Can bureaucratic control improve community forestry governance? An analysis of proposed Forest Act amendment
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December 2010

Discussion Paper Series 10:2

Series Editors: Hari Dhungana, Dil B Khatri, Kalpana Giri, Rahul Karki

Copy of this discussion paper is available on www.forestaction.org
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Abstract

The Ministry of Forest and Soil Conservation (MoFSC) has recently passed a proposal and drafted an amendment bill to revise the Forest Act 1993. This Act provided the legal foundation for community forestry programme in Nepal during the past two decades. However, the MoFSC has justified its recent move for legal change by citing anecdotal cases of irregularities and illegal felling in some parts of Terai and Churia region. But the Federation of Community Forest Users, Nepal (FECOFUN) and other civil society organizations have strongly opposed this move. As a result, positions on the move have polarized, and sparked off resistance and opposition at local to national levels. In this context, this paper examines the proposal in terms of the process and contents, and assesses how it impacts the community forestry programme and whether the proposed change would bring about expected outcomes. Doing this we hope to enrich the deliberation on this issue.

We suggest that, in terms of the process, MoFSC has undermined the multi-stakeholder and deliberative process, which was being progressively adopted over the past few years in forestry sector policy making. Some key assumptions behind this proposal have therefore become flawed. We also find that the proposed changes stipulated in the proposal are likely to aggravate the problems in community forest user groups—particularly corruption, illegal felling, and inequity—that MoFSC commits to resolve. We suggest that multistakeholder-based and deliberative process can help identify the problems and remove flaws of this proposal. This process needs to be informed by a robust and independent study of the problems in order to be able to determine workable solutions.

Keywords: forest act, policy making, community forest, bureaucratic control
1. Introduction

The Ministry of Forest and Soil Conservation (MoFSC) has recently passed a proposal for the amendment of the Forest Act 1993 from the Cabinet and prepared a corresponding amendment bill. In pushing forward these proposals, the MoFSC has pointed to the anecdotal cases of irregularities and overexploitation of forest in the Chure and Terai region. In addition, the Ministry has justified this proposal for increasing state revenue from forests and increasing the role of the Department of Forest in overseeing community forestry. Key points of these proposals are: joint responsibility in operational plan (OP) preparation, implementation, forest product harvesting and marketing between community forest user groups (CFUGs) and government forest officials, provision for a 50 percent contribution to the national treasury from the sale of forest products from community forests, a limited use zone concept in Chure, and other proposals to limit the access of communities to forest resources. This proposal has received vocal opposition from civil society groups and the disillusionment is growing within the forest user group federation and civil society circles.

In order to understand the polarisation around this proposal, it is important to examine whether this proposal is based on the objective experiences of community forestry over the past 30 years, and whether its formulation entailed at least a basic understanding amongst stakeholders. As such, the proposal has triggered debate, contestation and protests. It has generated a debate within the political parties, received attention at inter-party dialogues and created fissures within the bureaucracy. In addition, coverage of the issue in national and local media, including newspapers, radio and television channels have made the amendment proposal as a public concern throughout the country. Consequently, revising the Forest Act has become a matter of huge public debate for the last few months, challenging the existing public policy process in Nepal to make it more inclusive and deliberative.

Nepal’s forest policy context is changing rapidly. Nepal is presently under a political transition that entails a promise for federal restructuring of the country through the new constitution. In this situation, the fate of the forest resource governance is yet to be defined. Similarly, Master Plan for the Forestry Sector (MPFS), which was prepared in 1989 for 20 years, has already expired. In this context, the need is to develop consensus on forest management and governance to incorporate into the new constitution, and to prepare a new master plan for the forestry sector. The latter is being pursued by the MoFSC as the development of Forestry Sector Strategy. There has been the broader consensus on the

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1 The Federation of Community Forest Users, Nepal (FECOFUN) outright rejected the proposal. A series of protest programmes including rallies in each districts of Nepal have been organized. Dissatisfaction over the process and content of the proposal has also been raised by various other organizations including Nepal Foresters’ Association (NFA), Rangers’ Association of Nepal (RAN) and ForestAction as well as many of the government officials within the MoFSC.
defining principles and working strategies in the process of commissioning a report on
Democratising Nepal's Forestry Sector\(^2\), where a series of interactions from community, sub-
district, district, regional and national levels occurred. The conclusion of the taskforce was to
make pro-poor forestry by devising appropriate legal instruments to enhance autonomy of
the communities and improve their governance by recognizing their roles, clarifying their
responsibilities and rights, and encouraging investment and transparency (Task Force Report,
2008: 48).

