

How are Forest Policy Decisions Made in Nepal?¹

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Abstract: Taking a deliberative democracy perspective, we analyze the case of forest governance in Nepal with a view to understanding the extent and processes of citizen-state deliberations in forest policy making in relation to Nepal's specific historical and social contexts. We analyze 15 policy decisions which range from parliament-endorsed laws to executive decisions of the government that were made over the period 1998-2004. Our findings indicate that despite the functioning of a multiparty political system, most forest policy decisions made during the studied period involved limited democratic deliberation. Two reasons for this are identified as: a) continued dominance of the role of forest science and state forestry administration in forest policy making; and b) weak links between civil society and elected political leaders in the legislature and the government. Finally, we draw lessons for approaches to analyzing environmental governance.

Key words: deliberation, environment, forestry, policy, governance

INTRODUCTION

Governing environmental resources is challenging, as there is usually a need to reconcile diverse interests, stakes and ideologies of people at local and non-local levels as well as people of present and future generations. The challenge is further compounded by historically embedded colonial legacies of centralized and bureaucratic control over natural resources (Peluso 1992), and the predominance of scientific management ideologies which tend to resist pluralistic approaches to environmental governance (Backstrand 2004). Following the environmentalist movement of the seventies and the participatory development movement of the eighties, which sought to question scientific and bureaucratic control of natural resources, the agenda of inclusive, participatory and pluralistic management of natural resources has come a long way, mainly within the remit of decentralization and the devolution movement. However, even this participatory approach to

development thinking is increasingly being criticized for its failure to bring anticipated changes (Escobar 1995; Cook and Kothari 2001), whilst questions on the quality of deliberation are being raised over the neo-liberal ideology of democracy and governance (Dryzek 2000). Within this larger debate on democracy and development, the fundamental question we are posing is how far the local citizens are allowed, and they themselves come forward, to be the active agents of environmental policy change.

This article focuses on the case of forest governance in Nepal, where diverse local and international actors have engaged in devising policy solutions to environmental problems. The choice of Nepal also stems from the direct experience of the authors for substantial periods in Nepal as researchers and practitioners in the field of environment and development. Two crucial questions are taken up for analysis: a) how far have local level citizens, historically marginalized by

¹ The paper is the combined product of various research projects of ForestAction and its collaborators (Adaptive Collaborative Management (in collaboration with CIFOR) and Research on Knowledge System, both funded by IDRC). The views in the paper are solely of the authors and do not represent any of the collaborating or funding organizations. We would like to express our sincere thanks to Krishna Paudel, Bijyan Acharya, Bharat Pokharel, George Varughese, John Parkins, Ross Mitchell, Mani R Banjade, Basundhara Bhattarai, Harisharan Luintel for their valuable comments on the draft paper.

local processes of social differentiation and non-local processes of colonization and bureaucratization, been able to deliberate with state agencies on issues related to forest governance? and b) whether, how and to what extent, under the overarching ideology of a liberal governance regime², politicians and environmental officials have treated citizens as active agents and partners of policy change? Answers to these questions will be used to explore generic insights into the conditions, processes and outcomes of deliberation in environmental governance.

Following the projection of the Himalayan degradation thesis in the seventies (Eckholm 1976; Ives and Messerli 1989), which highlighted the fragility of Nepal's mountains under severe anthropogenic threats, Nepal's environmental sector became a site of experimentation for various

“participatory” policy and institutional innovations, of which community forestry (CF) is the most notable one. Whilst an enormous range of literature has analyzed the institutional and environmental outcomes of CF policy (Malla 2000), there have been only limited reflections on the more fundamental dynamics of citizen-state deliberation in policy and law-making in the forestry and natural resource sector in Nepal, and globally (Mitchell 2004; Parkins and Mitchell 2005). In this article we analyze the extent of political engagement between concerned groups of citizens and state in forest policy making in Nepal during 1998-2004 from the perspective of the deliberative theory of democracy which radically emphasizes public deliberation as an important ground rule of democratic governance.

A FRAMEWORK OF DELIBERATIVE GOVERNANCE

Following Jürgen Habermas, a prominent German sociologist and political theorist, we contend that any use of coercion and power (such as constitution of a small group or legislation of a state) is legitimate only when it is constituted through reasoned debate among concerned citizens free from strategic manipulation and deception (Chambers 1996; Dryzek 2000). In other words, democratically legitimate law-making occurs when the ‘communicative power’ of citizens is transformed into administrative power (Habermas 1996; Flynn 2004). In recent years, deliberative theories of democracy have gained renewed interest for their procedural, interactional and communicative views of governance because of continuing criticisms of the thin constitutionalist view of governance emphasized within liberalism. The notion of deliberation goes beyond participation in constitution or policy-making. It is founded on the concept of ‘communicative rationality’ that emerges when citizens deliberate free from manipulation and deception (White 1995). The Habermasian idea is that a good formal political system should simply formalize public opinion formed through

reasoned debate in an informal, domination-free public sphere of citizens. When citizens deliberate and give consent to rules, they consider that they are governing themselves (Chambers 1996:8). Deliberation is considered an opportunity for people to respect each other as moral agents and reach reasonable and legitimate solutions to disputes, and through this, the public policy making process is brought to open public debate and politics, beyond the confinement of expert inquiry (Forester 1999; Fischer 2003). From this perspective, we propose the following framework for the analysis of policy decisions (Table 1). It identifies specific issues and criteria for democratic deliberation at four tentative but important stages of regulation development and practice. The first question is: Who identifies the agenda of policy? The pertinent issue here is how far citizens, including politically marginalized groups, have been able to contribute to the debate with technical experts and politicians. The second question concerns the nature and extent of inclusiveness and unconstrained dialogue in the process of deliberation (Smith 2003:57).

² After 2002, Nepal's political system was taken over by the monarchy which had remained a constitutional monarchy since 1990. Despite a monarchy-based political system which carries feudal legacies, we presume that much of the policy making that we have taken for analysis has been guided by liberal democratic values and institutions established in 1990.

