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Mirror Group Discussions

The 'mirror groups' were small groups for discussion about issues raised in the plenary and other sessions. There were four in all, and they were asked to discuss the core issue of politicisation of community forestry user groups and ten other key issues. All the groups were requested to address the core issue and to discuss at least three others. Selection of the other issues and the priority given were left to the groups themselves. Groups could also identify their own issues.

Core Issue: Politicisation of Community Forestry User Groups

Fear of the negative aspects of politicisation, such as involvement in party politics, factionalism, and lack of transparency led many community forestry user groups to avoid interaction with the local, elected institutions and political activity of all kinds. The groups were asked to consider the appropriateness of this fear and the consequences of such avoid-

ance. The question of the advantages and disadvantages of engagement in or disengagement from local, elected institutions was also raised.

Key Issues

- Issue 1 :** Strategies to make local, elected institutions and community forestry user groups accountable and transparent
- Issue 2 :** Strategies to enhance co-ordination between local, elected institutions and

Participants at a discussion



community forestry user groups

- Issue 3** : Strategies to ensure that laws, rules, and regulations related to decentralization and the forestry sector
- Issue 4** : Strategies to reduce and mitigate conflicts occurring between local, elected institutions, community forestry user groups, and other stakeholders in implementing user group measures
- Issue 5** : Strategies to reduce duplication and optimise use of resources
- Issue 6** : Strategies to empower women in politics and in community forestry user groups
- Issue 7** : Strategies to enhance the role of community forestry user groups in planning, budgetting, implementation, and monitoring of development programmes undertaken by local, elected institutions
- Issue 8** : Strategies to influence local, elected institutions to increase the resources allocated for local development
- Issue 9** : Strategies to enable poor and marginalised people to have equal access to forest products
- Issue 10**: Strategies to influence locally, elected institutions so that they can advocate on behalf of community forestry user groups

The groups were requested to come up with specific responses to these issues at village level, district level, national level, and inter-country level.

Plenary Presentations on Mirror Group Discussions

GROUP ONE

Priority One: Strategies to enable poor and marginalised people to have equal access to forest products

- Increase people's participation in establishing rules and regulations for community forestry user groups.
- Seek to involve local people's representatives and local communities in the identification of poor and marginalised people.
- Distribute forest products at reduced rates or even free of cost to poor and marginalised people according to their needs. Enable the poor and marginalised people through training and provide jobs on a priority basis wherever possible.
- Community forestry user groups earning income should work for the betterment of the poor and disadvantaged.

Priority Two: Strategies to enhance women's roles in politics and community forestry management

- A reservation of 50 per cent of the seats should be given in law in order to ensure women's participation in the executive committees of community forestry user groups. Until such a legal arrangement is established, representatives should help women to provide their own leadership. Similarly, local representatives should arrange for the participation of the poor in community forestry user groups.

Priority Three: Strategies to reduce and mitigate conflicts occurring between local, elected institutions,

community forestry user groups, and other stakeholders in implementing user group measures

- Rules and regulations should favour community groups and local, elected institutions and representatives of community forestry user groups should take the initiative in this respect.
- Conflicts arise because existing laws and the proposed decentralization legislation give the right to use forest products to both local, elected institutions and community forestry user groups. Forums to address these issues are required.
- Assistance should be provided in order to solve border disputes among community forestry user groups.

Priority Four: Strategies to make elected institutions and community forestry user groups accountable and transparent

- The representatives of the people must become honest.
- The monthly income and expenditure records of local, elected institutions should be made available for inspection to local communities.
- Groups and organizations that work under local, elected institutions must be persuaded to make their income and expenditure available for public scrutiny.
- Awards should be provided to individuals and organizations that do commendable work.

Specific local, national, and inter-country responses

- Local, elected institutions and FECOFUN should provide the assistance needed to solve problems at the local level. Problems that

cannot be solved at the local level should be referred to national level institutions.

- Interaction programmes should be arranged among HMG, local, elected institutions, and FECOFUN.
- Workshops should be arranged to discuss the integrated development of hilly areas of the Hindu Kush-Himalayas and the formation of an organization that will include people engaged in natural resource management.

GROUP TWO

This group made a good suggestion that all institutions, community forestry user groups, locally elected bodies, and other organizations working in forestry in the Hindu Kush-Himalayan region should form an alliance. They emphasised that a relationship between locally elected institutions and the forestry user groups is very important.

Priority One: Strategies to make elected institutions and CFUGs accountable and transparent

Accountability

- The locally elected institutions should be made a major decision-making institution with authority to take decisions, plan, and implement programmes. As for natural resources, responsibility should be given to the village committee for community forestry, the locally elected body, or the forestry user groups.
- All community members and forestry user groups should have an equal share in the decision-making process. All decisions should be made by consensus.
- If any elected representative does not meet the expectations of the electorate or acts contrary to the

people's welfare, there should be a legal provision to recall them and to revoke their election.

- Elected institutions and forestry user groups should plan together after due consideration for ecology and the environment. Women should be included in a major way in this process.

Transparency

- There should be transparency in all the undertakings and at all levels.
- All institutions and committees should present openly to all people a complete account and financial statements of income and expenditure. This should be made a local tradition.
- Expenses incurred in campaigning for local elections should be made public.
- Provision should be made that all citizens can obtain any information they need without cost. This should be a major function of the people's representative.
- Elections must be held on time.
- In order for this transparency to become operational, people need functional education and need to be made aware of their rights. These are the tools that will help us to achieve transparency in civic society.