However, the MoFSC proposal to revise the Forest Act goes against the task force
recommendations. It has generated scepticism amongst forestry stakeholders. Both the
process that MoFSC followed to draft the proposal and the content itself, have triggered
criticism from various corners. Despite the earlier practices of adopting multi-stakeholder
processes and public deliberation while formulating Community Forestry Guidelines in 2008
and REDD-Readiness Preparation Proposal (RPP), this proposal was prepared without
stakeholder participation and consultation. The MoFSC directed District Forest Officers
(DFOs) to collect inputs for the revision. This has raised a question over the legitimacy of the
proposal. The proposal claims to address the genuine issues of community forestry, such as
poor governance and inadequate poverty outcomes. But, early on, it faced opposition that
can jeopardise achieving its stated objectives. More likely is that proposal might aggravate the
problems which MoFSC expects to resolve. While the proposal seeks to several provisions of
the Act, this paper explicitly focuses on the amendments that directly affect community
forestry.

This discussion paper has been prepared to inform the public, politicians, forestry officials,
activists and researchers and thereby to invigorate public deliberation on the agenda that has
severe implications on the thirty years of policy innovation in Nepal’s community forestry.
The main aim of the paper is to contribute to evidence-based policy making through
participatory and deliberative processes. In doing so, this paper reviews the MoFSC
justification behind the proposal, examines potential consequences, and explores alternative
ways to make community forestry work better whilst addressing daunting challenges.

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\(^2\) Ministry of Forest and Soil Conservation formed a high level task force on 21st August 2006 in the leadership
of a Joint Secretary by involving government representatives, NGO representatives, representatives from the
forest user groups, forestry experts and donors with a mandate to organize multi-stakeholder deliberation in
several districts and at national level so as to recommend its governing structures and forest management
modalities amidst the aspirations of newly established democratic republic. The purpose of forming the task
force was stated as ‘to ensure the rights and responsibilities of the local people in governing the forest resources
and democratisation of forestry sector’ and methodology was prescribed as ‘ensuring inclusive, transparent and
participatory approaches’, by organizing consultative meetings at forest user groups, districts and sub-districts
followed by a national level workshop.
2. Justification behind the proposal: strengths and caveats

“The proposed amendment to the Forest Act 1993 is against the will of the local communities and has been prepared without broad consultations with stakeholders” (Opinion of Keshav Raj Kanel, former Director General of Department of Forest, quoted in The Kathmandu Post, 4th Dec 2010).

MoFSC has pointed out a number of issues in community forestry for presenting its case for the amendment of Forest Act 1993. The proposal acknowledges that the handover of community forests in Terai and Chure areas has been comparatively low. But it blames the community forest programme for not achieving the anticipated level of performance in protection and management of the forests. All the rationales provided are largely related to sustainable forest management, governance of forestry institutions, and poverty outcomes. Sporadic cases of unsustainable harvesting, inequity, elite capture and irregularities, including corruption, are major issues noted by MoFSC. Indeed, many studies have highlighted these issues (Malla 2001; Malla et al. 2003; Kanel and Niraula 2004; Pokharel and Nurse 2004; Sunam and McCarthy 2010) and community forestry actors including the government itself have been striving to address them (Kanel 2008; Pokharel et al. 2007). We look at these justifications more closely below.

2.1 Unsustainable harvesting of community forests

“I felt like crying after reading the report prepared by the committee. I strongly urge the authorities concerned to bring the wrong-doers to book.”

(Subas Nembang, the Constituent Assembly Chairperson, after reading the Field Study Report on Deforestation in Forestry Sector prepared by the Natural Resource Committee of the Legislative Parliament).

The major reason for amending the Forest Act 1993, quoted in the proposal, is reckless tree felling in Chure and Terai. The anecdotal cases of illegal felling, both in community and government-managed forests, have flooded the national and local mass media for the last few months (BBC News, 19th May 2010; Republica, 15th August 2010; THT, 27th September 2010; Nepalnews, 26th July 2010; TKP, 4th Dec 2010). This has triggered the attention of not only politicians, bureaucrats, civil society organizations (CSOs) but also that of the general public. Due to the increasing coverage in the media, and subsequent reports from several districts, the Legislative-Parliament formed a committee to investigate the extent and the key culprits of illegal felling as well as to recommend government response. A report prepared by the sub-committee formed under the Natural Resource Committee (NRC) of the Legislative-Parliament described deforestation in fiscal year 2009/2010 was among the worst cases since
The NRC suggested that about 82,794 hectares of forest was encroached in the 26 districts (NRC 2010).

Despite these few case studies, there has been no recent independent and comprehensive study to examine the drivers and underlying causes of deforestation in Terai. Stakeholders of forestry agree that illegal felling is increasing in Chure and Terai but there is no common understanding over the drivers of illegal felling and underlying causes. Based on some anecdotal cases, MoFSC leadership has alleged that CFUGs have been responsible for forest depletion by harvesting more timber than the annual allowable cut specified in their operational plans, whereas Federation of Community Forest Users Nepal (FECOFUN) has blamed forestry officials as being the main culprits. Noticeably, the reports of NRC and National Vigilance Centre (NVC) present the nexus of forest officials, politicians, and local elites as the culprits (NRC 2010; NVC 2010).

Community forestry in Nepal is the most successful example of sustainable management of forests (a key message of the presentation made by Yuba Raj Bhusal, the secretary of MoFSC at Second Dialogue on Forests, Governance and Climate Change, 22-23 October 2009, Washington DC).

