

# Traditional Practices and Customary Laws of the Kirat People of Eastern Nepal and Comparison with Nepal's Statutory Laws

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*Legal procedures have to be compatible with the customary laws and traditional practices that are the legacy of local communities.*



## Introduction

This research focused on the dominant settlements of Kirat communities in eastern Nepal. These communities follow ancient and nature-based customary laws and traditional practices closely linked to biodiversity conservation, agricultural productivity, and sustainability of human health and nutrition (Shrestha 1997). The objectives of the study were to highlight the customs, traditions, and rituals of this dominant indigenous people from Ilam and Panchthar districts and to study a possible framework for facilitation of customary laws and traditional practices. An attempt is also made to identify the gaps in the statutory laws of Nepal in terms of indigenous customs and traditional practices and possibilities of amendment, especially in relation to biodiversity conservation.

The study covered most of the VDCs in Ilam district but, in the case of Panchtar, only the northeastern part could be covered because of the prevailing security conditions. Both districts are important in terms of the prevailing transborder sociocultural and environmental issues and are well known for their scenery and their many traditional conservation sites.

## Customary Laws and Traditional Practices

The Kirat community is composed of four ethnic tribes: Limbu, Rai, Lepcha, and Dhimal. Among these, the Limbu is the dominant indigenous tribe and one of the oldest communities in the Panchthar and Ilam districts of eastern Nepal. Their social, cultural, and economic systems are governed by community norms that integrate well with nature, and there is a rich legacy of indigenous knowledge (Box 1).

Traditional practices such as 'shapokchomen' rites (womb worship), 'yangdang phongma' (naming ceremony), 'maggenda' (rituals for giving a new life spirit), 'udhau' and 'ubhau' (celebrating the changing of seasons), and 'tongsing' (ancestor worship) are closely associated with livestock, agriculture, farming, and forest products.

### Box 1: Culture and biodiversity

The 'ahal' or water dyke is established in a open areas nearby to be used for grazing and bathing buffalos. Pastureland species, many aquatic animals, and micro-organisms would gather around these areas, maintaining local biodiversity. Similarly, pigs and fowl are an integral part of ceremonies like marriages, births, local festivals, and worship. The indigenous people know how to manage these culturally valuable resources.

Among these customary laws, the conservation of 'ranivana' (community forests) that supply fodder, foliage, fuelwood, and medicinal plants to local communities is significant. In such forests, the responsibility for conservation is given to the head of the local community who, with the cooperation of the people, issues orders concerning use and allocation of forest resources. The shamans and priests established the policy of ranivana conservation which are now being conserved as community forests.

'Kharka pratha' is another example of a customary land-use law through which the community would assign 'kharka' (pastures for grazing cattle). Similarly, 'mahavir' or bee cliffs were traditionally maintained by Limbus and Rais. There were also customary laws governing fishing in rivers and streams and taking care of water resources. With the implementation of the Land Reform Act 1964 and the Land Registration Act 1962, the rights of local heads were seized and transferred to the revenue office. This created conflicts and land ownership problems (Oli 1995).

## Institutional Framework and Implementation Procedure

The institutional framework that provides support and implements traditional practices and customary laws was closely associated with the 'kipat' land system (Box 2) and the Limbu

community (Shrestha 1997). Two types of institutional framework were recognised: formal institutions such as the ‘amal’ (local court), ‘amini’ (appeal court in the transboundary zone), and ‘adalat’ (appeal court in the non-transboundary zone); and informal institutions such as traditional religious bodies, social organisations, and individual intermediaries.

### **Box 2: Traditional land-use system**

The ‘kipat’ system is a particular land-tenure system associated with the Limbu community. It represents a communal form of land tenure inherited by the same communities from their ancestors as a source of livelihood. Traditionally, kpat rights were recognised not only for cultivated land but also for wasteland and forest. The kpat system went through a long history of political changes from 1774 to 1950. With the implementation of different acts, the kpat system ended in 1964.

The subba (head) of the amal was called ‘amali’ or ‘pagari subba’. The subbas had the legal power to rule on community issues regarding forests, rivers, pastures, wetlands, and religious sites. They were the people responsible for making decisions about conservation and restoration issues: however, while making decisions, experienced elders were often consulted. The central government would then depute the military authority to collect revenue, 40% of which went to the subbas as ‘khangri’ or wages.

With great reverence and faith, common people accepted many of the religious sites and temples as symbols of their customary laws and traditions. Social bodies such as ‘samaj’, ‘chumlung’, and ‘manghim’ played a significant role in shaping social institutions. In addition professionals, such as the ‘shikari’ (hunter), ‘bijuwa’, or ‘phedangba’ (healer or priest), and ‘dhami’ or ‘jhakri’ (protector), were greatly respected for carrying out social and cultural rites.

