Such a condition should be included in the Act, but it must be defined clearly. Otherwise, it could unreasonably restrict FUGs and the powers of the DFO could be misused.

Regarding the sales of forest products through an auction, Rule 66 of the Regulations gives the director general the authority to auction such forest products if the value does not exceed 2.5 million rupees, and gives the DFO the authority if the value does not exceed 500,000 rupees. Thus, any amount of sale by auction is also under the jurisdiction of the DFO. It is debatable whether this provision conforms with the objectives of the Act. This provision certainly limits the power to which an FUG is entitled as a legal entity and it is very like to create conflicts in the future.

Although Rule 67 of the Forest Regulations empowers the MFSC to develop and issue the necessary manuals for the purpose of fulfilling the objectives of the Regulations, the Operational Guidelines issued by the Department of Forests, Community and Private Forest Division in 1995 do not quote the Forest Act. The Operational Guidelines issued in 1995 were not issued under the Regulations. However, as already mentioned, they limit various powers of the FUGs. The MFSC needs to make sure that the Operational Guidelines do not limit the powers of FUGs provided by the Act and Regulations and that they are consistent with the same.

HMGN issued community forestry directives in 1995 by exercising the power conferred by Rule 67 of the Forest Regulations 1995. Section 12 of the directive stipulates that the DFO must depute a technical employee, of at least non-gazetted first class level, to the area where it is claimed that the FUG has been unable to work according to the work plan, has done something that has had a significant adverse effect on the environment, or has not complied with the Act, the Regulations, and the conditions prescribed by HMGN. The directive states that an on-the-spot inspection must take place and action must be taken on the basis of the report prepared by that employee. The Forest Regulations need to be amended to delegate this authority to make inspections to an independent expert and/or a group of experts, which should include one representative from the DFO, one from the relevant VDC, and an independent expert.

The Forest Act provides absolute discretion to the FUGs in relation to sale of forest products from the community forest, but the MFSC issued a circular in April 1996 stating that without fulfilling the demand of the local community and adjacent districts, an FUG cannot sell forest products in other places. If the community does not consume the forest products, they are permitted to sell the product within the district. Only if the products are not consumed or purchased in the district are they allowed to be taken outside the district with the permission of the DFO. Some experts view this as contravening the Forest Act, and maintain that the powers and functions entrusted to FUGs by the MPFS have been limited by the Forest Act, and that the powers and functions entrusted by the Act have been limited by the Forest Regulations and government notices, and that the DoF's circulars are even more limiting.

Contradictions Between Forestry and Decentralisation Laws

Members of local government mistakenly believe that forests within the area of a VDC or DDC are the property of that VDC or DDC. Section 17 of the Forest Act states that except when any right or facility has been obtained through a permit or a license, or in any other way, from HMGN or an authority empowered by HMGN, no person shall be entitled to any right or facility of any type in national forests. Similarly, Section 68(1)(c) of the LSGA stipulates that

the forest granted by the prevailing forest laws and HMGN are the property of the VDC. Further, the VDC can only dispose or sell its property with the permission of HMGN.

Contradictions within forestry laws

- The language used in Section 25(1): "The DFO may hand over the forest."
- The DFO may direct the FUG not to implement the work plan (Section 26[2]).
- No definition of what constitutes "significant effect on the environment" (Section 27[1]).
- Discretionary power of DFO is unreasonable and can be misused.
- Lack of provision for appeal against the decision of regional forest director violates the principles of natural justice (Section 27[2]).
- No provision of penalty for encroachment on a community forest by a person who is not a member of the community forest user group (Section 29[5]).
- The provisions of Section 49 (d)(e) and Rule 31 are against the spirit of Section 25(1) and the broad definition of forest products under Section 2(c).
- Rules 27(g), 29(2) of the Forest Regulations and 2.2.6 of the Operational Guidelines relating to bonds are unnecessary and against the spirit of the Act.
- Rules 12 and 13 as well as different notices issued by HMG are apparently beyond the legal authority of Section 25 of the Forest Act.
- No auction right to FUGs (Rule 66).
- Forest minister's circular of April 1996 is against the spirit of the Act (Section 25[1]).
- Only possession, no ownership rights to FUGs (Section 67).
- Forest Regulations 1995 seem to be impeding the objectives of the Act itself.

The LSGA stipulates that natural heritage is the property of the VDC. Natural heritage usually includes forests, lakes, ponds and rivers.