This is the core part of argumentation and reasoned debate in deliberative governance. The third question is: Who formalizes public opinion or, if there is no clear public opinion formed due to weak deliberation, who makes decisions – elected politicians or administrative bodies, and what possibility exists to hold them accountable to the concerned citizens? Lastly, the fourth question is that once the policy decision is made, who influences its practice, and how, and to what extent, concerned groups of citizens, technical officials and politicians

are prepared to engage in learning from practice? At this point, we supplement deliberation with Dewey's notion of democracy as cooperative inquiry (Dewey 1916/1966). Overall the nature and status of deliberation in governance may be explored in all these dimensions and stages of policy development. We will also point to Bourdieu's (Bourdieu 1998) ideas on social inequality and reproduction as an additional frontier to explore in order to enrich the framework of deliberative governance.

Table 1 Analytical Framework for the Assessment of Democratic Deliberation

| S.N. | Stage of Regulation Development | Dimensions of Democratic Deliberation |
|------|--|---|
| 1. | Defining Policy or Regulatory Issue | <i>Who define (s) the agenda of policy?</i> - technical officials/experts, politicians, powerful citizen groups, marginalized groups of citizens |
| 2. | Exploring Propositions for Regulation | <i>What is the extent of public debate in policy proposal?</i> <ul style="list-style-type: none"> - Transparency of agenda and propositions - Accessibility of ordinary citizens to debating forums, languages and mechanisms - Inclusion of all those concerned in the debate (identification and assessment of costs and benefits of various options for various groups from various perspectives) – including the recognition of diverse languages, perspectives, and ideologies - Extent of public debate independent of government influence: egalitarian, uncoerced, competent, and free from delusion, deception, power and strategy - Responses and reasons (given by politicians and bureaucrats) to citizen concerns, questions and arguments - Learning and shifting of initial positions (by all involved in deliberation) - Consensus, majority decision, or technocracy |
| 3. | Formalizing the Proposed Rule | <i>Who formalizes policy decisions and do the decisions truly represent the public will?</i> <ul style="list-style-type: none"> - Citizen representatives, the public, or bureaucrats - Manipulations of public opinion (linguistic, political) |
| 4. | Policy Practice and Collaborative Learning | <i>What is the practice, for reflection and policy feedback?</i> <ul style="list-style-type: none"> - Compliance of policy norms, discursive challenges, resistance or disobedience, reflections, feedback loop for learning and change |

HISTORICAL CONTEXT OF FOREST GOVERNANCE IN NEPAL

The two and a half-century-history of forest governance in Nepal shows that: a) the mass of people have historically been marginalized from mainstream political decision making which has been the preserve of the feudal ruling elites; b) the western agenda of modernization and development has contributed to the creation of a centralized, technocratic state implanted in the feudal, local political institutions; and c) the liberal democratic system of the post-1990 period

has been constrained by feudal legacies of the past as well as by the limited constitutionalist notions of liberal democracy itself, from genuinely promoting inclusive public deliberation.

The character of the state has always remained coercive and extractive with limited avenues for citizens to engage in political decisions (Regmi 1978; Gelner 2002). Except two brief periods of 'democracy' (during 1951-60 and 1990-

2004), state policies have been controlled by the monarchy or its associates. As such, the policy space is viewed as granted from the top of the state rather than from the power of citizens. Post-WWII modernization projects implanted technical developmentalism into the local feudal state (Cameron 1998). The forestry sector has been a key recipient of this approach. The colonial design of scientific and bureaucratic forestry was established in Nepal (Pokharel 1997), embodied with a technical and utilitarian view of forest (Peluso 1992). Such a culture of forestry means that there was little appreciation of democratic deliberation with people in forestry matters. Indeed, there is still a predominance of this view within the forestry profession that people are only a means for the protection of forest ecosystems.

During the eighties, state policies began to be influenced by the decentralization discourse which came, in part, as a response to environmental crises, and in part was influenced by the wider decentralization movement in the development field. In the decades of the sixties and seventies, Nepal was projected as a site of Himalayan degradation due to rampant deforestation in the fragile hills, and this attracted tremendous international attention. Initially the World Bank and the FAO, then a group of bilateral and international actors, influenced the national government towards the process of devolution of forest governance. Rigorous reflection and analysis into the problems of deforestation led to a realization within the government that the solution to the problem lay in recognizing local communities as the legitimate actors of forest management (Gilmour and Fisher 1991).

Following the promulgation of a multi-party liberal democratic system, despite deeply rooted colonial conceptions of centralized forest management, Nepal has made dramatic changes in formulating policies that appear to devolve rights to local people, and reorient government forestry staff towards providing better technical services

for the management of forests³. Under the label of CF, the democratic space provided by forestry legislation has often been heralded as a key innovation that allows local citizens to participate in wider democratic processes, governing forest resources, as well as providing space for wider civil society engagements in Nepal⁴. Though CF was initiated by the government with support from donors, in later years, it has increasingly been promoted by an expanding public sphere. A wide range of civil society organizations has emerged, including the nation-wide network of forest users, media, and independent research networks and platforms. Despite this achievement, recent critical reflections indicate that the tension between forest bureaucracy and local citizens has not been resolved (Britt 2001; Malla 2001). Several authors suspect that the forest bureaucracy has again sought to resurrect power through various policy instruments in which limited opportunities exist for citizens to challenge and criticize such state-initiated policy decisions in the forestry sector (Shrestha 1999; Pokharel and Ojha 2005). This indicates a continuing challenge for democratically elected political leaders to represent citizen concerns and resist technical handling of political issues of forest governance⁵.

³ The Forest Act 1993 is a landmark development in this regard which legally recognizes local forest user groups as perpetually self-governed institutions to claim 100 per cent of the benefits from the management of forests handed over to them.

⁴ Though CF is just one program of forest governance, and indeed the high value forest of Nepal Terai is yet to be brought under clear and agreeable institutional framework Brown 1998; Paudel 2002; Brown 2003.