On the contrary to MoFSC’s recent allegation, previous studies have acknowledged community forestry for its positive impacts on restoring degraded forests in hilly regions (Branney and Yadav 1998; Jackson et al. 1998; Gautam et al. 2003; Rana 2004; Karna et al. 2004; Pokharel et al. 2007). Similarly, the deforestation rate has also declined in 20 Terai districts from 1.3 to 0.08 percent between 1991 and 2001 (DoF 2005), and is partly attributed to the expansion of community forests in the Terai (DoF 2005; Kanel 2005).

In some cases, the amount of allowable harvest has been unnecessarily amplified by the media and committee reports. For example, many reports including the one by NRC are prepared by analyzing the harvests without considering the harvestable limits specified in the operational plan. Similarly, media reports have not specified the extent of deforestation within the handed over CFUGs.

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3 During the referendum in 1979, a large portion of the forests in the Terai was cleared to collect funds to prolong the then partyless Panchayat regime.
2.2 Poor governance and inadequate poverty outcomes

“The forest minister and director general of Department of Forests had sought money from me for my transfer, and in addition, officials at the Ministry of General Administration too wanted me to grease their palm to get consent for my transfer.” (District Forest Officer of Morang, quoted in the NRC Report, 2010).

Another set of concerns raised in the MoFSC proposal concerns with inequity, elite capture, transparency, corruption, and performance of CFUGs. The proposal also calls for addressing particular issues, including a lack of transparency in forest product marketing, misuse of group funds and insufficient fund mobilization for poverty reduction activities. But the MoFSC proposes to do so by increasing the control of the Department of Forest rather than facilitating the pro-poor and equitable CFUG governance and management. These issues, however, are not new to community forestry discourse since many past studies have highlighted them (Malla et al. 2003; Pokharel and Nurse 2004), and have been recognized as second generation issues since the mid 1990s. Because powerful elites often make decisions to favour themselves, they reap more benefits from community forests than the poor people who bear a disproportionate cost of their involvement in community forestry. Despite some positive indications of pro-poor activities, total pro-poor cost was three percent of total income of CFUGs (Kanel and Niraula 2004).

However, there are numerous innovations to address equity and poverty at the field level initiated by CFUGs themselves and through donor-funded projects (McDougall et al. 2008; Pokharel et al. 2007; Kanel 2008; Bhattarai et al. 2009). Similarly, funding for the pro-poor activities has increased since the revision of community forestry guidelines 2009. This revision was made through a multi-stakeholder deliberation and included a provision of investing 35 percent of the CFUG income in such activities. In addition, some studies show that community forestry has a strong influence on inclusive democracy and leadership development. The institutionalization of participatory process in decision making (meeting and assembly), rule of law and positive discrimination has strengthened inclusive democracy (Pokharel et al. 2007). Of the 143,000 elected committee members, about 24 percent of the members are women. Moreover, there are more than 600 CFUGs whose committee members are only women. Similarly, there is an eight percent representation of Dalit in the committee of CFUGs in Okhaldhunga, Ramechhap and Dolakha districts, and it is proportionate to their district population (NSCFP 2007). Of the 16,000 CFUGs in Nepal, if we consider only three key positions (chairperson, secretary and treasurer), there are 48,000 leaders (of which 11,000 are women) in CFUGs who make the day-to-day decisions on forest management, fund use, and other development activities.
2.3 Low revenue generation

Another justification of the MoFSC proposal for the revision of Forest Act is that the government has neither received sufficient revenues from community forests nor have CFUGs been able to generate optimum funds. MoFSC primarily sees two reasons responsible for this. The first reason is the lower pricing structure of forest products which is not responsive to the market. In other words, CFUGs are selling forest products, particularly timber, at a rate well below the market price.

Although CFUGs are selling forest products at a lower price, they have surprisingly been more effective in generating revenues than the central government (Kanel 2008). In the fiscal year 2008/09, the Department of Forest (DoF) collected NRs 65 million (11 percent of the total revenue of NRs 592 million from forestry sector) revenue from the CFUGs (DoF 2010). This revenue represents 15 percent of the total income of the CFUGs from timber sales of two species (Sal and Sissoo) outside the CFUGs. It indicates that the total income of CFUGs throughout the country was at least NRs 437 million for the same year (see Figure 1). This figure should be reasonably large because it does not include the income generated from selling forest products inside the CFUGs. Currently, community forestry covers only 25 percent of the total forest land.