Sections 215 and 218 of the LSGA stipulate that any proceeds accrued from the sale of river sand, stone, concrete, soil, driftwood, and the bone, horn, feather and skin of any wildlife which is not prohibited by prevailing Nepali laws, go into the DDC fund. These provisions violate the definition of forest produce under Section 2(c) of the Forest Act, which includes rock, soil, stone, concrete sand, birds, wildlife, and their derivatives. Section 25(1) of the Act empowers the FUG to sell, distribute, or use such forest products by independently fixing their prices.

Because forestry legislation bypasses the political tiers of the VDC and the DDC, these institutions could be displeased because they do not have funds, while the FUG may have plenty of money for development work.

Although VDC members may also be FUG members and may cooperate with the CF programme, if the Decentralisation Act is followed fully and to the letter, the CF programme could run into political trouble (Joshi 1997) with various conflicts arising.

Awareness and training to bring about attitudinal change among VDC and DDC representatives would be useful, since in reality, FUGs, VDCs, and DDCs depend on each other and work towards common goals.

Confusion also arises from dissimilarities in the language used by the LSGA and the Forest Act 1993. The LSGA gives DDCs and VDCs essentially unchallenged authority over UGs, their decision-making procedures, and their project implementation. Rule 87 of the DDC (Working Arrangement) Regulations states that projects to be executed with the participation of the people will have to be implemented through UGs and under the direction of the DDC. Similarly, Rule 91(2) stipulates that the district development office heads will have to follow the directions of the DDC when planning, implementing, monitoring, and evaluating the district development plan. There is a considerable difference between FUGs registered under the Forest Act and UGs set up under the LSGA. However, while the DFO is under the DDC, maintaining the autonomy of FUGs and avoiding conflicts will be very difficult. This issue needs to be taken up by national decision-makers in the near future.

Section 33(l) of the LSGA vests the right in the VDC to initiate and decide cases relating to the pasture, grass, and fuelwood of the village development area from the date of notification published in the Nepal Gazette. However, the Forest Act does not provide such a right to the VDC. Pasture and grass outside community forest areas may not create conflicts, but such resources within community forests could create various problems. Hearing and disposing of cases under the Forest Act regarding fuelwood, which is a forest product, is under the authority of the DFO when the value of the forest product is less than Rs. 10,000, and offenders are punishable with imprisonment for one year.

Contradictions between forestry and decentralisation legislation

- Misconceptions among members of local government that forests within the area of VDC/DDC are the property of the VDC/DDC.
- Section 17 of the Forest Act stipulates that no person shall be entitled to any right or facility of any type in national forests.
- Section 68(1)(c) of the LSGA stipulates that the forests granted by the prevailing forest laws and HMG are the property of the VDC.
- The LSGA stipulates that natural heritage, which includes forests, lakes, ponds and rivers, is the property of the VDC.
- Section 218 of the LSGA stipulates that monies accrued from the sale of sand, stone, concrete, soil, and so on become DDC funds. This violates the definition of forest products under Section 2(c) of the Forest Act.
- If the Decentralisation Act is followed to the letter, the CF programme may be in trouble.
- There is confusion from dissimilarities in the language used by the Forest Act and various laws related to decentralisation.
- It will be difficult to maintain the autonomy of FUGs and avoid conflicts as long as the District Forest Office is under the DDC.
- Section 33(l) of the LSGA empowers VDCs to hear complaints relating, among other things, to pasture, grass and fuelwood, but the Forest Act does not provide such a right to VDCs.

Contradictions Between the Forest Act and Other Laws

Section 4 of the Public Roads Act 1974 empowers the government to acquire any land for the construction, development, and improvement of public roads in accordance with prevailing Nepalese law relating to land acquisition. Similar provisions are also made in the Water Resources Act 1992, the Electricity Act 1992, and much other development-related legislation. Section 3 of the Land Acquisition Act 1977 empowers the government to acquire any amount of land for the sake of public welfare by providing compensation. Further, the Department of Roads may order the taking of the necessary quantities of soil, stone, or sand from any land adjacent to a road for construction, repair, and maintenance of roads. If the taking of stone, sand, or soil destroys crops, trees, plants, or anything else, the owner is to be compensated. An FUG with few negotiating skills and little comparative strength is very unlikely to receive the appropriate compensation.

The Nepal Mines Act 1966 has vested the ownership of any minerals (whether located, found, or discovered) on private land in the government. A mineral is defined as any kind of natural material which can be extracted from the earth except petroleum. This definition is so broad as to include rock, sand, soil, stone, and anything else that could contain minerals. At present the Department of Geology and Mines and the DDCs force FUGs to give such areas on lease, except where FUGs are strong enough to resist district level political pressure. In most cases, FUGs are forced to give up these forest products either to the DDC or to the Department of Mines.