Sharing information and executing customary laws were mostly oral except in cases of conflict. The community heads passed the laws orally and individuals would abide by them. The legacy of harmonised command and control generated a sense of social pride in the community and faith in their traditional and customary laws. The old ‘Muluki Ain’ (Civil Code 1854 AD) was also in support of customary laws, and dispensed justice based on customs and traditions.

Implementation of traditions and customary laws was carried out through a bottom-up approach with social institutions as a mediating factor. There was a network of communities closely related to each other. Issues were presented orally before community members and witnesses, discussions, verification, facts, submissions, vows, and oaths were taken in making decisions. Conservation of biodiversity was deeply embedded in many cultural traditions; for example, cleaning heritage sites before big festivals, prohibition of hunting during breeding seasons, weeding of ranivan after the rainy season, and extracting timber before summer budding. Such actions were based entirely on natural processes and traditional knowledge. Transparency, morality, and a strong belief in the sociocultural fabric were the major features that made these systems participatory and successful.

## **Statutory Laws and Other Policies on Biodiversity Conservation**

The review of the statutory laws and other legal policies concerning conservation in Nepal revealed the following.

### **Private Forest Nationalisation Act, 1956**

This act inhibited individual control over vast areas of natural resources. Although it was a positive step towards managing the country's important resources, it gradually developed into a top-down approach of management and the community was ignored.

### **Panchayat political system**

This was established as a public forum in which local people could elect their community heads as representatives in the local panchayat. The system, however, ignored the traditional practices and customary laws and shifted the use rights of the subbas and mukhias over their lands and resources to local revenue, chief district, and local forest officers. With the establishment of the Panchayat government many acts, such as the Forest Act 1961, Aquatic Animals' Protection Act 1961, Land (Survey and Measurement) Act 1962, Land Reform Act 1964, Plant Protection Act 1972, National Parks and Wildlife Conservation Act 1973, and Pasture Lands Nationalisation Act 1974, were passed into law.

### **Policies and strategies**

The current policies and strategies for conservation of biodiversity include the National Conservation Strategy 1988, The Nepal Environment Policy and Action Plan 1993, Forest Act 1993, Environment Protection Act 1996, Nepal Biodiversity Strategy 2002, Sustainable Development Agenda for Nepal 2003, and the Tenth Plan (2002-2007).

With the establishment of a democratic political system in Nepal in 1990, Nepal promulgated the 'Constitution of the Kingdom of Nepal' through which the directives, principles, and policies of the state have provisions related to protection of the environment and conservation of biodiversity. Guided by this constitutional provision, Nepal gradually became involved in international treaties and conventions. This necessitated reform in the existing forest laws, leading to promulgation of the Forest Act 1993. The act takes all the values of the forest into account including social and environmental services. Section 23 of this act empowers the government to delineate any part of the national forest that has special environmental or cultural importance as a protected area. Article 26(4), being a principle of the state policy, proclaims that the state shall give priority to the protection of the environment and prevention of its further damage and that the state shall make special provision for protection of rare wildlife.

### **Community forestry, leasehold forestry, and statutory laws**

Any part of a national forest handed over to a user group for the collective benefit of the community is regarded as a community forest. The history of community forestry in Nepal

began with the concept of a participatory approach to local resource management. His Majesty's Government of Nepal introduced the community forestry programme to improve the condition of the forests in the mid hills and high mountains, as well as to satisfy the basic needs of rural people for forest products.

Any part of a national forest leased to any institution, industry or community, under the current law, for production of forest products, agroforestry, tourism, or farming of insects and wildlife in a manner conducive to the conservation and development of the forest is regarded as a leasehold forest (LF). The major objective behind the establishment of leasehold forests was to alleviate poverty and to improve the ecological condition of degraded forest lands.

### **Community and leasehold forestry in Ilam and Panchthar**

In Ilam there are 202 community forests among which 170 are already handed over to the community. The research carried out discovered that community forests in remote areas are more protected than those along the roadside or those which are easily accessible. In Panchthar, out of a total forest area of 38,500 hectares, 19,207 hectares still has potential to be developed into community forest.

Similarly, there is a large area of pastures and abandoned agricultural land in Nepal by the side of the Singhalila National Park. The pastures used to be leased to herders from India. These areas have a potential for leasehold forestry. The fact of an open and weak border in terms of policing, means that poaching and illegal trade in wildlife and forest species are rampant. Similarly, the upper part of Panchthar around Pauwa Bhanjyang, Silauti, and Ravi has suffered from illegal trade in medicinal herbs. These are serious transborder issues for which cooperation and collaboration are needed (Pant 2002).