![Figure 1: Comparison of DoF and CFUG revenue of FY 2008/09](image)

Second, MoFSC argues that the current tax rate (15%) is too low, resulting in lower government revenues. However, MoFSC has failed to recognize the contribution of CFUGs to rural livelihoods and community development. Various case studies (see Collett et al. 1996; Dev et al. 2004; Pokharel et al. 2007; Bhattarai et al. 2009; Chapagain and Banjade 2009) have shown that CFUGs positively contribute to improve the livelihoods of rural people in terms of enhancing natural, social, human, financial and physical capital although macro-scale data on linking community forestry and livelihoods is lacking. The major investment of CFUGs has been on community development (36 percent of their expenses), which includes road construction, school support and other infrastructure development (Kanel 2008). These costs
otherwise would have to be borne by the government. Moreover, MoFSC has not considered additional and improved ecosystem services generated by the improvement in community forests. Also, CFUGs are resilient institutions in the face of socio-economic and political shocks, as the majority of CFUGs were functional in times of conflict (Pokharel et al. 2006).

In addition to these challenges recognized by MoFSC, civil society actors, specifically FECOFUN, see bureaucratic hurdles and overregulation, weakness in implementation of existing provisions and lack of effective monitoring and evaluation as major challenges (FECOFUN 2010; Paudel et al. 2008).

3. Potential consequences of the proposal

The MoFSC proposal suggests that complete autonomy of CFUGs is responsible for irregularities, unsustainable harvesting, lower pricing and elite capture/inequity. Under the Forest Act of 1993, CFUGs were given autonomy to manage forests and market forest products independently:

The DFO may handover any part of a National Forest to a users' group in the form of a Community Forest as prescribed entitling to develop, conserve, use and manage the forest and sell and distribute the forest products independently by fixing their prices according to OP (Article 25).

The Users’ Group shall be an autonomous and corporate body having perpetual succession (Article 43).

Thus, most proposed amendments are directed to constrain group autonomy. These include making forest officials and CFUGs jointly responsible for OP preparation, implementation, harvesting and marketing of forest products, formulation of harvesting and marketing guidelines, and limiting forest use in Chure. Joint responsibility, harvesting and marketing guidelines are expected to promote transparency, accountability, reduce corruption and ensure that monitoring and evaluation are increasingly effective. Table 1 presents the proposed revisions in the Forest Act and their potential adverse consequences, which are subsequently discussed in more detail.
Table 1: Rationale and potential consequences of the proposed amendments

<table>
<thead>
<tr>
<th>Proposed amendment</th>
<th>Potential consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint responsibility in OP preparation, implementation, forest product harvesting and marketing</td>
<td>• Increased elite capture</td>
</tr>
<tr>
<td></td>
<td>• Increased corruption</td>
</tr>
<tr>
<td></td>
<td>• Passive CFUGs</td>
</tr>
<tr>
<td></td>
<td>• Inadequate poverty outcomes</td>
</tr>
<tr>
<td></td>
<td>• Increased deforestation</td>
</tr>
<tr>
<td>50% contribution to the national treasury</td>
<td>• Fake accounts and dubious financial practice</td>
</tr>
<tr>
<td></td>
<td>• Commercialization</td>
</tr>
<tr>
<td></td>
<td>• Inadequate poverty outcomes</td>
</tr>
<tr>
<td></td>
<td>• Low level of interest in CF-less incentive-passive forest management</td>
</tr>
<tr>
<td>Limited use zone concept in Chure (No forest management)</td>
<td>• Increased deforestation-illegal harvesting</td>
</tr>
<tr>
<td>Restriction in forest use</td>
<td>• Passive forest management</td>
</tr>
<tr>
<td></td>
<td>• Increased deforestation-illegal and extra legal felling</td>
</tr>
</tbody>
</table>

3.1 Joint responsibility: Jeopardizing community forestry

In a sense, it appears that MoFSC is keen in joining hands with CFUGs by introducing shared responsibility. However, this provision not only discourages local communities while empowering forest officials, but it may also have dire consequences on governance and forest management by interfering on group autonomy and the spirit of decentralization. First, it is more likely to foster elite capture and nurture corruption; issues that MoFSC intends to reduce. Even in the current situation, where CFUGs are legally autonomous having limited controlling role of the DFO and its subsidiary branches, the nexus of local elites and corrupt government officials is attributed as the prime cause of rampant timber smuggling from some of the CFUGs. Similarly, cases of cooptation from the state forestry officials seeking rents are reported from almost every Terai district (Paudel et al. 2009; Paudel et al. 2010). Without changing the corrupt practices and attitudes of these people, concern exists over what will happen when the controlling role of forestry officials is increased. Obviously, the provision of joint responsibility will help to create and reinforce an unfair bond between local elites and forest officials who can manipulate decisions as per their interests, thereby promoting elite capture. Likewise, it will provide a playing ground for local elites and forest officials to further institutionalize corruption and other malpractices (see Timsina and Paudel 2003). These results should be expected because there are numerous cases of abuse of authority by
forest officials demanding unfair rents from CFUGs (Paudel et al. 2006). This argument is also supported by recent reports of the Parliamentary Committee on Natural Resources and National Vigilance Centre which reveal that forest officials, local elites and politicians are the ones indulged in the quagmire of corruption, even though the timber is harvested from community forests (NRC 2010; NVC 2010).