The Soil and Watershed Conservation Act 1982 (SWCA) has provisions for watershed declaration that conflict with the Forest Act. The SWCA empowers the government to designate protected watershed areas and to entrust the Watershed Conservation Officer (WCO) with extensive powers to administer such sites (Section 3, SWCA). The designation of a watershed area gives extensive governmental control over the chosen locality, as the WCO has the authority, *inter alia*, to,

- construct check-dams,
- undertake torrent control,
- improve irrigation channels,
- protect water courses and take up other necessary activities of erosion and landslide control,
- protect vegetation in landslide-prone areas and undertake afforestation programmes,
- direct the cultivation of specified crops, and
- regulate any other agricultural practices pertinent to soil and watershed conservation (Section 4, SWCA).

Where necessary, the WCO may confiscate privately owned property (Section 14, SWCA). Although the landowner is entitled to compensation, as assessed at market value rates (Section 8, SWCA), the impact of this action upon family and community life remains unaccounted for. The SWCA needs to be reviewed in light of community forest related legal provisions and amended to become consistent with the Forest Act.

The National Parks and Wildlife Conservation Act is not clear about wildlife in community forests and concentrates on the protection of wildlife within national parks and

wildlife reserves (Amtzis, 1995). This is likely to create conflict in the near future as wildlife increases in community forests.

The MFSC should make legal arrangements to entrust FUGs with harvesting wildlife in community forests. If the ministry is serious about increasing wildlife in community forests, it should develop a sustainable harvesting strategy. If the Department of National Parks and Wildlife Conservation can permit hunting in buffer zones, the DoF should be allowed to do so in community forests. Existing legislation may not be enough for this purpose. The MFSC should consider enacting endangered species protection legislation to ensure, among other things, the sustainable harvesting of those plant and wildlife species that are neither endangered nor vulnerable.

Section 10 of the Environment Protection Act 1996 empowers the government to designate any area as a conservation area if it contains biological diversity, rare wildlife, rare plants, or places of cultural and historical importance, and is considered extremely important from the point of view of environment protection. The government is also empowered to prohibit all kinds of activities in such conservation areas. Many FUGs operate in areas containing rich biological diversity and rare plants and a few community forests contain rare wildlife as well. This provision, which is not subject to community forest laws, will come into conflict with the Forest Act once the Ministry of Population and Environment starts delineating conservation areas.

The Forest Act explicitly mentions that in matters covered by the Forest Act the Regulations shall be applied accordingly, and in other matters the provisions of prevailing law shall be applicable. No such provisions exist in the LSGA. In places where the Forest Act and Regulations are inconsistent with the LSGA, forestry legislation should prevail. Lawmakers do not want local government or decentralisation legislation to prevail over forestry legislation. However, in relation to the Nepal Mines Act it is unclear whether the Forest Act would prevail because this Act includes a similar provision to the Forest Act. Nevertheless, the Supreme Court has stated that the Forest Act 1961 is a special act that delineates provisions for forest management; therefore the Forest Act should prevail in respect to forest management. The Supreme Court has specifically decreed that whatever is found within the government forest is within the jurisdiction of the Forest Department, so driftwood is under the Forest Department's jurisdiction. Only driftwood outside forest areas is under DDC jurisdiction (Bir Bahadur Lama v. Ministry of Forest and Soil Conservation, 1997). However, Section 48A of the Forest Act, included by the first amendment to the Act in 1998, says that the DFO must deposit 50% of the amount received from the sale of unclaimed timber and driftwood in the DDC fund and the rest must be deposited in the consolidated fund. It further requires that 20% of the 50% deposited in the DDC fund must be spent on the conservation of forests.

Contradictions between the Forest Act and other legislation

- The following legislation empowers the government to acquire any land to fulfil the objectives of the Acts.
  Section 4 of the Public Roads Act, 1974
  Section 16 of the Water Resources Act, 1992
  Section 21 of the Electricity Act, 1992
  Sections 3,4 and 25 of the Land Acquisition Act, 1977
- The Nepal Mines Act 1966 has vested the ownership of any minerals in HMGN.
- The provisions relating to declaration of a watershed area under the Soil and Watershed Conservation Act 1982 are contradictory to the Forest Act.
- The National Parks and Wildlife Conservation Act 1972 is silent about the wildlife within community forests.
- Section 10 of the Environment Protection Act 1996 empowers the government to designate any area as an environmental conservation area. This provision will come into conflict with the Forest Act once the Ministry of Population and Environment starts delineating conservation areas.
- Forestry legislation prevails over other local government legislation.

five
complementarities and gaps

The Forest Act, the Local Self-Governance Act, and other acts are replete with various complementary provisions, contradictions, and gaps with respect to the management, utilisation and ownership of natural resources, particularly forest resources and the scope of UGs and NGOs.

