

# 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	-	-

After the promulgation of the 1991 Constitution of the Kingdom of Nepal, sovereignty in the hands of the people of Nepal was reflected in the Water Resources Act. The Government has undertaken the application of decentralised legislation with respect to sharing of agricultural commodities with the private sector, provision of improved technologies, Strengthening of water resources in the agricultural sector of rural areas.

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.