Priority Two: Strategies to bring about complementarities between laws, rules, and regulations related to decentralization and the forestry sector

- Decentralization and forest related work require that laws be based on ground-level realities. Laws should be made at the *Gram Panchayat* level or thereabouts, as they can be worked on more properly and effectively at that level. If any amendments are required, they can easily be made.

- Byelaws and rules to manage and govern local forest resources should be made through locally elected bodies.
- Recommendations should be taken from the *Gram Panchayat* and the locally elected committee should forward these to policy-makers and laws should incorporate these suggestions.
- Feedback from local people should be sought before finalising any law.
- Laws and rules regarding water, forests, and the land should not overlap. National-level laws must complement laws and policies at the community level.

Priority Three: Strategies to empower women in politics and in community forestry user groups

To improve the operations of both locally elected institutions and forest user groups, and to improve the relationship between them, participation of women is important. However, thus far, whenever this has been mentioned, people's responses have been very uncertain and the resolve has been limited to rhetoric.

- Strong and effective laws are needed to give women a better chance to participate in the decision-making process.
- There should be reservations for women and the underprivileged, but for an agreed time period only. If the time is not limited, the reservation provision could be misused.
- There should be awareness programmes for women, and they should be given an equal opportunity to participate in politics and community forestry management.
- Specific programmes and information on alternative income generation should be provided to women.
- It is important that women who

are involved in natural resource use be given opportunities to express their views and give recommendations openly.

GROUP THREE

Priority One: Coordination between community forestry user groups and locally elected institutions

- The increasing emphasis of community forestry user groups on commercial exploitation of forest produce and locally elected institutions' perceptions of community forestry user groups as a source of 'money power'
- Failure on the part of the 'creators' of community forestry user groups to provide them with an organic link to the local governance chain.
- Community forestry user groups are sadly and poorly pitted against:
 - political masters (ministers),
 - forest and other officials (DFOs),
 - 'mafia' groups, and
 - environmental protection groups.

Each of these groups aims to exploit the forests at the stage when conservation and protection is achieved and commercial exploitation is possible.

- Absence of conflict resolving mechanisms between community forestry user groups and forest officials as well as community forestry user groups and elected institutions
- Community forestry user groups' own capacities and capabilities to resolve conflicts and have better appreciation of their role with locally elected institutions and other outside vested interest groups are also limited.

Priority Two: Strategies to enhance coordination between community forestry user groups and locally elected institutions

- Capacity building of community forestry user groups must increase their management skills and understanding of the intentions of each outside vested interest group trying to use them, and they must proceed with caution.
- Focus of community forestry user groups should be more on protection of forests for meeting their daily needs for fuel, fodder, and conservation of water resources.
- Community forestry user groups should not be organically linked to locally elected institutions without any fear of being politicised. In any democratic system, politicisation is not so bad. Community forestry user groups must sharpen their skills and enhance their capacities to live successfully within the 'environment' in which they are born and grow.

Community forestry user groups must continue to raise their voices for more autonomy in the preparation and management of their working plan vis-a-vis the forest department. In fact the micro-plan of each community forestry user group's command area, made through community involvement, must replace the working plan guided by the forest department. Improvement of the capabilities and capacities of community forestry user groups must take place concomitantly with this.

- The forest department should change its attitude and its process to bring it into line with the changing scenario in natural resource management. DFOs must begin to acknowledge the capabilities and inherent strengths of community forestry user groups

and give them support rather than looking upon them as a threat to their power and existence.

- Innovations in conflict management at the local level were needed and space within the overall setting in which community forestry user groups and locally elected institutions was operated, being created.

Priority Three: Strategies to bring complementarities between Laws, Rules and Regulations related to decentralization and the forestry sector

- We cannot govern forestry at the village level in isolation, and thus the need for complementarity between Forest Conservation Acts and laws governing the forest sector and the laws bringing in the decentralization process.
- Each nation will have to achieve this by carefully analysing the areas of conflict at each level of decentralization being attempted within their historical perspective and make amendments in the laws governing the functioning of the forestry sector at each level of decentralization.
- Lessons can be learned by the countries of the Hindu Kush-Himalayan region by looking at the best mechanisms that are evolving in this region and the complementarity achieved.
- Lessons learned from the functioning of community forestry user groups and locally elected institutions over the last few years also provide insights into the areas of conflict(and attempt amending laws and rules which put them in a situation of an 'either-or' scenario.)

Priority Four: Strategies to empower women in politics and in community forestry user groups

- Equal participation of women both in politics and in community forestry user groups is a *sine qua non* for bringing about their empowerment.
- Reservations at various levels of governance is not the answer; it only gives them space within the system to make a start.
- The beginning should be made at each level of family and village institutions.
- Focus on women's education and health issues can facilitate empowerment and by enhancing their understanding and analysing the issues from the right perspective.
- Economic activities for women, such as women's dairy cooperatives, women's community forestry user groups, etc, can also help the empowerment process.
- Women's groups should be increasingly exposed to the outside world and given the opportunity to develop their skills in negotiation and in decision-making processes.
- Everyone must make an effort to generate space for women's initiatives at all levels.

GROUP FOUR

The members of this group selected and prioritised three issues by voting and then formed four small groups, each one considering the task from a certain perspective: village level, district level, country level, and inter-country level.