⁵ During the period of our analysis from 1998-2004, the country ran gradually into the deepest level of political crisis - the parliament was dissolved and the Monarchy took over executive power. Obviously, this constrained the overall potential of civil self-governance. Worsening security deflected peaceful processes of deliberations in any issues of governance.

FOREST POLICY DECISIONS DURING 1998-2004

In the long history of forest policy making in Nepal, we analyze those decisions that were made in the period of democracy after the 1990s. We have selected 15 policy decisions that were made during January 1998 - May 2004 in chronological order as a sample for the analysis of forest policy. We selected this period keeping in view the most striking policy decisions and actions of the

Parliament and government. Excluded from the analysis are the Forest Act 1993 (which endorsed the principles of decentralization) and the Forest Rules 1995 (developed by government to enforce the Forest Act 1993). These were foundational legal developments immediately after the advent of parliamentary democracy, during which civil society activities were not fully developed.

Table 2 Overview of Forest Policy Decisions (January 1998 to May 2004)

| S.N. | Forest Policy Decisions | Level of decision | Summary Content of the Decisions |
|------|---|-------------------|---|
| 1. | Monopoly rights on timber sales | CM | The Timber Corporation of Nepal (TCN) was granted monopoly rights over the sale and distribution of timber in Nepal (9 Feb, 1998). |
| 2. | First amendment of Forest Act (1993) | Parliament | Parliament amended the Act to restrict some of the rights of community forest user groups (CFUGs) and give more power to forest officials to control CFUGs (Dec 1998). |
| 3. | Timber at reduced prices | MFSC | Prices for the sale of stockpiled timber were reduced by up to 75 % of the the market price (1999) based on a system of grading. |
| 4. | Ban on green felling | MFSC | The ban applied to all types of forests, including community forests. (1 Nov, 1999) |
| 5. | Community forestry stopped in the Terai | MFSC | A circular that restricted CF in the Terai to degraded land around well-stocked forests (28 April, 2000) |
| 6. | Special forest policy for Terai | CM | The policy was applicable to the Terai, Chure and Inner Terai endorsing various models of forest management ⁶ (28 April, 2000) |
| 7. | Forest inventory guideline | DoF | A compulsory guideline for inventory of community forests was enforced with mandatory technical forestry processes without mechanisms to incorporate local knowledge and deliver services. (September 2000) |
| 8. | CF guideline revision | DoF | Revision of CF operational guidelines to clarify the practical implementation of CF (June 2001) |
| 9. | Second amendment of Forest Act 1993 | Parliament | An attempt through a second amendment of the Forest Act (1993) to further curtail some of the rights of CFUGs (February 2001) |
| 10. | CF directives | DoF | CF development directives (7 Feb, 2001) |
| 11. | Biodiversity strategy | MFSC | Nepal's biodiversity strategy that was developed as per the requirements of the Convention on Biological Diversity (July 2002). |

⁶ Terai, Chure and Inner Terai consist of the lowest and southernmost parts of the country, with a climate quite similar to the humid tropics. This region is endowed with high value timber species and is a highly biodiverse region. As such, governance of forest and biodiversity of this region is much more complex than any other regions in the country.

| | | | |
|-----|---|------|--|
| 12. | Tax on CFUG incomes | MFSC | A Government financial ordinance for levying 40% tax on CFUG forest product sales (1 July, 2003) |
| 13. | Collaborative forest management guideline | MFSC | This was brought in to implement the new forest policy for the Terai with limited rights given to local communities compared with community forestry. (2003) |
| 14. | Non timber forest products (NTFP) policy | MFSC | The policy was developed to promote management and marketing of NTFPs and medicinal plants (2004). |
| 15. | Revised inventory guideline | DoF | Guidelines for inventory of CF (2000 version) were revised. |

Note: CM = Council of Ministers

MFSC = Ministry of Forests and Soil Conservation

DoF = Department of Forest. Source: adapted from (Timsina et al. 2004).

Table 2 provides an overview of the 15 policy decisions that were made in the period, including the levels of decision-making. This shows that the government has been quite active in making decisions over the past six years. The decisions we have compiled for reflection are not necessarily confined to CF program, but affect CF in various ways. They have been enacted from four levels of the hierarchy namely: a) Parliament resolutions of national legislation (2 and 9); b) decisions by the Council of Ministers (1 and 6); c) decisions at ministry level (Minister or Secretary levels) (3-5, 11-14); and d) decisions by the Department of Forest (7, 8, 10 and 15). Whilst Parliament is considered as the ultimate and legitimate source of any regulation binding on citizens, according to the 1990 Constitution of the Kingdom of Nepal, it will be shown later that decisions by various layers of government actually modified or brought additional binding provisions that were often contrary to the spirit of the law formulated by the parliament. These decisions encompass four related but different dimensions of policy development: a) regulating the forest product economy, especially defining institutions that are or are not eligible for forest product marketing; b) regulating felling of trees taking environmental rather than local livelihoods rights into account; c) redefining the strategy of managing Nepal's Terai forests, which represent the remaining natural forest blocks of high value timber species (called *sal*); and d) promoting biodiversity conservation along with sustainable utilization of medicinal plants

and other Non-Timber Forest Products (NTFPs).

Marketing policy (decision 1) was guided by the interests of state officials and the senior managers of the state-owned Timber Corporation of Nepal (TCN) to save it from going into bankruptcy (which was indeed likely to happen due to corruption and mismanagement)⁷. The decision incited reactions from the Federation of Community Forestry Users of Nepal (FECOFUN) and the Association of District Development Committees of Nepal (ADDCN), as the decision interfered with the rights of community forest user groups (CFUGs) and district development committees (DDCs) in relation to marketing of forest products in their respective domains. Later, the government again provided privileges

⁷ While TCN had a monopoly in timber marketing in the Terai, the process of handing over of community forest to local users had threatened TCN's monopoly over the timber trade. Moreover, the government had initiated the process of developing the Local Governance Act, which could provide authority for timber harvesting to local bodies such as the Village Development Committees (VDC) and DDC. In these contexts, the government had decided to give monopoly power in timber marketing from all kinds of forests (community forests, forests under local bodies and government forests) in 33 districts both in the Terai and Hills of Nepal. However, CFUGs and DDC refused to provide timbers to TCN, and FECOFUN and DDC filed a case in court against the decision of the government. The government then had to issue a circular to allow use of forest products from community forests according to the Forest Act 1993 and in the case of DDC areas according to the Local Self Governance Act 1994.