## **Comparison of Traditional Practices, Customary Laws, and Statutory Laws**

Although the Gorkha kingdom was guided by an Indo-Aryan philosophy, the Kirats followed Tibeto-Burman ideas. At the onset, the Kirats' traditions, values, beliefs, and customs were supported by the Gorkhas, and they provided them with user rights; however, with a change in social and political perspectives, clear changes were observed in resource management, conservation patterns, objectives, and the process of policy and decision-making.

The objectives of traditional practices and the customary laws were to protect natural resources, to use them for people's daily needs, to maintain the socioeconomic system, and to satisfy natural and supernatural deities by observing their rites. The statutory law, on the other hand, is subject oriented, heterogeneous with broader and wider objectives than customary laws, and with a complicated strategy and framework. This was necessary because statutory laws have to cover health, security, peace, education, and overall development of all sectors of society. The statutes emphasised individual interests for a culture of conservatism and a monetary economy: the concept promoted individualised distribution of natural resources and destroyed the will of the people to conserve resources collectively.

The natural resources that were managed by the community using indigenous approaches included water, forests, land, animals, aquatic life forms, and wild flora and fauna; genetic and species' level conservation was not precisely defined. The statutory laws, on the other hand, are in line with international laws on biodiversity conservation and include more than 50 sectoral articles taking into account the ecosystem, species, and genetic levels of diversity.

The conservation strategy in traditional practices was nature based and social norms and values were strongly executed. People observed these religious, cultural, and social norms strictly and were less oriented towards the commercial exploitation of natural resources. For example, a stone in the river was assumed to be the possession of the river god, so was not taken elsewhere. The statutory law, however, had to take into account the increasing heterogeneity in the social structure, physical development, resource use, and economy; and this had an impact on most of the traditional and customary laws.

Similarly, the decision-making process in customary law involved the active participation of family members in a community with focal guidance from mediators such as elders, priests, shamans, healers, and 'phedangbas'. Gender issues were of least concern. Statutory laws were developed around fundamental and basic human rights and gender issues were highly sensitised; the decision-making process was through a top-down approach using various policies and sectoral laws.

Despite provisions in statutory laws, time and sociopolitical change left community practices abandoned. Because there was little incentive in the new legal system for the community to follow it, people became unresponsive to the conservation of natural resources (Basnet 1990). In Ilam and Panchthar, however, the effect of statutory laws has been positive in the context of management of community and leasehold forests. People's participation, transparency, good governance, morality, and sense of public welfare, which derived from traditional practices and customary laws, can still be solicited if some reforms can be made in the statutory laws.

## **Recommendations and Conclusions**

An old Limbu saying, "ghar odar ho, vana vandhar ho" or "the house is a shelter whereas the forest is a treasure", indicates that the whole Kirat community has a culture and life-support system based entirely on forests.

Many of the acts and regulations of the 1990 constitution have overthrown customary laws and traditional practices leaving behind an indecisive and confused community as well as exponential resource exploitation. The indigenous community can be more effective in conserving local resources provided they are trained and guided towards sustainable economic practices through innovative programmes such as community and leasehold forestry.

The government should give priority to forest conservation and to developing forest-based industries, ecotourism, and cultural tourism in these two districts and should develop the infrastructure accordingly. An opportunity for income-generating activities based on customary

practices needs to be created. In addition, livelihood options should be addressed along with conservation measures. Biodiversity conservation should focus specifically on transboundary areas for conservation issues such as illegal trafficking, trade, land encroachment, poaching, hunting, and illegal grazing.

The indigenous knowledge of local institutions should be mobilised for conservation activities and communities should be consulted and informed when statutory laws are being formulated. In addition, communities can play an important role in creating awareness about statutory laws, policies, and projects among their people. Similarly, statutory laws related to conservation should be reviewed, amended, and reformed in order to incorporate selected customary laws and traditional practices. Active community participation in policy and decision-making processes should be solicited. Laws need to be implemented at the local level with the support and guidance of the district and national authorities and organisations. Policies should be appropriate, particularly with regard to the use of common property such as forests, pastures, watershed systems, and biological diversity.

The northeastern part of Ilam and Panchthar are close to India and there are many community forests that can be developed into conservation corridors for the proposed Kangchenjunga landscape. Therefore, an agroforestry programme should be introduced into boundary areas to provide livelihood incentives. Restoration of forest cover in the Churia foothills and along other pathways will not only facilitate the seasonal movement of wildlife species, it will also provide resting places for migratory birds. This would form a traditional corridor for cumbersome migratory wildlife such as elephants, tigers, and rhinoceros.

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