The powers and functions of the VDC ward committee under Section 25 of the LSGA includes the upkeep of paths, roads, bridges, sewers, ponds, lakes, wells, canals, and water taps in its ward; arranging for the disposal of the ward's solid waste and rubbish; assisting the VDC in keeping records of the ward's population, houses, land, inns, sheds, rest houses ('dharmasalas'), temples, monasteries and mosques; looking after and planting trees on its fallow land, as well as on slopes, hills, and so on; and assisting in environmental conservation. Section 25 does not mention forests at all, as if forests are not natural resources and ward committees are not responsible for promoting the conservation of forests. Another crucial issue is whether ward committees can plant trees in national forest areas.

VDCs are required to have development and construction work within their area carried out through UGs and NGOs (LSGA, 28[2]). The Act does not mention how UGs and NGOs might be encouraged to carry out this work, which is divided into eleven broad headings, including forest and environment-related work. The word 'development' is broad and all-encompassing; if defined by law it will certainly include community forestry programmes. Section 28(2) needs to be interpreted liberally and clear-cut provisions developed for involving and encouraging UGs in development activities. The Regulations should also provide terms of reference, spelling out the roles and responsibilities of the VDC, the UGs, and NGOs in relation to a given project.

Under the LSGA, 31(1)(d), VDC members must assist UGs and NGOs in selecting plans and implementing projects. If the LSGA provisions are taken seriously, they have far-reaching practical implications. However, it is surprising to note that UGs and NGOs are seen as tertiary institutions. If they are considered tertiary institutions, law makers should have no reluctance about designating UGs as legal entities under the LSGA, just like any FUG or irrigation users' association registered under the Forest Act 1993 or the Water Resources Act 1992, respectively; or they should provide similar powers and functions as those enjoyed and discharged by an NGO registered under the Society Registration Act.

Section 43 of the LSGA obliges the VDC to formulate periodic and annual plans for the development of village development areas. While formulating such plans, the VDC must give

Table 1: Overlapping rights regarding forest products

Forest Products	Forest Act 1993	Local Self-Governance Act 1998	Nepal Mines Act 1966	Water Resources Act 1992
Fuelwood, dried timber, twigs, branches, bushes	Users Group	VDC	-	-
Herbs	Users Group	DDC	-	-
Mines (stone, sand, soil)	Users Group	VDC & DDC	HMG	-
Skin, bone and other animal by-products	Users Group	DDC	-	-
Prohibited herbs	HMG	-	-	-
Resin	HMG & Users Group	DDC	-	-
Dahatar bahatar	Users Group	DDC	-	-
Straw, grass	Users Group	VDC	-	-
Water resources	Users Group	VDC/DDC	HMG	Kingdom of Nepal
Natural heritage	Users Group	VDC	-	-

[illegible]

priority, among other things, to projects that help protect the environment. Section 43(4)(b) obliges the VDC to formulate plans after obtaining projects from the ward committees and the UCs and NGOs of the village development area. Section 43 makes it clear that projects likely to contribute to environmental protection, which certainly include community forests, must receive priority. Likewise, VDCs are obliged to include the projects given by FUGs in periodic and annual plans. Where they exist, FUGs are one of the longest lasting UGs in most VDCs. Thus, the decentralisation legislation itself seems to give prominence to FUGs.

Section 48 of the LSGA includes a provision relating to the implementation of VDC projects from the funds of the VDC itself, from contributions given by the DDC, and by various NGOs. However, the LSGA does not mention the role of FUGs or the contribution of FUGs, which increase almost every year. The Forest Act empowers FUGs to spend money on public welfare activities from the balance remaining in the FUG fund after investing in community forestry development. At least 25% of FUG income must be spent on the development of community forests and the remainder may be spent on other activities. At present, FUGs undertake many development activities in their areas. It is discouraging that this increasing contribution of FUGs is not recognised.

The LSGA empowers VDCs to operate projects through NGOs and obliges the VDC to encourage NGOs in the identification, preparation, operation, supervision, evaluation, and maintenance of work within the village development area. NGOs must implement projects in coordination with the VDC. Section 47 of the LSGA obliges the VDC to coordinate with government and non-governmental organisations, among others, to provide various services and to implement development programmes in the village development area. However, the LSGA is almost silent on the subject of coordination with FUGs. In reality, FUGs are also NGOs with their own legal existence. If the idea is to involve NGOs, there should be no

reluctance about promoting FUGs, which are the most appropriate form of community based organisation (CBO), being autonomous legal entities and well equipped with knowledge of how to manage local natural resources and of the people's needs. Unless the strength and potential of FUGs is recognised by the various pieces of legislation dealing with the management of natural resources, legislative objectives are unlikely to be met. Equal status should be given to NGOs and FUGs.