Priority One: Coordination between community forestry user groups and locally elected institutions

Village Level

- Formation of a coordination committee. The representative of the coordination committee, elected representative from the elected

body, and representatives from other stakeholders should form this coordination committee at the village level.

- Information on activities of every community forestry user group should be sent to the village-level, locally elected institution every three months.
- The locally elected institutions must use a part of their budget for programmes related to increasing people's awareness about forestry.

District Level

- There is no forest committee at the district council level. In India, a forest committee should be created at the district level to bring coordination between the district council and the forest committees. In order to activate this forest committee, the DFO should be the secretary of this committee.
- People who depend on the forest for their livelihood should give a memorandum to the government.
- To make the district forest committee more active, elected representatives from different villages should give memoranda related to forestry to the government.
- To make the DFO more aware of forest-related problems, he/she should be invited to district forest committee meetings. These meetings should be held once or twice a year.
- District council members should also be invited to the meetings.
- To protect national forests, a sub-committee should be formed under the supervision of the district forest committee.
- To increase women's participation, there should be elected women representatives on forest committees and sub-committees.

National Level

- Formulation of those policies that can encourage people who are en-

gaged in agroforestry and in private forestry

- Role of locally elected institutions in assisting with monitoring and planning of community forestry user group programmes
- The government should provide grants for forest conservation.
- Policy formation related to forest-based industries
- Move to remove double taxation on forest products
- Arrange for the use of community forestry income through cooperatives for development programmes.

Inter-Country Level

- Politicians, administrators, and community representatives should meet regularly at the inter-governmental level
- Study tours and workshops should be organized.

Priority Two: Strategies to empower women in politics and in community forestry user groups

Village Level

- Women's participation in policy-making is a must.
- There should be arrangements for at least 30 per cent women's participation in locally elected institutions.
- There should be arrangements for at least 40 per cent women's participation in community forestry user groups.
- In order to enhance the capacity and awareness of women, workshops, study tours, and different programmes should be organized.
- Men who work in different institutions should initiate and provide opportunities for their own women family members to participate.
- Legal rights for women to paternal property must be given.
- Awards should be given to those

women members who have worked actively throughout the year.

- To make women more self-confident, locally elected institutions and community forestry user groups should arrange joint training programmes for them.
- Locally elected institutions should play an active role in arranging suitable and reasonable markets for the sale of products made by women's groups.
- Members of locally elected institutions and community forestry user groups should jointly arrange a conference to discuss their problems and identify solutions.

District Level

- To improve the leadership qualities of women in community forestry user groups, arrangements for training should be made.
- Women must be represented on district-level governance bodies.
- Elected women members must arrange meetings once or twice a month, and the president and vice president of the elected district council should be invited to participate.

National Level

- There should be reservations for women in locally elected institutions and community forestry user groups.

Inter-Country Level

- Women's meetings should be organized for comparative study of the issues and potential solutions.
- Study tours and workshops should be organized.

Priority Three: Strategies to bring complementarity between Laws, Rules and Regulations related to decentralization and the forestry sector

Village Level

- Provide information on present laws and regulations to members of locally elected institutions and community forestry user groups.
- Arrange interaction programmes to seek solutions for legal hindrances.
- Arrange talks on positive and negative aspects of legal acts and prepare papers, suggesting possible amendments, to be sent through the locally elected bodies to the central level.
- Duplication of rights between local institutions and community forestry user groups should be removed through interaction programmes of community forestry user groups' representatives and representatives of locally elected institutions. With ICIMOD's assistance, the president of FECOFUN should take the initiative for this process in Nepal.

District Level

- Forest committees/subcommittees should search for experts to make forest policies, and they must be invited to meetings occasionally.
- In order to make pro-public forest laws, the members of forest committees, having prepared the points related to the acts, should work to increase knowledge about them among the community members.

National Level

- The government should consult with different stakeholders before making policy decisions.
- A national forum should be established for discussion related to duplication of related acts.

Inter-Country Level

- Comparative studies should be commissioned.
- Study tours to relevant countries and workshops should be organized.

PLENARY SESSION

Comparative Analysis of the Decentralization Laws and Forest Laws of Nepal

by Narayan Belbase and Dhrubesh Regmi

Narayan Belbase and Dhrubesh Regmi are specialists in environmental law who work with the ProPublic law firm. They are active in the field of developing environmental legislation in Nepal, including bringing Nepal's laws into conformity with international environmental legal accords, in facilitating implementation of such legislation, and in environmental legal research.

Issues and Challenges for Linkages Between Local Governance and Community Forest Management in Nepal

by Amrit Lal Joshi

A.L. JOSHI is Chief Planning Officer of the Ministry of Forests and Soil Conservation, His Majesty's Government of Nepal, and has made a major contribution to the implementation of the Community Forestry Programme in Nepal.

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Comparative Analysis of Decentralization Laws and Forest Laws of Nepal

by Narayan Belbase and Dhrubesh Regmi

Mountain farmers in Nepal have historically established systems to manage local forests on their own initiative. These systems involved locally accepted rules through which a clearly defined group of beneficiaries regularised forest use and excluded outsiders. Rural communities

formed a group and kept some forest area as *raani ban* (queen's forest), using it for a few months every year and leaving it undisturbed to regenerate for the rest of the time. These practices gave birth to Nepal's present day community forestry system. Violating the code of conduct for a *raani ban* was punishable, and these *raani ban* were also honoured by other villages in the area. Even now, examples exist of communities continuing to manage forests successfully irrespective of laws and ownership.