(decision 3) to the company to sell old timber stock at a reduced rate but the company could not sell this low quality timber due to quarantine restrictions by India. Likewise, a series of restrictions on felling and utilization were imposed, starting with a ban on green tree felling through a ministerial order (decision 4). Senior forest bureaucrats referred to a public speech of the then Prime Minister (PM) delivered on Environment Day, even though the PM did not explicitly ban green felling in community forests. The Ministry of Forest and Soil Conservation (MFSC) issued a circular to the District Forest Officers (DFOs), who in turn instructed CFUGs not to fell green trees even if they were prescribed for harvest according to their approved forest management operational plans. This action further led to the revision of the CF directives (10). The Department of Forest (DoF) amended the CF directives by adding a provision that forest inventory should be carried out both in forests already handed over to communities as CF as well as in forests yet to be handed over. This amendment of the directives was made with the intention of enforcing restrictions on the felling of green trees.

Immediately after the revision of the CF directives, the MFSC developed a detailed forest inventory guideline (7)⁸. However, such restrictions were somewhat relaxed through revision of the CF guidelines (8) and forest inventory guidelines (15). The DoF revised the CF inventory guidelines in 2004 with the participation of civil society and government agencies. This time, DoF was more flexible by making a provision that social workers at the local level could use the guideline for making forest inventories which would be considered as valid inventories as done by technicians. Policies

⁸ In the beginning, 2000 copies were published in English. However, the guideline was too complex for the targeted level of forest rangers who could hardly understand the content and language in the guidelines. It was again published in Nepali to make it simpler after realizing that it was too complex as shown by dissatisfaction expressed by the forestry technicians themselves, forest users and other concerned groups.

related to biodiversity and medicinal plants were driven by different interests. The biodiversity strategy and plans (11) were part of international obligations relating to the Convention on Biological Diversity⁹. NTFPs policy was a response to growing markets for medicinal plants and other NTFPs, and the interests of NGOs and the private sector (15)¹⁰.

Out of the 15 decisions, the four major legal decisions that affected CF were: a) The 1998 amendment of Forest Act 1993 to institute an arrangement for prosecuting CFUG members; b) the government decision to levy 40% royalty (which was supported by a financial ordinance in 2003, despite a Supreme Court decision against it); c) new Terai forest policy and consequent constraints on CF in the Terai; and d) enforcement of forest inventory guidelines in 2000. Almost all these decisions relate to redefining and reinterpreting the distribution of rights and roles over forest - mainly between local communities and government. Representatives of forest users usually say that subsequent government decisions have consistently sought to limit their rights as instituted by the Forest Act 1993. We now analyze these policy decisions against four criteria of deliberative governance outlined in the framework in section two.

⁹ The biodiversity strategy was promptly developed, without which, the government official could not participate in the world summit in Johannesburg 2002. However, government later developed a biodiversity action plan, which intends to increase the conservation area through imposing a restriction on forest users for the use and management of the forests.

¹⁰ Government experts and some NGOs have claimed the policy as participatory and inclusive as some of the representatives of civil society were involved in the process of policy development. However, the involvement of civil society, in this case, appears to be illusionary as more technical and non-political NGOs led the process that did not allow more space for deliberation with local people (citizens).

ANALYSIS OF DELIBERATION IN FOREST POLICY MAKING

Who Scopes/Defines Policy Agendas?

The general orientation of forest administration, in Nepal as well as around the post-colonial world, is to make decisions about forests centrally, considering forest as a technical domain to be dealt with technically. Table 3 shows that despite the rhetoric of decentralization-oriented forest legislation and democratic governance, most of the vital policy change agendas were defined by forest bureaucrats (1-3, 5-7, 9, 10 and 12). Apart from others, this includes the proposal to revise the Forest Act 1993 itself – which was eventually endorsed by the elected parliament to curtail some of the previously legalized rights of citizens over forests. Only two items on the agenda were defined and promoted by civil society (14 and 15). These relate more to clarifying the implementation of procedures of forest legislation rather than redefining the content of legislation per se.

We found that one agenda was defined jointly by civil society and forest administration (8). This again related to clarifying procedures of implementing forest law, developing guidelines for CF (although guidelines are themselves a confusing form of policy because in practice they are interpreted as rules by the locally based

forest officials). Two agendas were pushed by an international agency and donor projects (11 and 13). One of them was related to promoting biodiversity concerns, which is generally driven by western-based actors – INGOs or bilateral project expatriates. The other related to the management of the country's Terai forest, in which donors have an interest in supporting Nepal's government in conservation and economic exploitation of forest resources. In the latter case, donor-supported Terai forest guidelines were actually not a consensus formed in open debate, but consisted of proposals from forest bureaucrats.

We noted a high level of discrepancy between the policy provision and the practical situation when political representatives decided without consulting civil groups or administrators. The ban on green tree felling (4) is a case in point. A Prime Minister without having knowledge of the situation announced that he would ban green felling. He was prompted to declare this when he was participating as a chief guest at a function organized by environmentalists on Environment Day. The ministry without doing any analysis of likely consequences of this translated the statement into a governmental order.