Surprisingly, the LSGA provides no legal measures for involving UGs in the identification, supervision, and evaluation of development plans. However, Section 49 of the Act stipulates that the implementation of village level projects must be done through user committees. The involvement of UCs in the planning process will certainly strengthen project implementation and maintenance. The LSGA overlooks this aspect, whereas the Forest Act and Regulations clearly stipulate that the users themselves develop and implement the work plan.

Unlike the provisions of the LSGA relating to UGs at the VDC level, the provisions relating to UGs at the DDC level are clear, and promote UGs in implementation of projects. Section 208(1) of the LSGA requires the DDC to implement its projects by constituting a UC from among the beneficiaries of the project. Further, in this case the LSGA gives NGOs and UCs equal status. Section 209 (1) of the LSGA obliges UCs and NGOs to coordinate with the DDC in implementing and operating development projects. The DDC is empowered to implement and operate projects through UCs and NGOs (LSGA 209[2]). Section 208(1) and 209(2) of the LSGA also appear contradictory, for Section 208 (1) provides obligatory provisions whereas Section 209 (2) makes the same provision discretionary.

Section 50 of the LSGA states that the VDC must abide by the directives issued from time to time by the National Planning Commission and the DDC with respect to the formulation and implementation of village development plans. This provision is incompatible with the principle of decentralisation. No effort has been made to amend it, however, raising questions about the government's decentralisation initiative itself.

Now is the appropriate time to define and classify the linkage and coordination between local authorities and UGs. Since local authorities will ultimately be more powerful and will have the authority to levy and collect taxes, fees, and so on, this could lead to the over-harvesting of natural resources, and to their degradation. A clear line must be drawn between the different pieces of legislation, and gaps and contradictions corrected.

Complementarities and gaps

- Section 25 of the LSGA does not mention forests at all under the powers and functions of the VDC ward committee.
- Section 28 (2) of the LSGA does not mention how UGs and NGOs could be encouraged to carry out VDC construction and development work.
- UGs under the LSGA do not have the same legal status as irrigation users associations under the Water Resources Act or UGs or UCs under other acts, or FUGs under the Forest Act.
- Section 43 of the LSGA obliges the VDC to formulate periodic and annual plans for the VDC, which certainly includes community forests.
- The LSGA is silent about the contribution and role of FUGs and coordination with FUGs.
- Section 50 of the LSGA requires the VDC to abide by directives issued by the National Planning Commission and the DDC, and it raises questions about HMGN's decentralisation initiative.
- If the provision of Rule 31 (2) of the Forest Regulations is misused, the consequences will be fatal.
- Increasing the empowerment of local bodies could lead to over-harvesting of natural resources, and thus to their degradation.

six
looking towards the future

Initially, efforts were mostly made to hand over large areas of forest to UGs. The DoF demarcated forest areas haphazardly, leading to many technical problems and depriving many people of their own land. The participation of local people in this crucial phase of community forestry development cannot be ignored. Overlooking the importance of full community participation to investigate who are the genuine forest users and how forest area should be demarcated raised many conflicts between the DoF and the people (Poudel 1997). This hampered the success of the community forestry programme. There are a large number of cases in the Supreme Court related to the demarcation of community forests. In some instances, private land has been demarcated as national forest and in others, community forest area has come under individual ownership.

The Forest Act of 1993, the Environment Protection Act 1996, and the Environment Protection Regulations 1997 have been carefully drafted to ensure that they are both realistic and practical. In addition, the government increasingly recognises and accepts the need to work closely with NGOs and, most importantly, with local people themselves. Consequently, new organisations are evolving, linkages between organisations are being forged, and community forestry is growing. These are all positive efforts initiated by the government. However, it is easier to make policies and reform them, to enact and amend laws, and to set targets for large numbers of UGs, than to implement a lasting and equitable community forestry programme. It remains to be seen whether the government's efforts will succeed.

