

Let it be

Proposed review of Forest Act 1993, among the most progressive laws in the world, is misguided



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Currently, the Nepali government is proceeding with a new round of amendments in the Forest Act 1993. This is one of the world's most progressive forest laws in terms of empowering local communities to access, control and manage forest commons. The government step has come as somewhat of a surprise to many forest stakeholders in Nepal, as it is being pushed at a moment in Nepal's history when parliamentarians are running short of time to finalize the new constitution and the structure of 'New Nepal'. The amendment is being justified as a corrective measure to regulate and control community activities within sustainability limits. Why such change, at such a moment, and on a policy instrument that has been heralded as a major achievement of the post-1990 Nepal?

AMENDMENT OF WHAT?

The first aspect of amendment concerns redefining community rights over forest resources. The 1993 Forest Act recognizes Community Forest User Groups (CFUGs) as perpetually self-governed institution, with well-defined rights to manage, develop and use the designated forests. They can set up community management on all accessible forest areas, provided they

are 'willing and able' to manage. They can negotiate provisions of forest use and management with District Forest Officer (DFO), which provides technical support and monitors group activities to ensure compliance with the agreed rules. Such an arrangement has provided incentives to local communities to become active partners in forest management, with over 16,000 groups formed throughout the country, benefiting nearly 10 million people. Studies show that forest condition has also greatly improved once communities were entrusted with management responsibilities.

The proposed amendment will limit CFUG autonomy in three ways. First, it sets per capita forest area limit as 0.5, 2 and 3 ha in Tarai, Hills and High hills respectively. This provision will restrict communities to smaller forests areas than what they can manage. This will also push CFUGs to subsistence management, and prevent them from becoming more commercially oriented. Second, the proposal aims to empower DFO to intervene in the organizational system of CFUGs. If the proposal is approved by the parliament, DFO can penalize the leaders of CFUGs on the pretext of public complaint, and can then take the forest back to the central government control. Third, the DFO is authorized to 'approve' or 'disapprove' the application for renewal of the CFUG constitution, as well as to 'approve' annual reports, and 'instruct' the group. While a CFUG needs to respect state regulatory system, the current proposal to have DFO control and oversee a community organization will exterminate spaces for democratic self-governance at local level. If these provisions are implemented, the CFUG leaders will become loyal and accountable to the DFOs, rather than their community. However, it does raise a question on

who should monitor a community organization and how.

Fourth, the government will set the price of the forest products with the intent to bring uniformity in market price of timber. This further undermines institutional autonomy of CFUG, and makes the DFO all-powerful patron of CFUGs. All these proposed amendments will jeopardize the essence of 'perpetually self-governed institution' around forest commons.

forests' and 'collaborative forest management'. Framed by central government officials' interests to 'manage' the forests, this proposal is starkly against the principles of decentralized (and the likely federal system) of forest governance. This also goes against the accepted principle that the role of central government agency is to regulate, enable, support and monitor local government and communities as the latter manage forests. It will be a grave

FOREST GOVERNANCE



Let there be light

This will further buttress the collusive alliance between officials and local community elites who are said to be responsible for timber smuggling in the Tarai region.

The second aspect of amendment concerns the role of central government in forest management and governance. The proposed amendment seeks to mandate the central government agency to control and manage forests as 'block forests', 'protected

mistake if the parliament endorses a provision that makes central government a manager of forest instead of playing an enabling role.

The third aspect of amendment concerns sharing tax and revenue from the harvesting of forests managed by communities. The current provision is that CFUGs enjoy all revenues from the sale of forest products, except that they pay 15 percent tax on revenue earned from sales outside the

group. As per the proposed revision CFUGs will have to pay 50 percent of gross revenues accruing from sales to the central government. This proposal has been rejected upfront by the pro-community activists. But the issue is not straightforward and requires a careful analysis.

In a democratic polity, citizens and entrepreneurs are obliged to pay taxes to the government in exchange for the basic public services. But a fair and democratic negotiation of tax cannot be achieved when the government does not engage other stakeholders. In recent years, increasing corruption has deterred people from paying tax not only related to forestry but also to the wider economy. In this situation any tax proposals should include commitment to combat corruption, assuring the public that the money will not be misused.

WAY FORWARD

The amendment proposal stems from concerns for regulating over-harvesting of timber by some CFUGs in the Tarai, where the law and order situation is weak, and CFUGs' access to institutional development support services is limited. To find a solution in the spirit of democratic decentralization, the oversight and monitoring role being undertaken by the DFO on behalf of central government should be relocated to local government mechanism. But the current debate of forest policy amendment completely misses this aspect. While central government officials emphasize central control, some groups of community leaders and civil society activists tend to idealize communities and sideline the issue of bringing local governance into the debate.

Neither the bureaucratic hegemony nor the community populism offers complete solution to the challenge of strengthening community

governance, which is essentially linked to the entire system of local governance. I admit that currently, there is also a problem of accountability and transparency in the local government mechanism due mainly to the absence of elected local officials. But sooner or later we need to find a solution to institute an appropriate form of local government with elected officials accountable to local citizens. The whole issue of an oversight over community should be handled by local government, not the central government. In many countries local governments now hire (select) and pay the salary of local foresters who are certified by the central forestry agency but work for local government (in Tanzania, for instance). This would also help forest officials to work for local people, while local government would also become technically equipped. This in turn will help achieve regional equity and sharing of forest benefits, especially in areas with no standing forest. For all these reasons, regulation of community organization should be part and parcel of local governance reform. Addressing community governance without concurrently reforming local governance would only lead to centralization and de-democratization. Therefore, the solution lies in crafting a system in which communities enjoy rights over forests, take responsibility for management, and are also under the broader democratic oversight of elected local government. At this point, rather than amend the 1993 Act, the government would be wiser to focus on the crucial task of defining the role of local governance in the new constitution; the goal is to have a constitutional arrangement to ensure democratic local governance and community-focused management of forests.

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