Table 3 Analysis of Primary Actors Defining the Agenda

| S.N. | Forest Policies and Decisions | Who defined the agenda? |
|------|---|--|
| 1. | Monopoly rights on timber sales | TCN (forest technocrats) |
| 2. | First amendment of Forest Act 1993 | Forest bureaucrats. |
| 3. | Timber on reduced prices | Forest bureaucrats. |
| 4. | Ban on green felling | Political representatives (popularly elected Prime Minister) without any suggestions from concerned citizen groups. |
| 5. | CF stopped in the Terai | Forest bureaucrats. |
| 6. | Special forest policy for Terai | Forest bureaucrats. |
| 7. | Forest inventory guideline | Forest bureaucrats |
| 8. | CF guideline revision | Forest bureaucrats and civil society. |
| 9. | Second amendment of Forest Act 1993 | Forest bureaucrats. |
| 10. | CF directives | Forest bureaucrats |
| 11. | Biodiversity strategy | International actors, and the taken up by forest bureaucrats. |
| 12. | Tax on CFUG incomes | Forest bureaucrats identified and drafted the policy which was endorsed by officials of Ministry of Finance. |
| 13. | Collaborative forest management guideline | Donor projects with some token consultations. |
| 14. | Non Timber Forest Products policy | A few non-political I/NGOs and representatives of forest users worked with government officials to identify agenda and draft policy. |
| 15. | Revised inventory guideline | Agendas identified by NGOs, forest users and civil groups. |

This contradicted already agreed operational plans for the management of community forests and created problems. It also went counter to the on-going policies of decentralized management of forest.

The predominance of forest bureaucracy in defining the agenda of forest policy is consistent with the three aspects of centralization which have existed historically in Nepal: a) centralized monarchy-led political institution as the source of ultimate power (Joshi and Rose 1966) and persistence of patron-client relations between rulers and ordinary citizens (Malla 2001); b) colonial forestry schooling that forests should be managed for maximizing public revenues (Peluso 1992; Pokharel 1997); and c) the idea that forest policy and management should primarily be led by technically trained foresters (Nightingale 2005). Despite constitutional guarantees of civil political rights, the governance of forests has remained the preserve of forest bureaucrats, under the aegis of a centralized state.

Extent of Public Deliberation

Irrespective of who identifies the policy agenda, there is still a good chance of deliberation if it is opened for public debate. Table 4 presents an analysis of the extent of public deliberation in the 15 policy decisions. The analysis suggests that agendas forwarded by actors other than forest bureaucrats are likely to be opened for public debate. Agendas (8, 11, 14, 15), which were pushed by international actors and civil groups, were opened for public debate to some degree. But even here, in none of the policy drafting processes were representatives of civil groups invited. The latter were limited to commenting on the drafts prepared by forest officials along with staff of donor projects. Agendas which involved the direct personal interests of forest officials were more insulated from public debate. Much of the debate was confined to Kathmandu, and there were only limited strategies for deliberation that could involve those citizens who directly depend on forest resources for their livelihoods.

Table 4 Policy Decisions and Extent of Public Deliberation

| S.N. | Forest Policies and Decisions | Extent of Public Deliberation |
|------|---|--|
| 1. | Monopoly rights on timber sales | Government took a decision without opening the issue for public debate. Civil society participation was limited (confined to some press releases by FECOFUN). |
| 2. | First amendment of Forest Act 1993 | Forest bureaucrats opened it for public debate but the dialogue was constrained by the strategic agenda of bureaucrats themselves. Elected representatives (members of parliament) could not understand citizen perspectives and were misled by forest bureaucrats. Forest users, FECOFUN and NGOs strongly objected to this move, and raised questions about the motives of forest bureaucrats regarding their faith and commitment in enhancing democratic spaces. Neither bureaucrats nor political representatives gave convincing reasons for amendments to concerned citizen groups. |
| 3. | Timber on reduced prices | No consultation with other local actors, especially DDCs and VDCs was done. No competitive bidding was allowed. The debate was closed due to interests of commission agents and corrupt officials. |
| 4. | Ban on green felling | Agenda was not opened to public debate. Decisions made by the Ministry (bureaucratic level) took advantage of a speech by the Prime Minister |
| 5. | Community forestry stopped in the Terai | Issue not opened for public debate. Citizen groups used their intelligence to find out about secretly operating processes. Forest users, FECOFUN and NGOs argued for the compliance of forest policies and legislation by the Department of Forest, who did not listen to citizen groups free from their own strategic interests. |
| 6. | Special forest policy for Terai | The policy proposal was not opened for public debate before the decision. Forest bureaucrats strategically used some representatives of forest users to serve their own interests. The policy is still widely resisted by masses of users, FECOFUN and NGOs. |
| 7. | Forest inventory guidelines | The proposal was opened to bilateral forestry projects and not civil society. |

| | | |
|-----|---|--|
| 8. | CF guidelines revision | The proposal was drafted by forest officials and project staff but there was better consultation compared with other policy instruments, although still with limited citizen participation in defining the agenda of change. The task force comprised only of government and donor projects excluding civil society representatives. |
| 9. | Second amendment of Forest Act 1993 | There was active engagement of civil society in debating the amendment, although forest officials did not themselves open up the debate. FECOFUN and users heavily protested the move as some of the rights of users were supposed to be further curtailed. |
| 10. | CF directives | Forest bureaucrats prepared the guidelines. They provided some room to comment on the draft to civil groups (users, network, NGOs). They also received feedback from stakeholders and national workshops. However, no representatives from users, FECOFUN or NGOs were constituted in the policy draft team. |
| 11. | Biodiversity strategy | Public debate was confined to conservation NGOs and some representatives of forest users. Forest bureaucrats drafted the Biodiversity Strategy. However, FECOFUN, users and NGOs heavily resisted it, arguing that the action plan must recognize the community approach to biodiversity conservation. |
| 12. | Tax on CFUG incomes | The MFSC drafted the policy which was endorsed by officials of the Ministry of Finance. The proposal was not opened to public debate and none of the civil groups could provide any feedback. |
| 13. | Collaborative forest management guideline | The agenda was pushed by donor projects with some token consultation. Critical concerns were raised by civil groups such as FECOFUN but were not listened to. Ministry officials endorsed the proposal without public debate. |
| 14. | Non Timber Forest Product policy | A few non-political I/NGOs and representatives of forest users worked together with government officials to identify the agenda and draft policy. Private companies were invited to discuss the policy in two stages. |
| 15. | Revised inventory guideline | Though the proposal was drafted by forest officials and donor project staff, extensive consultations were made with NGOs, forest user groups and FECOFUN |

The inventory guideline of 2000 (7) is a clear example of the 'depoliticisation' of the decision by forest bureaucrats (Ojha 2002). The decision laid out a technical requirement for the management of forest without looking at how it fitted politically into the relationship between foresters and forest users. The guideline failed to address the problem of how the necessary technical skills could be supplied. As a result, many CFUGs' forest operational plans were suspended and forest management and utilization actions were postponed (Dhital *et al.* 2002; Paudel *et al.* 2002). This was probably not the intended consequence, but a result of decisions based on a partial and technical view of change. The 2004 revision, which was more deliberative compared to the first in 2000, seems much more comprehensive and practical, implying the connection between deliberation and quality of policy decisions.