Second, the provision of joint responsibility will result in passive community forest management. Of 9,000 staff in DoF, there are only about 1,700 forestry technicians, and no social workers (see Table 2). Owing to the limited staff and resources, forest officials cannot participate in all activities such as meetings, assemblies to silvicultural practices and marketing of forest products that CFUGs undertake. The limited capacity of the government to provide the needed services and putting controlling provisions against CFUGs to limit their autonomy will eventually hinder CFUGs from being active and innovative. Some argue that DFOs have been given sufficient power to regulate CFUGs, and have been given power even to take back community forests if CFUGs deviate from their OPs and cause massive damage to the environment. Perhaps for these reasons, FECOFUN has considered this proposal as an attempt for some forest officials and politicians to resurrect their traditional power to bolster protection oriented forest management (FECOFUN 2010).

Table 2: Number of staff and their composition in DoF (above the Guard and Peon rank)

<table>
<thead>
<tr>
<th>Staff categories</th>
<th>Forest technician</th>
<th>Administrative staff</th>
<th>Armed force</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No</td>
<td>%</td>
<td>No</td>
<td>%</td>
</tr>
<tr>
<td>Officials (Officer level)</td>
<td>260</td>
<td>5</td>
<td>7</td>
<td>0.6</td>
</tr>
<tr>
<td>Assistants/clerks</td>
<td>1400</td>
<td>25</td>
<td>650</td>
<td>56</td>
</tr>
<tr>
<td>Total</td>
<td>1660</td>
<td>39</td>
<td>657</td>
<td>15</td>
</tr>
</tbody>
</table>

Source: Pokharel (2006)

3.2 Fifty percent Tax: Ruining local economy

Another MoFSC proposal is levying 50% of the total revenues earned by CFUGs from the sale of forest products (timber and fuelwood) outside concerned CFUGs as a contribution to the central treasury. While a 15 percent tax is still being contested⁴, MoFSC seeks to

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⁴ There has been an attempt to levy 40 percent tax in 2003 and reduced that to 15 percent after massive protest from FECOFUN and other actors, and the litigation in the court.
introduce the new tax scheme of 50 percent. This provision will have negative implications on the local economy, community development and poverty reduction. This provision reduces incentives for commercialisation and considerably reduces CFUG income. The tax scheme has failed to consider the investments of CFUGs especially incurred for forest protection, harvesting and marketing. A case study of three CFUGs from Nawalparasi district shows that CFUGs spent 50 to 65 percent of their total income prior to the actual timber sales to cover the costs of harvesting and marketing (see Table 3). If they abide by the new tax scheme there will be less revenue remaining for the CFUGs. It will decrease CFUG funds and encourage them to become involved in forged financial practices such as maintaining double accounts. As a result, there will be limited funds for poverty reduction.

Table 3: Cost of harvesting and marketing of Sal timber in Nawalparasi

<table>
<thead>
<tr>
<th>Name of CFUG</th>
<th>Quantity sold in 2009</th>
<th>Total cost</th>
<th>Total income</th>
<th>% cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sundari</td>
<td>5500</td>
<td>945942</td>
<td>1733421</td>
<td>55</td>
</tr>
<tr>
<td>Dhusani</td>
<td>3205</td>
<td>641000</td>
<td>1000000</td>
<td>64</td>
</tr>
<tr>
<td>Amar</td>
<td>6258</td>
<td>1225510</td>
<td>2445708</td>
<td>50</td>
</tr>
</tbody>
</table>

Source: Field Study, October 2010.

3.3 Restricting forest use: Licensing for illegal logging

MoFSC has intended to regulate forest use by allowing CFUGs to carry out forest utilization activities only after two years from the handover of community forests. Besides, CFUG can only implement operational plan (OP) after one year from its revision. Technically, it is flawed because there are different silvicultural and other forest management activities which should be carried out every year. Further, the amendment does not consider the needs for forest products for two years which will negatively impact the poor, and may encourage users to steal forest products to fulfill their needs. Overall, this proposal fuels passive forest management and is likely to increase forest depletion due to a decline in ownership feeling of local community over forest.

Clearly defined and undisputable tenure is vital in sustainable natural resource management since it provides strong incentives for people to own and manage resources sustainably (Luintel and Chhetri 2008). Tenure confusion exists in the Churia region, and as a result, this region is facing the overexploitation of forests and a looming environmental crisis. Instead of addressing tenure issues, MoFSC decided to introduce the concept of ‘limited use zone’
which considers the sensitivity and fragility of Churia region and upward-downward (Terai) linkages for ecosystem services. The ‘limited use zone’ concept implies, as described in the proposal, that only fallen, dead, diseased and dying forest products can be extracted, that no tree felling is permitted, and that virtually no forest management occurs at all. MoFSC is proposing this concept by blaming CFUGs for the environmental crisis in Churia region without a thorough analysis of the drivers behind it. In fact, this proposal will further weaken tenure and induce unsustainable harvesting. The provision may result in forest product theft by local communities in order to meet their livelihood needs and illegal logging by corrupt forest officials, politicians and local elites. In the past, Nepal has experienced the deadly scenario of high deforestation and forest degradation, which is attributed to unclear tenure and limited or no rights given to local inhabitants. If the proposal is implemented, it is likely to aggravate deforestation and degradation in Chure.