Prior to 1957, local communities controlled forest use themselves, without any question of incentives to regulate forest consumption and invest in forest resources. Following nationalisation in 1957, people reacted negatively, fearing their traditional rights to access and use would be curtailed. Since no compensation was offered for soon-to-be deprived landowners, many purposely deforested their land to prevent its being nationalised. Communal responsibility for forest management disappeared and forests were converted into an open access, common property resource. State control of the forests failed because of lack of institutional capacity.

The Forest Act 1961 provided for state administration of the forests, and sought to restore governmental control by transferring some state-owned forests to the local level, while formalising village *panchayat* usufruct rights over others. By the mid seventies, policy-makers realised that local people's participation was essential in managing the forests on which they depended. Non-government organization (NGO) involvement hit a critical height following a 1975 government-sponsored forestry-management conference in Kathmandu. Forest officers from

across the country met with senior officials in a major forum. Subsequently, a series of legislative enactments brought Nepal incrementally closer to its current emphasis on community forestry. Initial success was limited, however, largely due to the impractical nature of the forestry rules which failed to create an environment for the full participation of all users.

In 1986, the government initiated a formal review of the forest policy that culminated in the formulation of the Master Plan for the Forestry Sector 1988 (MPFS), a policy and planning strategy for forestry stretching into the next century, setting medium and long-term objectives. The priority objectives of the MPFS are to meet the basic needs for fuelwood, timber, fodder, and other forest products, on a sustained basis, and to promote people's participation in developing, managing, and conserving forestry resources. Women's participation is also addressed as the plan's guidelines stipulate that one third of user committee members should be women. Community and Private Forestry is prioritised; the policy being to develop and manage forest resources through the active participation of individuals and communities to meet their basic needs, with phased handing over of all accessible hill forests to the 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, authorising District Forest Officers (DFOs) to form user groups, hand over forest areas, and provide technical assistance. All tangible benefits from community forestry development go to the user groups. Simultaneously, a process of decentralization was also taking place in Nepal with the emergence of democracy and a multi-party system. De-

centralization policy in Nepal evolved in different stages after 1965 and emerged as enacted under the Decentralization Act 1983. This Act represented a milestone in the government's campaign to surrender resource management to local communities through the user's group concept. Scepticism that the Act represented the national government's attempt to secure power by increasing local political elites' access to development largesse, however, led to its becoming virtually defunct after restoration of democracy. A new High Level Decentralization Coordination Committee (HLDDC) under the chairmanship of the Prime Minister was established in April 1996. Among the Committee's policy recommendations are the following: to follow a participatory development and decision-making approach at the local level, mobilise resources at the local level, and institutionalise local self-governing institutions. The Commission's report also notes that disputes have been caused by contradictory provisions in the Forest Act and by the Nepal Mines' Act relating to income of the local government accruing from natural resources. Consequently it recommends amending or repealing these provisions. The report is, however, silent about the management and use of community forest products. The Local Self Governance Bill (LSGB) has already been prepared and tabled in parliament. Once enacted, it will provide a legal framework for implementing the government's most recent decentralization initiative.

Nepal's 1990 Constitution envisages the people as the source of power through decentralization. Article 26 (3) requires the State to pursue the policy of mobilising the nation's natural resources and heritage in a manner useful and profitable and suitable to the national welfare. Al-

though Article 26 did not specifically mention community forestry, it provided the legal mandate for community forestry which revolves around local user groups for protection, management, and use of the forests. By enacting the new Forest Act 1993 and Forest Regulations 1995, HMG had shown its commitment to institutionalisation of forest users' groups (FUGs) by recognising them as legal entities. Detailed provisions regulated the procedure for forming and registering FUGs, preparing work plans, handing over community forests, managing FUG funds, and organizing the collection, sale, and distribution of forest products. If the DFO found an FUG not working according to the work plan, likely to adversely affect the environment or unlikely to comply with the Forest Act or regulations, the DFO could cancel the FUG's registration and resume ownership of the community forest. The FUG must be given an opportunity to state its case and has the right to appeal to the Regional Forest Director.

The number of forests being handed over was expected to increase with new legislation and intensive training programmes. The targets fixed by DFOs are decreasing every year, because post formation support demands were too high for existing personnel to cover. Statistics showed that the number of FUGs receiving community forests had increased every year since 1987/88. By late 1997, there were 6,022 FUGs; 0.64 million households were involved in FUGs in 59 districts throughout Nepal. However, implementation of community forestry policy, legislation, and programmes differed from area to area. This had already created various problems, and these were likely to increase rather than decrease in the near future. Bureaucratic resistance, especially from

those government officials charged with implementing and overseeing forestry policies, was a major constraint to effective implementation of new community forestry laws. Few government foresters in Nepal actually believed in the unqualified rights of local people to own or manage forest resources.

The Buffer Zone Management Regulations 1996 (BZMR) promulgated under the National Parks and Wildlife Conservation Act 1974 provided another legal instrument likely to be instrumental in promoting users' groups in buffer zones surrounding protected areas in Nepal. Similarly, the Water Resources' Act 1992 (WRA) provided a legal framework for the registration of Water Users' Associations (WUA) for the sustainable development of the irrigation sector.