Public deliberation requires the strengthening of civil society. There are increasing instances of proactive engagement of civil groups in forest

governance in recent years in Nepal. FECOFUN, as the nationwide network of forest dependent citizens, has been a key player in forest sector policy development. It has consistently pushed for participatory forest management. Along with NGO alliances, it has brought new perspectives into the policy-making process that used to be solely dominated by Government. The most important policy issue in which FECOFUN has made significant contributions in the past few years, concerns the perpetuation of CFUG rights over forest resources in the hills as well as in the Terai (FECOFUN considers that the first amendment and second (proposed) amendment to the Forest Act 1993 has curtailed CFUG rights on forests). It is through FECOFUN that the legal provisions relating to community forestry were spread to areas where there were no projects or where DFOs were not so enthusiastic about informing people (e.g. in the Terai). All such FECOFUN's awareness raising activities have helped to enhance the political capital of CFUGs beyond the traditional patron-

client relationship with the DoF. The challenge, however, still remains as to how forest bureaucrats should recognize civil actors as partners of learning in the process of democratic governance. In some instances, forest bureaucrats respond to the civil society agenda of policy change (as in 8 and 15), but this is not recognized publicly and is interpreted as internal and not part of the regular process of policy-making.

Formal Authority for Policy Decisions

From the perspective of deliberation, citizens affected by decisions should be in a position to have their say. They will then consider themselves to be self-governed, rather than having restrictions imposed on them by others (Chambers 1996). So, the question here is how far are the four layers of decision-making, identifiable in the parliamentary democratic system in Nepal (Parliament, Council of Ministers, Ministry of Forest and Soil Conservation and Department of Forest), permeable to the voices of citizens? In principle, while parliament is the only level that formulates laws which are binding and coercive, and decisions at all other levels are supposed to clarify the intent and procedures of the law, in practice all decisions are considered binding extensions of the law itself. Analysis of the 15 policy decisions indicate that: a) the intent and will of the law prepared by the parliament is consistently distorted by the subsequent decisions of forest governance; b) parliamentary practices also demonstrate limited sensitivity to the deliberative spaces for concerned citizens; and c) political leaders seem to be guided more by 'administrative will' rather than public will as against the ideal of deliberative democracy.

One example of how the message of legislation is distorted by bureaucracy relates to the rights and autonomy of CFUGs. While the legislation asserts that CFUGs are autonomous and perpetually self-governing institutions for managing designated forest areas and with an entitlement to claim all benefits, the actual contract between local forest officials and

the CFUG includes a provision which reads "*notwithstanding whatever is written in the previous clauses, the CFUG will follow written and verbal orders of forest officials and staff*"¹¹ This was made possible through a provision of Forest Rules 1995 prepared by the council of ministers ostensibly as per the Forest Act 1993. When one of the CFUG leaders was asked why they accepted such a provision, contrary to the Forest Act, he replied that it was their compulsion, as the DFOs would not hand over forest without accepting such conditionality despite it being against the spirit of the law.

The liberal view of democracy that guides democratic thought and practice in Nepal, coupled with local elites taking the role of political leadership, means that leaders once elected do not have to seek any communicative legitimacy from the ordinary citizens on issues of governance. The implication of this is that members of parliament (MPs) have had very limited interactions with concerned groups of civil society during the drafting and debating of forest legislation amendments. MPs seem to depend solely on the views and recommendations of technical specialists. Further, most of the legislation passed by parliament contains clauses which allow unlimited discretionary space to government, and such provisions have been used to distort the spirit of the original legislation (Bhattarai and Khanal 2005).

Policy Practice and Collaborative Learning

Policy in the face of complexity is an experiment, and there is always a need to take a learning mode (Lee 1993). As the policy space is largely captured by administrative authorities, with no or only limited space for concerned civil society to have its say, the notion of policy that is put into practice is linear and devoid of mechanisms and processes that ensure constant reflections, negotiations and

¹¹ FECOFUN internal monitoring says that many CFUG's Operational Plans contain such provisions. We personally found precisely the same provision in Chautari CFUG of Nawalparasi district.

deliberation. Even within MFSC there is a distinction between policy-makers, who are concerned with making policies, and implementers, who are concerned with implementing the policies. The flow of information between the two levels is limited (Ojha *et al.* 2002) as is the engagement of citizens in the process. Table 5 presents an analysis of the implementation status of the 15 policy decisions and citizen responses.

Table 5 summarizes the status of implementation, reflections and responses to policy. Since most of the policy decisions that were made with limited public deliberation were actively resisted during

their implementation, some of them had to be revisited (8, 11, 12, 15) or even withdrawn (4, 9) due to enormous civil resistance. The case of the Terai forest policy indicates that there is an impasse – neither have the new policies devised without public deliberation been enforced, nor have the civil actors been able to pursue a convincing agenda of policy reform. Since the early 1990s, MFSC and the DoF have engaged with donors to develop plans for government managed block forests in the Terai through plans known as Operational Forest Management Plans (OFMP).