Overall, the provision of joint responsibility, coupled with the 50 percent tax scheme, would result in a restriction of forest management that would have far reaching and largely negative implications on forest management, governance and poverty reduction.

Reviewing the proposal of MoFSC, we find a number of fundamental assumptions underpinning it. First, MoFSC assumes that the autonomy to CFUGs provided by the Forest Act is the primary cause of irregularities, corruption, lower pricing and unsustainable harvesting. Second, the MoFSC also assumes that the local communities are incompetent in forest management so that the bureaucracy should have control over it. Third, a strict protection-oriented forest management approach is the best way to achieve sustainable forest management, and thus, the market should be discouraged. Finally, a change in the overall policy of community forestry could be legitimized by using the unique issues of community forestry in Chure and Terai.

The pressing question that remains is: are the legal responses prepared based on these assumptions panacea to address the issues of community forestry or can we go beyond the 'box'? Moreover, are there any better alternatives?
4. Alternative ways: Building on existing practices and innovations

How can we make community forestry work better? There are a number of good practices and innovations that provide us with better, alternative ways to achieve sustainable forest management, good governance and poverty reduction. Also, in a democratic Nepal the strategies in the forestry sector must be in accordance with the principles of democratic governance, and not the traditional top-down bureaucratic approach. Similarly, a need to democratize state-community relationship and promoting collaborative and deliberative mechanisms at district and sub-district levels for monitoring CF related issues and concerns are suggested. This section presents the alternative ways based on existing good practices and innovations to address the burning issues of community forestry in Nepal.

4.1 Improving CFUG governance

A democratic approach to promote sustainable harvesting involves participatory and deliberative decision making by improving the group governance, introducing a locally-led inventory process and developing a good monitoring system within CFUGs. Critical and deliberative interface of external actors including government agencies, NGOs and networks can facilitate inclusive, democratic, pro-poor and equitable governance processes within the CFUGs.

The existence of the nexus of local elites, smugglers and corrupt officials has been possible in the CFUGs where ordinary citizens have limited information regarding their rights, responsibilities and awareness on CFUG processes. To break it, a rigorous process of deliberation and information sharing at each hamlet (tole) and household, wherever feasible, is required. This should start from the CFUG formation process. In the already formed CFUGs, tole committees could be institutionalized as basic units for decision-making, representation, benefits distribution and community development. Research has shown that the CFUGs which have institutionalized toles in this way are not involved in such a damaging nexus.

4.2 Democratizing state-community interface

The relationship between the Department of Forest and community has always been problematic as the former has been blamed for its attempts of cooptation to, rent seeking from, and controlling the CFUGs. There are circumstances where local elites (especially few CFUG leaders) personally benefited by forging the nexus with corrupt officials, and evidence exists where CFUGs suffered gravely from the government for declining to pay a bribe or for conducting fair affairs. In these situations, rather than providing additional space to further cultivate this nexus, efforts should be directed toward transforming this relationship, such as
by increasing local awareness. Similarly, district forest governance can be brought under the umbrella of local governance, where forestry professionals come to a critical interface with citizen representatives. This might help transform techno-bureaucratic attitudes towards deliberative change agents (Ojha et al. 2010).

The existing inventory guidelines are hardly accessible to CFUG members and are highly technical. Local people have very limited knowledge and understanding about it. Simplifying it and making it more readily accessible would help local people understand the rationales and requirement of forest inventory. With awareness of CFUGs on scientific management and harvesting practices the CFUGs can contribute to sustainable forest management.

4.3 Promoting collaborative and deliberative mechanisms for monitoring

There is also a need to improve the existing forest product marketing system which is heavily influenced by cumbersome regulatory provisions and institutional behaviour (Dhungana and Bhattarai 2008; Kunwar et al. 2009). Clandestine relations among local elites, forest officials and contractors flourish in this environment, but with high transaction costs and greater incentives of overexploitation. But under participatory and democratic decision-making and effective monitoring, overexploitation will be reduced. Multi stakeholder mechanisms at the district and sub-district levels are urgently needed to oversee forest product harvesting and marketing related issues. The structures and mandates of these mechanisms could be developed at the district level. The District Forest Coordination Committee (DFCC) exists but has been criticized for its overly governmentalized structure and its ritualized function. Key issues that these mechanisms could address include: monitoring of CFUG practices including forest products harvesting, governance processes, pro-poor and equity related initiatives; developing standards for district/sub-district on forest product price, linking market to the CFUG, ensuring transparent and fair competition among traders during tendering processes, and ensuring larger environmental issues and concerns such as the protection of threatened and endangered species, and conservation of ecologically sensitive areas.