Regarding decentralization in general, although the Constitution provided a basic framework, its weakness lay in the omission of an effective infrastructure of local government and a clear-cut scheme for decentralization. Three local government acts: the VDC Act 1992, the Municipality Act 1992, and the DDC Act 1992 had been enacted to implement constitutional directives. They provided for two-tier local government bodies, the Village Development Committee (VDC) or Municipality at the grass roots' level, and the District Development Committee (DDC) at the district level, laying the foundation for participatory democracy and local development in Nepal through decentralization and devolving power to locally elected bodies. The government seemed committed to the decentralization process.

A role for non-government organizations (NGOs) had also been provided for in the legislation so that they

could enhance public participation and serve as a link between local government bodies and development activities. The VDC was obliged to encourage NGOs in the task of identifying, formulating, inspecting, evaluating, and maintaining village development projects in each VDC area (section 51(1)). NGOs were required to implement the projects in coordination with the VDC. However, there was a paucity of specifications about their rights, duties, and functions.

Although these Acts were in force and LSGB had been tabled in the Parliament, experts argued that no serious attempt had been made to empower people to participate in their own decision-making for community development. Most development programmes were handed down from the centre, and whether they had a positive impact on people's lives was not monitored at all. DDCs were finding that programmes other than those recommended by them were being approved by the centre. Transparency in decision-making was generally and notoriously lacking at the VDC level and above, and financial irregularities seemed more like the rule than the exception. Audits were rarely carried out and people hardly got to discuss the financial dealings of the VDCs; Municipalities, and DDCs. Decentralization would bring procedural dilemmas for which solutions were elusive. Administrators would perceive a lack of information and professional respect in relationships with their politician colleagues. Bureaucrats were accustomed to being in control and better informed than their 'citizen' counterparts. There was lack of clarity regarding functional boundaries between the roles of parliamentarians and district-level politicians. Local politicians would want parliamentarians to 'stay out' of local politics and focus their en-

ergy on legislation, policy, and Kathmandu. Regarding the relationship between VDCs and FUGs, some experts believed that, in general, VDC members were very cooperative towards users' groups. Community forestry would be most successful if VDCs and FUGs could work with self confidence and good faith. Recognising the importance of coordination between the VDC and FUG, the DoF was beginning to plan orientation/training programmes to sensitise VDC members about the community forestry programme. Undoubtedly, the VDC had a bigger mandate, including overall development of the village area, than the UGs. The focus of UGs on natural resource management, however, had provided them with a certain expertise that most VDCs probably did not have. If linkages and mechanisms for coordination between them developed, these institutions would complement each other. Failing this, it was likely that there would be a broad gap between management and sustainable use of natural resources as well as development activities at VDC levels. This would thwart the principles and policies of decentralization and local autonomy.

Conflicts always occurred in developing situations and, unless they arose, there could be no resolution. People who made new rules and regulations should realise that they lacked field experience. What was needed was a mechanism that could quickly respond and take the initiative in conflict resolution. A variety of conflicts could arise in relation to community forestry, and there were also legal ambiguities regarding community forestry initiatives. For example, contradiction apparently existed in the Forest Act's authority over the decisions and actions of FUGs. According to the Forest Department hierarchy, ultimate author-

ity rested with the MOFSC, not with the people, as stipulated in the 1990 Constitution. Rectifying such inconsistencies in language and the resulting uncertainties in the delegation of authority was an essential prerequisite to community forestry's success. Certain rules seemed to have been deliberately included simply to impose unnecessary conditions and control FUGs without reason.

If the DFO withdrew a community forest from the FUG, an appeal could be made to the Regional Forest Director and his decision would be final. No provision existed for access to a Court of Law. As the DFO and Regional Forest Director were both employees of the MOFSC, it was unlikely that any decision they made would be unbiased, and so this violated the principle of Natural Justice as well. This issue needed to be considered seriously because the DFO could make a decision to withdraw a community forest on the basis of a report prepared by a junior staff member whose technical expertise could easily be questioned. Close analysis revealed other specific ambiguities and contradictions as well.

A related problem had to do with contradictions between the Forestry and Decentralization laws. Members of local government bodies commonly believed, mistakenly, that forests within the area of a VDC or DDC were the property of that VDC or DDC. Because forestry legislation bypassed the political tiers of the VDC or DDC, these could remain unsettled because of lack of funds, while the FUG might have plenty for development work. If the Decentralization Act was fully and strictly followed, the CF programme could get into trouble politically. Thus, awareness and training to bring about attitudinal change among VDC and DDC representatives would be very

useful, since, in fact, FUGs, VDCs, and DDCs were dependent on each other and were striving to achieve common goals.

Confusion also arose from dissimilarities in the language used by the Forest Act 1993 and that of the various decentralization laws. The DDC Act and VDC Act gave DDCs and VDCs essentially unchallengeable authority over UGs, their decision-making procedures, and project implementation. Although there was a big difference between FUGs registered under the Forest Act and users' groups set up under the DDC Act or VDC Act, as long as the District Forest Office was under the DDC, it would be very difficult to maintain the autonomy of FUGs and avoid conflicts. In a similar fashion, contradictions were found between the Forest Act and other laws, including the Public Roads' Act 1974, the Water Resources' Act 1992, and other development-related legislation. The Supreme Court had held that the Forest Act 1961 was a special Act that had given special provision for the management of forests, and therefore that it should prevail in respect to forest management. It had been argued that HMG should not slow down its target just because conflicts arose and conflict resolution was not on the agenda in the Department of Forest's (DoF) work plan.