Constraints remain daunting. Talbott and Khadka believe that among the most demanding of these constraints are the problems posed by tenurial insecurity and the lack of effective legal recourse to oppose DoF decisions. Unless their time, effort, and material investments stand a good chance of paying off, FUGs will be reluctant to participate fully. Conversely, they are sure to pursue those management schemes that have a proven record of increasing material benefits. To ensure that this is the case, a history of institutional inertia within the government agencies needs to be overcome. Perhaps more importantly, real disincentives against agency enthusiasm do exist — additional work load and increased responsibility coupled with loss of some control over (and thus credit for) successful innovations. As long as community forestry implementation relies on the goodwill of the DoF, these factors may well prevail over both the spirit and the letter of the law.

Forest products that are deemed essential for farmers and forest users are generally limited to grass and/or fodder, firewood, leaf litter, and small timber for making agricultural

implements, but this is not all that communities need. In defining the basic needs of a rural community, biological materials from the forested land of a community such as charcoal, honey, resin, spices, wildlife, and medicinal and food plants should be included. The definition should also be sensitive enough to accommodate services rendered by forest land such as grazing, watershed protection, management of wildlife habitat, and the development of ecotourism.

In practice the work plans — management agreements between the users and the government — set limits on the rights of UGs. While preparing a work plan, forest users are assisted by district forest personnel, who may still be guided by an ideology of protection. They do not fully describe and make clear what is achievable by users within the limits of the Forest Act. Thus, many FUG work plans do not reflect the good intent of policy and legislation.

The ongoing gap between practice and policy not only delays the desired progress but also reinforces the perception in the community that government sponsored activities are more to benefit the government itself than to help local communities. Therefore, a protective ideology among forest personnel is unwanted because it can prevent the wise use of the forests (Chhetri 1994).

The DoF needs to work together with different government agencies to make the various pieces of legislation consistent with the Forest Act 1993 and it should repeal those provisions in the Forest Regulations which limit the powers given by the Forest Act, as discussed earlier in this paper.

The Act should be amended to incorporate the role of the VDC as a mediator between UGs and government agencies. A provision for advisors should also be included in the Act with this role also entrusted to members of the VDC. The Act should encourage FUGs to invite the VDC representative to their meetings where possible and to seek advice from the VDC in case of problems. For this to become effective, VDCs should see FUGs as autonomous institutions, should respect their autonomy and decisions, and recognise their contributions.

The time has come for serious dialogue with local government to address their concerns as well as to accommodate the aspirations of FUGs. As VDCs and DDCs are elected, representative institutions of local people, they have the mandate to make decisions on behalf of their constituency. This does not mean that they must take part in FUGs. VDCs and DDCs should see their role as promoters and facilitators rather than as regulators. They should see community forests as one of their long-term projects and promote them to this end. FUGs should inform VDCs of their decisions as an advisory group. FUGs should also promote the role of the VDC and DDC as mediators and arbitrators. The VDC should also try to implement their projects through FUGs.

Talbot and Khadka note that perhaps the most significant harbinger of the impending change comes not from the words of statutes, but from changes in the attitudes of the people. Before 1990, many Nepalese villagers referred to the forests as 'sarkari ban' (*government* forest), now they increasingly refer to them as 'hamro ban' (*our* forest). In light of the entrenched legacies of both the Rana regime and the panchayat system, this semantic change indicates a noteable achievement**.**

The community forest programme is one of the most effective programmes to protect and conserve the nation's natural resources. An FUG established under the Forest Act enjoys various powers and is one of the most powerful legal entities to manage and utilise the country's natural resources. However, due to lack of awareness, ignorance of legal provisions

and policy, and to some extent governmental reluctance, FUGs are confronted with various problems. The MFSC should not compromise on non-negotiable issues such as the autonomy of FUGs, and the full power FUGs have at present for management and development of the forests, including fixing the prices of the forest products. A legal and policy framework should be developed and amended to reduce and mitigate the adverse impacts of different sectoral legislation and policies. The need of the hour is to enter into consultation and serious dialogue with different stakeholders, particularly local elected institutions, and to continue building on the success of the community forestry programme.

Looking towards the future (recommendations)

- Need to attain consistency among Forest Act, Rules, and other laws
- All biological materials, from grass, fodder, and firewood to charcoal, honey, resin, wildlife, and other non-timber forest products, should be included in defining the basic needs of a rural community
- Legal provisions need to be enacted for the conservation of wildlife and sustainable harvesting
- Various acts and laws require amendment
- VDCs and DDCs should see their role as promoters and facilitators rather than as regulators
- VDCs and UGs should understand each others' roles and functions and work in harmony to complement each other
- VDCs and DDCs should respect the right of FUGs over forest products within the CF area
- The MFSC should not compromise on non-negotiable issues such as the autonomy of FUGs, and should continue further empowering and strengthening FUGs

seven
bibliography
(not necessarily cited in the text)

Amatya, P.K. (1997) 'People's Participation in Development and Local Government.' In *Sahabhagita,* 2 (1): 21-35

Amtzis, J. (1995) *Conflict Resolution in Forest Resource Management*. Workshop Report. Kathmandu: ICIMOD, GTZ, RECOFTC

Bhatia, A. (ed) (1996) *Proceedings of the Seminar on Conflict Resolution in Natural Resources*. Kathmandu: ICIMOD

Bhatia, A. (1999) *Participatory Forest Management: Implications for Policy and Human Resources' Development in the Hindu Kush-Himalayas. Volume V Nepal*. Kathmandu: ICIMOD.

