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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 permissible 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 (Talbot 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.