The VDC Act, the DDC Act, and the LSGB were replete with various complementarities, contradictions, and gaps with respect to management, use, and ownership of natural resources, particularly forest resources, and the scope of UGs and NGOs. This was an appropriate time to define and classify the linkage and coordination between local authorities and UGs. Local authorities would ultimately be more powerful and have the authority to levy and

collect taxes, fees, etc. This could lead to over-harvesting of natural resources, causing their degradation. The authors therefore suggested that gaps and contradictions be corrected with a sense of urgency to manage Nepal's forest resources sustainably in collaboration with locally elected institutions and community organizations.

The Forest Act of 1993, the Forest Regulations, the Environment Protection Act 1996, and the Environment Protection Regulations 1997 had been drafted carefully to ensure that they were both realistic and practical. In addition, the government increasingly recognised and accepted the need to work closely with NGOs and, most important, the local people themselves. As a result, new organizations were evolving, linkages between organizations were being forged, and community forestry cover had been rapidly increasing. Constraints, however, remained daunting. Making policies and reforming them, enacting laws and amending them, and setting targets for large numbers of UGs were all considerably easier than implementing a lasting and equitable community forestry programme.

Among the most demanding of these constraints were problems posed by tenurial insecurity and the lack of effective legal recourse to oppose DoF decisions. Unless their time, effort, and material investments would stand a good chance of paying off, FUGs would be reluctant to participate fully. Conversely, they were sure to pursue management schemes with a proven record of increasing material benefits. A history of institutional inertia needed to be overcome, and, perhaps more important, real disincentives did exist: additional work loads, increased responsibility, loss of some control over (and thus

credit for) successful innovations, and the loss of profit from current loopholes and weaknesses. Until community forestry implementation had more to rely on than the good will of the DoF, these economic and psychological factors might well prevail over both the spirit and the letter of the law.

Moreover, community forestry work plans were still found to set limits to the rights of users' groups. In preparing a work plan, forest users were assisted by district forest personnel. What users could achieve within the limits of the Forest Act was not made fully clear to them, and, thus, many work plans did not reflect the good intent of the policy and legislation. The ongoing lag between practice and policy not only hampered progress but also reinforced the common belief that government sponsored activities were more for the government than for local communities. A protective ideology among forest personnel was unwanted because it could prevent the wise use of forests, which was essentially conservation.

The DoF needed to work with various government agencies as well as the MOFSC to make the various pieces of legislation consistent with the Forest Act 1992. The Act probably needed to be amended to incorporate the role of the VDC as a mediator. The provision of advisors should also be included in the Act and this role could also be entrusted to members of the VDC. The Act should make a provision that FUGs should invite a VDC representative to their meetings when possible and seek advice from the VDC in case of problems. Prior to that, VDCs should see FUGs as autonomous institutions, should respect their autonomy and decisions, and recognise their contributions. VDCs and DDCs should see

their role as being one of promoters and facilitators. They should see community forestry as one of their long-term projects and FUGs as the users' groups that their own legislation required them to promote.

The most significant harbinger of change, however, came not from statutes, but from changes in people's attitudes. Before 1990, many Nepalese villagers referred to the forests as *sarkari ban* (government forest); now they increasingly referred to them as *hamro ban* (our forest). This semantic change was a long way to have come in just four years. Although the community forest programme was one of the most effective programmes for protecting and conserving the nation's natural resources, FUGs were facing various problems. The 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 was to enter into consultation and serious dialogue with different stakeholders and continue building on the programme's success.

Forest User Groups: Self Governing Institutions for Managing the Forests of Nepal

by A.L. Joshi

Forest land in Nepal covered 4.5 million hectares, roughly 37 per cent of Nepal's land mass; it was mostly located in the hills. In this region the small size of the forest areas and the mosaic nature of settlements meant that community forestry was the only alternative for forest management. The *Terai* had large, isolated patches of forest where commercial forest management at the national level was possible along with community forestry.

Nepal's economy was land based, and most of the population lived by subsistence agriculture. Forests were integral to Nepal's farming system, playing a crucial role in maintaining the productivity of the hill farms. Use of forest products depended on physiographic zone, the highest pressure being in the middle hills, the Siwaliks, and the *Terai* because of the dense newly settled population. The middle hills and the Siwalik forests were used mainly for local and domestic purposes, whereas *Terai* forests were harvested illegally and the timber sold within Nepal and also in the Indian market.

Until 1951, forests were generally used to generate income for the national government, but, in that year, the policy was changed from revenue generation to management. The first step taken by the government concerning forest management was the nationalisation of private forests in 1957. Nationalisation was intended to limit increasing private control and to protect the interests of the majority of the people and the nation. However, failure to communicate the meaning and feeling of the act and the lack of immediate management activities led to *de facto* owners taking advantage, destroying forests, and converting them into private farmlands. No scientific management activities were undertaken following subsequent forestry acts—all relating to protection, revenue generation, selling, and punishment. These policies increased the power of government employees and created a big gap between the government authority and the local users. This process continued for about 20 years until the government realised that it needed to tackle some of the negative consequences of the earlier acts and activities.

Community Forestry legislation was first enacted under the Forest Act 1961 as the *Panchayat Forests and Panchayat Protected Forest Rules* 1978. These rules handed forest areas over to local Village *Panchayat*(s) in places in which the users were the communities around forests. In a practical sense the local *panchayat* could not manage and supervise the community forests. Demands were made to hand forests over to local users, which was more practical. In 1987 the Community Forest Rule was amended to hand over forests directly to users.