Bir Bahadur Lama v. Ministry of Forest and Soil Conservation (1997) In *Supreme Court Bulletin,* 5(4): 84

Chhetri, R. (1994) 'Rural Communities and Their Forests.' In *Habitat Himalayan,* 1(1): 3-4

HMGN High Level Decentralisation Coordination Committee (1996) *Decentralisation and Local Self-Governance Report, 2053*. Lalitpur: HMGN, Decentralisation Working Group

HMGN/DoF (1997) *The Community and Private Forestry Programme in Nepal*. Kathmandu: HMGN/DoF

HMGN/MWR (1992) *Irrigation Policy*. Kathmandu: HMGN, Ministry of Water Resources

HMGN/NPC (1992) *The Eighth Plan (1992-1997)*. Kathmandu: HMGN/National Planning Commission

MPFS (1988) *Master Plan for the Forestry Sector (MPFS)*, *Nepal Forestry Sector Policy*. Kathmandu: HMGN ADB; FINNIDA

Hobley, M.; Campbell, J.Y.; Bhatia, A. (1996*) Community Forestry in India and Nepal: Learning from Each Other*. Discussion Paper Series No. MNR 96/3. Kathmandu: ICIMOD

ICIMOD, (2002) *Participatory Forest Management in Myanmar. First National Workshop, December 2000.* Kathmandu: ICIMOD

Joshi, A.L. (1997) 'Empowering Local Users in the Forest Management of Nepal.' In *Sahabhagita*, 1(2): 49-68

Kanel, K. (1993) 'Community Forestry and the 1993 Forestry Legislations, Implications for Policy and Implementation.' In *Banko Jankari*, 4(1)

Khadka, S.S.; Gurung, S.K. (1990) *Popular Management of Forest Resources in Selected Districts of Selected Zones: Review of Laws and Regulations on Forestry User Groups*. Kathmandu: CEDA

Lynch, O.J.; Talbott, K. (1995) *Balancing Acts: Community-based Forest Management and National Law in Asia and The Pacific.* Washington DC: World Resources Institute

Mahat, T.B.S.; Griffin, D.M.; Shepherd, K.B. (1986) 'Human Impact on Some Forests of the Middle Hills of Nepal: Forestry in the Context of the Traditional Resources of the State.' In, *Mountain Research and Development 6(3)*: 223-232

Martinussen, J. (1993) *Local Authorities in Nepal*. Kathmandu: HMGN/Ministry of Local Development; DANIDA

Palit, S. (1996) *Comparative Analysis of Policy and Institutional Dimensions of Community Forestry in India and Nepal*. Discussion Paper Series No. MHR 96/4. Kathmandu: ICIMOD

Poudel, S.K. (1997) 'Conflicts in Two Community Forestry User Groups in Kaski District, Nepal.' In *Banko Janakari,* 7(1): 23-31

Pradhan, R.; von Benda-Beckmann, F.; von Benda-Beckmann, K.; Spirits, H.L.J.; Khadka, S.S.; Haq, K.A. (eds.) (1997) *Water Rights, Conflict and Policy*: Proceedings of a Workshop held in Kathmandu, Nepal, January 22-24, 1996 (Publisher no longer exists)

Sharma, P.M.; Bajracharya, R.M.; Sharma, S. (1997) *A Study on the Social and Legal Aspects of Water User and Sanitation Committees*. Kathmandu: Asian Development Bank; HMGN, Ministry of Housing and Physical Planning, Department of Water Supply and Sewerage

Shrestha, B.K. (1996) *Decentralised Planning and People's Participation in Decision-Making in Nepal*. Paper presented at the National Seminar on Strengthening Participatory Democracy through Decentralisation, Political Science Association of Nepal, 14-15 March 1996, Kathmandu, Nepal

Shrestha, K.B. (1996) *Community Forestry in Nepal*: *an Overview of Conflicts*. Discussion Paper Series No. MNR 96/2. Kathmandu: ICIMOD