4.4 Making community forestry work for the poor

Community forestry is widely expected to contribute to poverty reduction. The current community forestry guideline provisions of 35 percent of group income devoted towards

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5 DFCC is criticized by non-state actors and are demanding to make it more inclusive. In many districts, they are largely inactive or are (mis) used by DFO only when they required it to legitimize their activities. However, if it is made inclusive in terms of involving relevant stakeholders, it could help resolve many of the issues within a district. Depending on local issues and needs, sub-district level multistakeholder mechanisms could be more beneficial.
poverty reduction is noble, but it is not clear about the scope of the contribution by CFUGs to achieve this reduction. The current understanding of poverty in community forestry is too narrow and only counts cash contributions. However, there is a need to appreciate the multiple benefits of forests such as forest products, shelter, watershed protection, employment opportunity, wild fruit and other edibles, and herbs, which all contribute to poverty reduction. Ambiguities exist regarding the poverty objectives of forests. Existing legal provisions often restrict the use of forest land for productive agro-forestry practices, eco-tourism or other potential purposes and yet it expects CFUGs to contribute to poverty reduction. Strengthening CFUG governance along with legislative clarity on the purpose and scope for poverty reduction would largely make community forestry work for the poor. Legal provisions for diversifying pro-poor activities through community forestry such as eco-tourism and agro-forestry would work.

Capacity building and empowering marginalized groups should be the key strategy to promote pro-poor governance. Policy directions such as guidelines and their enforcement could be complementary but should not be the major strategy to ensure equitable benefit sharing. Similarly elite capture in CFUG has to be addressed by improving the internal governance of CFUGs, developing a self and collaborative monitoring mechanism and rewarding schemes.

Acknowledgements

We would like to express sincere thanks to Growing Forest Partnership (GFP) and Rights and Resources Initiative (RRI) for financial support. Thanks are also due to Kamal Bhandari for providing field data. The valuable suggestions made by Hari Dhungana and Hari Sharan Luitel are gratefully acknowledged.
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Annex 1: MoFSC Proposal

Government of Nepal
Ministry of Forests and Soil Conservation

Ref: Getting Approval of the Theoretical Subjects to be improved to address the issues Seen in the Management of Community Forest

Approved by Hon. Minister of Forests and Soil Conservation on 2067/3/17

1. Brief Statement about the Subject

About 23 percent of the total forest area in Nepal has been handed over to the local community. Approximately 15 thousands Community Forestry User Groups have been managing these forests. In the Hills, large area of national forest has been satisfactorily protected and managed as Community Forests. Though the handover of the community forests in Terai and Chure is comparatively low, field studies have confirmed a reality that the protection and management of the community forests handed over to the community is not protected and managed to the anticipated level. Giving a due consideration to the suggestions received from the National DFO Workshop and Field Monitoring Report, this policy proposal is prepared to address issues realized in the management of community forests.

2. Comments Received and Other Relevant Issues

Aiming to make the forest product collection and distribution system effective, credible and transparent (thereby uprooting the existing malpractices), on 2066/02/23, the Ministry of Forests and Soil Conservation received an instruction from the Commission on Investigation of Abuse of Authority urging to prepare a Guideline on the collection, sale and distribution of forest products from the Community Forests and instruct District Forest Office to forbid forest products sale and distribution, even within the group, with the price lower than it was stipulated in Forest Regulation 1995.

3. Reasons to Submit the Proposal

a. Though, Rule 26 of Forest Regulation 1995 mentions that, ‘……..while determining the community forests, the wishes as well as the management capacity of the local users should be considered….’, the standards of management capacity has not yet been well defined, due to which, some groups were allotted with more forest and some groups were allotted with too little forest than their management capacity. This has created conflict by unequal access to forest resources. The confusion in the management capacity standards has also made it
difficult to handover the proposed community forests of Terai and Inner Terai-forests that have been protected and long been awaited for legal hand over. Therefore, it is imperative. While determining the forest area for each household, the minimum requirement of the users and geographical regions will be taken consideration.

b. The collection and sale of forest products in government managed forests is regulated by Forest Product Collection, Sale and Distribution Guideline 2057 and Forest Product (timber and firewood) Auction Procedural Guideline 2060. But, guidelines for the collection, sale and distribution of the forest products in Community Forests have not yet been prepared. In the absence of such guideline, the process of forest product sale and distribution is not transparent. Due to the sale of forest products at low price, both the society and the government have been losing a considerable income. Similarly, because of the disparity in the selling prices of forest products of the community and the government, the income of the society and the government has not been substantially increased. Being indifferent to the need of the district, forest products from the Community Forests have been sold to other districts; District Forest Office has no clear responsibility and role in the Acts and Regulations to have control over the transport of forest products. These are few reasons that have created administrative and legal difficulties to have regulatory control over community forests.

c. Based on the analysis of forest condition and analysis of increment, forestry technical staffs are responsible to put forest management activities and annual allowable cut in the operation plans. But after hand over of the forest, forest staffs don't have any regulatory responsibilities. Forestry staffs and the executive committee point finger to each other for any irregularities. Therefore, the forest staffs involved in the preparation, approval and implementation and the executive committee of Community Forestry User Group should be made jointly responsible for such irregularities.