In 1989 a political movement abolished the *panchayat* system and democracy was reinstated in Nepal. In the spirit of the new democracy, the Forest Act 1993 and Forest Rules 1995 were enacted, giving more rights and responsibilities to FUGs. Community forests were managed by the people who really needed them and who could manage them, and, at the same time, support came from the government in the form of training and technical assistance through the Department of Forests (DoF). The community forestry section of the Forest Act 1993 became very popular worldwide, being recognised as a progressive, advanced, and unique legislation. A rough study showed about 61 per cent of Nepal's forest area as potential community forest.

However, some gaps, constraints, and conflicts remained to be tackled to make the community forestry programme fully successful. CF required intensive work from DoF staff, especially as more FUGs were added every year, requiring additional field staff to follow up while, in fact, field staff were reduced during Forest Department reorganization in 1992. While CF in the hills was progressing nicely, for various reasons forma-

tion of FUGs in the *Terai* forests was still slow.

Certain weaknesses still existed, even after enactment of the 1995 by-laws. These partly related to the limited nature of DoF responses in improper functioning of FUGs, the need for guidelines on spending of FUG funds on community development work, and the unclear relationship between FUG and VDC/wards in managing community forestry.

Another issue pertained to Nepal's increasingly decentralized government system and the fact that forest user groups were not at present officially linked to VDCs and DDCs. While basic responsibility for community forest management must remain only with forest user groups, they should be connected with the coordinating role of local government institutions. At present, various conflicting and overlapping regulations could be found when analysing pertinent provisions of the Decentralization Act and the Forest Act, particularly the CF provisions. Both pieces of legislation worked on the same concept of decentralization and empowerment at the local level. Earlier attempts to have CF controlled by *Panchayat* leaders failed, however, and later legislation made clear that it was the users themselves who must be active and empowered for forest management.

For several reasons, the establishment of strong FUGs, whose members would carry out forest management activities voluntarily, and which would generate income from sale of forest products as well as receiving a certain amount of support from government and donor agencies, led to surplus funds. Initially, all such funds were to be used for forestry development only, but as funds were accumulated and forestry

operations were not costing money, the government amended the legislation so that *“surplus funds of the FUG can be spent for other community development work”* such as drinking water, irrigation, school, health, sanitation, roads, and social activities. This led to more community development work than would have been possible using only government funds, and this has had a positive impact on the commitment of the users. Thus, financial resources generated by CF made it possible for CF to work as a centre for community development in the local context.

Community forestry was the only alternative for forest management in Nepal. It was decentralized and democratic, and all kinds of users could be accommodated within FUGs. From the resources community forestry generated, it appeared possible that community forestry could be used as an effective strategy for community development. The existing programme must continue without disturbance and locally elected bodies and government agencies should play a role in planning, monitoring, and coordinating CF programmes.

Comments by Discussants

Kalyan Raj Pandey, Team Leader, Participatory District Development Programme, UNDP, Nepal

“I am not a forestry expert but work with a decentralization and self-government programme known as the Participatory District Development Programme which is being carried out in 20 districts of Nepal by UNDP together with the National Planning Commission. I would like to comment on a few points that were raised in this context. Mr Joshi stated that decentralization is not taking place

because the centre is not willing to let go of power, and as he himself is a bureaucrat it seems as if he also does not want decentralization. I agree with his point. Although decentralization has been a topic for many years, we have not made progress because the decentralization laws and rules are made by the centre itself. How can we bring about decentralization through these laws and rules? If we are thinking about decentralization and self governance the process should come from the bottom; the grass roots’ level. By a bottom-up approach, I mean mobilising various UGs and building up their capacities. The PDDP programme is working with the community, VDCs, and DDCs to build capacities and to coordinate them in their development work. In the context of amending the laws, I think it is a difficult task. If the House passes the Self-Governance bill, 36 other rules and acts must be amended. Who will want to change all the rules? Even if there is the desire, who will coordinate this among the different ministries and agencies? We have to give responsibility along with the technical capacity to VDCs and DDCs. The tussle between the line agencies and the local bodies has to come to an end if we want to reach out for our goal of decentralization and self-governance.”

Surya Adhikari, Legal Officer, Department of Forests, HMG/Nepal

“Laws can always be amended and I feel the outcomes and suggestions of this kind of workshop help to make laws. How can locally elected members be made responsible and be made to coordinate with the CFUGs? What kind of policies should be made for this? How can we make the Forest Act and the Decentralization Act complementary with each other? We

need to think about this. The local, elected bodies and the CFUGs should coordinate and work together.”

Rakesh Sharma, Deputy Director, Uttar Pradesh Academy of Administration, Nanital, UP, India

“Mr. Joshi has stated that community forest groups must grow. If that is the case, the pending applications must be processed in a timely manner. Nepal’s community forest programme is very good but the decentralization development process is being linked with the medium of VDCs. A VDC is given a grant to run its programmes, but the community forest does not get any sort of outside help, being instead expected to be self-reliant. Wouldn’t it be better for all the nations of the Hindu Kush-Himalayan region to start thinking about forest-centred development based on the model of community forestry? Why not see the community forest group itself as a local body since it is realised that community forestry is such an important sector in mountain areas?”