Table 5 Policy Decision, Implementation Status and Citizen Responses

| S.N. | Forest Policies and Decisions | Citizen Responses and Implementation Status |
|------|---|---|
| 1. | Monopoly rights on timber sales | Constant resistance by concerned people in practice but MFSC has weak feedback loop to reflect upon such information and little willingness to bring the issue to wider public debate. |
| 2. | First amendment of Forest Act 1993 | Constant resistance by CFUGs, and extensive exercise of the authority by forest officials. |
| 3. | Timber at reduced prices | Constant resistance by civil society (FECOFUN, users and NGOs), but the timber was sold out. |
| 4. | Ban on green felling | Active resistance by civil society after the ban led to withdrawal of the decision. |
| 5. | CF stopped in the Terai | Constant resistance by civil society and people of Terai. Government plans to implement alternative approaches to forest management have not materialized. CF continues to be at a standstill as the demand for it by its proponents is not convincing enough in the face of critical issues raised by the DoF. |
| 6. | Special forest policy for Terai | The policy is widely resisted by masses of users, FECOFUN and NGOs. |
| 7. | Forest inventory guideline | Actively resisted by CFUGs. Forestry technician themselves found the inventory complex and difficult to understand. |
| 8. | CF guideline revision | No active resistance and no monitoring of implementation by any agencies. |
| 9. | Second amendment of Forest Act 1993 | The attempt was withdrawn in view of massive civil protests. |
| 10. | CF directives | Active resistance by the users, federations and a few NGOs working in the field of community forestry, but the new provision for inventory was enforced by the DoF. |
| 11. | Biodiversity strategy | Civil society reactions led government to engage in more consultative process. |
| 12. | Tax on CFUG incomes | Constant resistance by civil groups led to reduction, but not to complete withdrawal of the tax rates. |
| 13. | Collaborative forest management guideline | Continued resistance by proponents of CF, and limited implementation despite significant levels of donor support. |
| 14. | Non Timber Forest Products policy | No resistance and no active implementation either. |
| 15. | Revised inventory guideline | Minimal resistance from civil groups but implementation not adequate. |

Based on such plans, DoF decided to restrict hand over of CF in the Terai (5) and was set to implement OFMP. Whilst civil society interest in Terai CF was rising both at local and national level, MFSC explicitly sought to stop CF in the Terai on the presumption that these forests are not meant only for local communities but have wider national significance. Three reasons put forward for alternative approaches were: a) Terai forests' contribution to the national economy; b) exclusion of distant users in the ongoing practice of CF in the Terai; and c) growing evidence of corruption, smuggling and misuse of power by the powerful stakeholders within CF. Based on this premise, MFSC issued a circular to DFOs not to hand over the forests of the Terai region (decision). The idea was developed

into a different policy for the management of Terai forest, which was then passed by the cabinet (6). Earlier, the government had attempted to make a second amendment to the Forest Act 1993 so that the new Terai policy could be backed by the act (9). This was not successful due to civil opposition, although the government still continued to enforce some of the provisions through the financial ordinance (12), which was later declared void by the Supreme Court in a decision on a case filed by civil groups. Defeated at Court and resisted by civil society, the government (with MFSC as the key unit) again moved ahead with alternative forest management strategies (other than CF), and unilaterally enforced the Collaborative Forest Management Guidelines¹² (13).

DISCUSSION AND CONCLUSION

We have analyzed the case of forest policy decision-making in Nepal from the perspective of deliberative governance. The case brings out five important factors that affect the forms and degree of deliberation in environmental governance: a) social differentiation in terms of caste, class, ethnicity, religion and gender; b) prevailing non-accountability in wider political institutions which was largely nurtured around the monarchy and its local, land-owning feudalist elite extensions; c) overriding authority claims to scientific forestry knowledge and the legitimacy of centralized bureaucracy; d) weak form of civic participation in governance that is limited to periodic voting for local and central representatives within a national constitution largely informed by the ideology of liberal democracy; and e) influence of international aid agencies in environmental policy making and decentralized governance.

In these contexts, we posed four questions that we considered crucial from deliberative democracy perspectives: a) Who scopes/defines the policy agenda? b) What is the extent of public debate in the policy

proposal, including the accessibility of the debate to all concerned? c) What is the form of authority formalizing the proposal, including the mechanisms of public accountability of the authority? and d) How was the policy decision put into practice and how did actors respond to policy provisions during the implementation of the policy? The analysis suggests that despite the rhetoric of participatory development, decentralization and democracy, actual policy decisions on forestry in Nepal continued to be captured by forest officials, who have both scientific and bureaucratic authority. According to our judgment, only two out of 15 policy decisions taken during the period 1998-2004 were actually based on better deliberation. Other decisions were made without effective engagement with affected groups of people, and the associated public sphere. Given this, we now seek to provide an explanation for limited civic participation in forest policy-making, and also identify factors that pulled citizens and forest officials together in some of the processes of policy deliberation.

¹² As an alternative to CF in the Terai, a Collaborative Forest Management strategy has been put forward by MFSC, despite resistance from FECOFUN and other civil actors. FECOFUN's argument is that in the name of collaboration, the MFSC intends to withdraw legal rights of local people over forest resources. A few donors (British and Dutch) have attempted to implement this Collaborative Forest Management program in some districts of the Terai, but there is no reported success of this as yet, mainly because of the continuous resistance from FECOFUN and other civil actors.

The predominance of forest bureaucracy in making policy is sustained by and nurtured through the three aspects of centralization which have existed historically in Nepal and which we outlined above: a) a centralized, monarchy-led political institution as the source of ultimate power (Joshi and Rose 1966) and consequent persistence of patron-client relations between rulers and ordinary citizens (Malla 2001); b) extractive forestry beliefs that forest should be managed centrally for maximizing public revenues (Peluso 1992; Pokharel 1997); and c) deeply held perceptions that forest policy and management should primarily be led by technically trained foresters (Nightingale 2005). Despite the opening up of spaces for civil society in national policy processes in the post-1990 period, the practices of policy making have continued to be strategically manipulated and captured by bureaucrats due to their procedural capacity to exclude or co-opt other voices. Political inequality is considered to be one of the greatest barriers to open deliberation (Young 2003). The historically constructed divisions of class, caste, gender and ethnicity stratify Nepalese society, and the majority of the ordinary and disadvantaged people find it socially difficult to deliberate openly with forest officials who are mostly from the upper echelons of the status hierarchy. Bista (1991) discusses at length how Nepal's politics is embedded in the culture of feudalism, demonstrating the unequal relations of power, differentiation, and injustice in day to day practices. A key aspect of his analysis is that government officials always consider themselves *hakim* (boss) of ordinary people, who are expected to unquestionably obey and respect the views and instructions of officials.