d. Section 25 of Forest Act, 1993 has allowed Community Forest User Groups to sell and distribute the forest products independently by fixing their prices. Section 43 (1) has legally recognized Community Forest User Group as an autonomous and corporate body having perpetual succession. Because of this provision, monitoring and evaluation of community forest has not become effective.

e. Multistage field studies by Chure Conservation Task Force of the Ministry of Forests and Soil Conservation has have pointed out its geographic and geological sensitivity. Probing Committee commissioned by the Ministry of Forests and Soil Conservation has submitted reports on the illicit cutting in community forests of Chure region. Upon the analysis of such reports and Chure related issues raised by different mediums in Chure and other
environmentally sensitive areas, it is imperative to mention management activities in the operation plans based on the “limited use” concept.

f. Field report have shown that in many districts of Terai and inner Terai, operational plans were prepared hastily, in a short period and even before getting institutional maturity, trees were cut within one or two days after the operational plan was approved. No priority to forest management activities; expenditure equaling the income, no matter how much is earned; not allocating fund for poverty alleviation and income generating activities are few examples of irresponsible activities that necessitate the amendment of Community Forestry Guideline, 2052.

g. The organizational structure of Department of Forest is conventional. This conventional structure makes it difficult to regulate the ever growing number of community forests. Analyzing such extra workload (services to Community Forests, monitoring of the Community Forests, protection of government managed forests and expansion of the private forests), it is necessary to improve the organizational structure of Department of Forest.

In the above mentioned context, Hon. Minister of Ministry of Forests and Soil Conservation on 2067/3/17 has approved a proposal submitted by the Ministry of Forests and Soil Conservation on “Theoretical Subjects to Address the Contemporary Issues about Community Forest Management.” Therefore, this proposal has been submitted according to the Annex-1 Number 16 of …..Regulation, 2064 of the Government of Nepal. 3

4. Provisions to be Decided

To address the weaknesses observed in the Community Forest protection and utilization, it is very necessary to amend the Forest Act, 1993 and Forest Regulation, 1995. Hence Ministry of Forests and Soil Conservation will be directed to make necessary arrangements to amend the Forest Act, 1993 and the Forest Regulation, 1995 as given below-

a. Considering the fulfillment of minimum needs of the users, maximum forest area per household will be determined on the basis of geographical regions.

b. The process of forest product collection and sale is not transparent and products have been sold at low price, the society and the government have been losing a big income. Therefore, to facilitate increased income of the society and the government, the following arrangements are needed.

i. Prepare and compulsorily implement the Collection Guideline and Sale and Distribution Guideline for the forest products from Community Forests.
ii. Based on the geographical region and well being ranking, fix the price exactly the same as mentioned in Forest Regulation, 1995 for sale and distribution the forest products within the group.

iii. Sell and distribute forest products to outside groups only when the demand within the district is satisfied. Such surplus forest products should be competitively auctioned with minimum prices according to the market price.

iv. Out of the income received from selling forest products to outside group, make arrangements to deposit 50 percent of it, according to the minimum price mentioned in Forest Regulation 1995, to the Forest Development Fund.

v. While selling the timber and firewood of community forest to outside the group, make arrangement that enable the organizations like Timber Corporation of Nepal (TCN) to enter into a competitive auction

vi. Make the forestry officials and Community Forest User Group/Executive Committee collectively responsible during the approval and implementation of the operation plan and forest product sale and distribution.

d. To ensure an effective monitoring, make provisions for a compulsory monitoring through District Forest Coordination Committee.

e. In the community forests of Chure and other environmentally sensitive regions, mention the forest management activities in the operation plan based on the “limited use” concept. In such areas, completely avoid the concept of Annual Allowable Cut. No commercial extraction is allowed, only the dried and fallen trees would be utilized for local supply.

f. Following provisions must be compulsorily included in the amendment of Community Forestry Guideline, 2052

i. Provisions that would allow forest utilization only after a year of operation plan approval

ii. Provisions related to fund mobilization

iii. Provisions that would allow to implement programs of current fiscal year only on the basis of monitoring report of the previous fiscal year
g. Improve the organizational structure of Department of Forest after analyzing the extra workload (service to the Community Forests, monitoring of the Community Forests, protection of Government Managed Forests and expansion of Private Forests) added as a result of the above mentioned changes.

Date: 2067/3/18 Surya Prasad Joshi  
(Acting Secretary of Government of Nepal)
1. Annex 2: Amendment bill
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बन ऐत 2044 मा भएका व्यवस्थापन

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30 जुलाई: (क) डा. 49 को ख्यात (क) अन्तर्निष्ठको कर्म संपन्न गर्नेछ यसलाई ध्यान राख्नुहोस्।

43 (2) उपर्युक्त (क) व्यवस्थापक व्यापारिक प्रतिस्पर्धाको संबंधमा जिल्ला वन व्यवस्थापक कर्म गर्नेछ यसलाई ध्यान राख्नुहोस्।

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