My second point is that a community forest is created by forest officials, and is at the mercy of the forest department with even the appeal power resting with the forest department; this is totally against the principle of natural justice. If the community has so much indigenous knowledge why is the working plan of the CFUG not approved by the elected body of the CF instead of the DFO? There should be a broad guideline for community forestry. Community forests have been created as parallel bodies but no organic link has been given to them. This situation will create more conflicts if it is not resolved. I think community forestry has to be recognised in the name of decentralization.”

Bijay Raj Poudyal, District Forest Officer, Nuwakot District, Nepal

“We have heard how the forest acts and laws have been changing and also that the laws are conflicting with each other. In addition, there is a national interest that sometimes acts as an obstacle in community forestry programmes. There are of course international commitments that can be highly conflicting with national and local interests. So this issue also has to be clearly defined.

Since the issue of income and interest are dependent on the forest, VDC and CF groups should coordinate with each other. There should be a separate forest-based planning process. Since community forestry generates income, it plays a positive role in development. We have to consider what our interest is. Development of our country? Poverty alleviation? Raising women’s status? Unless property rights are given to women and management rights and user rights are guaranteed, no progress will be possible.”

Points from the Floor

“The point is essentially how to strengthen democracy. Whatever groups you have, democratic principles based on gender and equity must be strict, and, if I believe in democracy, I believe in elected bodies. We all believe in democracy. I do not believe in consensus. In villages where the consensus approach has taken place, the ruling classes always occupy the position of power. There is no way through the process of consensus to bring marginalised groups and women to the forefront. You can see this by looking at how many women are in CFUGs and what positions they occupy. I have been told in many places that these women

have been asked to resign the moment cash has been made available (on the basis of the groups having women members?). Constitutionally elected bodies are the answer, whether it is a CFUG, water UG, road UG, etc. These groups all need to work and coordinate with the locally elected bodies.”

“We must eliminate duplication in laws and policies. We have also seen that when people initiate any programme, there is no conflict but, when programmes are initiated by the bureaucracy, then conflicts arise. Therefore I think user groups should be given the status of a legal entity.”

“The rules and regulations are on one side, and the users’ groups on the other, but the community has still been able to manage it well. Only when rules and regulations about the forest are made from the grass roots’ level will they be practical and realistic. Just making rules and policies according to theories will not work.”

“A strong incentive for decentralization was that the sectoral approaches that have been tried from the national and state levels have not worked. The decentralization issue also reflects the need for area-based rather than sectoral approaches. When the decentralization process occurs it is almost automatic that all kinds of national laws will be impacted. One problem is that when we initiate decentralization in the same way as we undertake a sectoral act, the Decentralization Act is also being imposed rather than going through a commission that will look into all of the issues and arrive at a decentralization process.”

“The other issue about the hierarchy of legislation is that, in almost all countries, what actually takes place and the budgets that are issued are

based on office orders and what happens within the walls of particular agencies. Can we allow this kind of monetary disbursement based on those office orders? Financial resources are determining the implications of policies, e.g., JFM in India is hanging on an office order, whereas you have a constitutional provision for forestry activity adjoining the village to be given to the *Van Panchayat*.”

“UGs should be empowered to make their own management decisions according to their geographical condition and the members of the locally elected bodies should also be included.”

“The question is politics, development, and the people. There should be coordination and balance between these in each sector.”

“We have to think of a solution to eliminate the duplication of laws. How can we formulate laws and policies to help develop the grass roots’ level people?”

“The forum should come to a conclusion about how locally elected bodies and UGs can coordinate with each other and about the issue of power. I feel that the UGs have more than the DFO because they have the authority to cut the trees whereas the DFO cannot issue an order to cut. So we DFOs are not curtailing any power instead we have given it away.”

Responses by Narayan Belbase

“Concerning the query about whether it is possible to change 36 laws to enact the bill of self governance, my answer is yes. For this the government needs to be committed and one government agency has to take the lead responsibility. If the sectoral bias within the government

agencies is removed and, with round table discussions, these laws can be amended. But this cannot easily take place.”

“About the local decentralization legislation, UGs have been mentioned, but they have not been defined, and I also pointed this out during the presentation. I feel that when ‘user group’ is mentioned that also applies to forest users’ groups.”

“The question about decentralization as a sectoral legislation is very valid. I feel that every legislation should contain a dimension of decentralization. There is no need to bring separate legislation for decentralization. If the dimension of decentralization is not included in every legislation, whether related to development or natural resource management, then decentralization will never be effective as a sectoral based legislation.”

“A question was raised about whether the conflict within this legislation bill will effect the CFUGs. I will say it will not matter because of the Supreme Court decision which says that the forest act is the prevailing legislation for forest-related activities and forest-related resources. Even if the self governance bill is

passed, the forest legislation will still prevail.”

“One question was raised about what kind of forest resources the UGs have the right to use. For this there is a conflict among different agencies, each claiming they have the right, as was illustrated in the presentation.”

Responses by A. L. Joshi

“We must not try to keep politics and development and development and the people away from each other because they are intrinsically linked. The user group and the VDC should be in harmony with each other. The policies and laws relating to forests have been very democratic and decentralized thus far, and I don’t think there is any doubt about this. The issue here is how to strengthen this. It is now time to think about how we can coordinate in a better way because we are all looking for development as an end result.

In some cases in the *Terai* the process in handing over forest areas is slow. There are several issues involved in this, but we feel that the community forestry programme should also grow and move ahead in the *Terai* region of Nepal.”