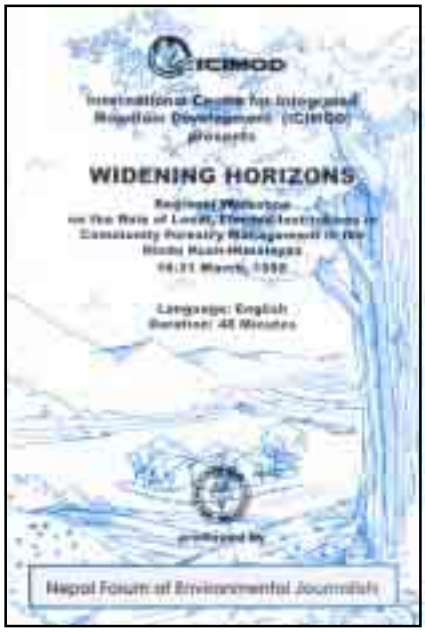
Talbott, K.; Khadka, S. (1994) *Handing It Over: an Analysis of the Legal and Policy Framework of Community Forestry in Nepal*. Washington DC: World Resources Institute,

Tillitt, G. (1991) *Resolving Conflict: a Practical Approach*. Sydney: Sydney University Press

Also from ICIMOD on this theme.....

Widening Horizons

Role of Local, Elected Institutions in Community Forestry Management in the Hindu Kush-Himalayas



A film by ICIMOD
Produced by NEFEJ
2001

Languages: English, Nepali, or Hindi

Playing time: 48 min

Format: VHS

Price:
US$ 20.00 (Developed Countries)
US$ 15.00 (Developing Countries)
US$ 10.00 (ICIMOD Member Countries)

To order contact
ICOD/ICIMOD, POB 3226, Kathmandu, Nepal
Phone: +977 1 525313
Fax: +977 1 524509, 536747
email: distri@icimod.org.np
on-line: www.icimod.org

It is becoming increasingly clear to all concerned that the natural resources in the mountains can only be properly managed in the long-term if the actual users, local people at the grass roots, are involved in development and implementation of strategies for use and protection – and this is particularly true for forests. All over the HKH, there is a move towards participatory forest management in one form or another. But how will local government and community-based FUGs, formal and informal, work together? And how local government with policy-making institutions at the central level?

In March 1998, women and men from Bangladesh, India, Pakistan, and Nepal elected to village institutions at village and district levels met together with members of community forestry groups and networks and NGOs for an intensive workshop on the role of elected institutions in community management to debate issues and evolve strategies. The results were filmed, and are presented here in an innovative attempt to capture the essence of the problem,and the way people can work together to create solutions. The scene is set with real life cameos of life in the region, an earth ceremony symbolises the unity of purpose that brings the participants together, key issues are identified, topics are highlighted through excerpts from speeches – and more movingly in wide-ranging series of interviews with individual participants held during the workshop. A cultural dance programme brings people closer, songs are used to highlight environmental issues, a field trip shows the interaction between elected local government officials and FUG members– and an earlier conflict in the same village is presented as a piece of street theatre, to everyone's immense enjoyment. The workshop closes with an extensive common statement on governance and community forestry, listing the present situation, desired outcome and strategies for achieving it, for different issues of concern.

Although filmed some time ago, the topicality of this issue has not faded. This lively way of looking at the whole field of interaction between governance and community forestry, between elected local government officials and forest user groups, will inform many and contribute to discussion and solutions. All the major issues are touched on in one way or another – a veritable goldmine of information on attitudes, desires, perceived problems and needs, and a wonderful example of how a disparate group of people with a common interest can work together creatively to develop new strategies and approaches.

About the Authors

Mr. Narayan Belbase

Mr. Narayan Belbase is currently Programme Officer (Environmental Justice Programme) at Ford Foundation, New Delhi. He served IUCN (The World Conservation Union) in various capacities from 1990 to 2000, and UNDP Nepal as Assistant Resident Representative in 2000-2001. He has written extensively on environment, governance, and gender issues. He holds a Masters of Comparative Law (MCL) from the University of Delhi and Masters of Law (LL.M) from Sydney University.

Mr. Dhrubesh Chandra Regmi

Mr. Dhrubesh Chandra Regmi is an advocate and a social activist. A lecturer at Tribhuvan University, he is also a founder board member of South Asia Watch on Trade, Economics and Environment (SAWTEE). He has written extensively on environment, intellectual property rights, and consumer issues. He holds a Bachelor of Law from Tribhuvan University and Masters of Arts from the University of Delhi. Mr. Regmi is currently preparing his thesis for a Ph.D. degree from the University of Delhi.