Despite some changes in attitude and behaviour of forest officials towards working with people, largely as a result of the CF movement in the hills, the orthodox image of forest bureaucrats has not changed much. Instead, the difference in power and hierarchy between people and foresters (*hakim*) continues to be wide and ordinary citizens and forest bureaucrats still have [problems of] mutual mistrust, with limited possibility of direct deliberative engagement. The majority of foresters still attach great value to what can be regarded as technical-rational approaches because of dispositional (habitual), political (for fear of losing power),

and knowledge-related (limited opportunity for critical reflection on rote-learned "scientific" knowledge) reasons. The prevalence of *hakim* culture means that ordinary citizens are expected to serve forest officials, rather than vice versa. These politico-cultural inequalities are a barrier to deliberative policy making. And even the potential of deliberative activism (Fung 2005) – in which citizens can ethically engage in civic disobedience in proportion to the extent of coercion and deception – is undermined by the tacit and unquestioned acceptance of the existing bureaucrat-citizen relations.

If forest officials enacted *de facto* centralized governance of forests in the 1970s, then what did the democratic system of post-1990 Nepal do to promote the participation of ordinary people in forest policy making? The liberal view of democracy that guides political practice in Nepal, coupled with local elites capturing the role of political leadership, means that leaders once elected, do not feel the need to seek and maintain dynamic communicative links with the ordinary citizens on issues of governance. Members of parliament have had very limited interactions with concerned groups of civil society during the drafting and debating of forest legislation amendments¹³. Political leaders were guided more by 'administrative will' rather than public will (as stressed in the ideal of deliberative democracy).

Indeed, the interests of political elites and forest officials converge in appropriating the valuable forest and land resources of the country (it is an "open secret" in Nepal that Forest Ministers collect their "election expenses" through forest officials who offer

¹³ The recent derailing of parliamentary democracy and the consequent breakdown of people's control over the government has further complicated the forest policy making. There is now a question of democratic legitimacy of the decisions in policies and legislation as there is no elected parliament in place. At such critical situation, more open deliberations/interactions between citizen forums and government organizations are even more important, while the actual spaces for deliberation are getting constricted. Besides election of parliamentarians, there exists no regulatory mechanism to provide an accountability link between forest administrators and civil society.

competitive bribes to get a transfer to a resource-rich district). Even when legislators truly captured the sense of public opinion, in several instances, the intent and will of the law prepared by the parliament has been consistently distorted by the subsequent decisions on local forest governance. All this suggests that the radical image of participatory practice of CF can still be captured by a better disguised form of technocratic control in a more fundamental process of policy formulation (Pokharel and Ojha 2005), and may sustain political inequality between ordinary people and bureaucratic authorities (Nightingale 2005).

Does the nature and extent of public deliberation vary with the agency of forest officials? The analysis suggests that quality of deliberation improves to a certain extent when informal coalitions exist among officials, researchers, civil society activists and representatives of people. Improved deliberation came about in part because the agenda of reform was driven by civil society and NGOs as a reaction to previous authoritarian decisions (as in the case of forest inventory guidelines). However, even in the cases of relatively better deliberation, we found limited presence of citizen representatives in the core committees and task forces shaping the agenda and debate. Task forces or working committees usually consist only of government officials and staff of international forestry projects. Representatives of citizens – such as CFUGs, FECOFUN, NGOs – are generally not included in such task forces, although the latter are invited in the workshops or other consultative events designed by the task forces and the committees. While this provides citizens with an opportunity to voice their concerns and opinions, they are still not allowed to participate in defining agendas and the process of the consultation.

Limited deliberation is not fully attributable to the interests of forest officials and elites in stifling debate. There are limiting conditions from the civil society side too. In the first place, there are few well-recognized, mass membership groupings in civil society around any policy issues, and there it is always difficult for officials and politicians to know who exactly to consult with and how. Even when a group is identifiable, it is costly, in terms of time and resources, to hold consultations with all relevant actors.

These situations constrain effective deliberation between government and civil society. Also, civil society is not a homogeneous institution such that consulting a few representatives would bring consensus.

Despite prolific growth of civil society organizations in the past few years, citizens have not been able to forge viable forestry networks, with the inclusion of the poor, marginalized and deprived groups of people. Even the nation-wide FECOFUN is weak in internal representation and local accountability. While there is a tendency to depoliticize forest governance issues through technical rationality on the part of the government, there is often a tendency to look for material gains from engagement on the part of organized civil society actors. These actors have not been able yet to come to a genuinely 'public' sphere, and are rather confined to small-scale, instrumental domain of "projects". This is manifested in the ongoing competition, conflict and lack of meaningful cooperation among NGOs and civil actors in the forestry sector. This means that the limited influence of the public sphere is not solely due to the domination of government organizations, supported by donors, but equally due to weak deliberative processes within civil society itself.

So what does the Nepal case offer to wider practice and theory on deliberative governance in the field of environment? In the context of a differentiated society like Nepal, with a history of centralized decision making institutions captured by a few groups of ruling elites, the spaces for ordinary people to deliberate over public policies are limited. These spaces are less likely to be expanded significantly by emphasizing the notions of radical participation or citizenship as they rely too heavily on the pre-existing confidence of people in civil society, without considering the social embeddedness of limited agency and structural differentiations between groups of people. Consequently we suggest conceptualizing deliberative practice as a dialectical relation between structure and agency with a potential for significant shifts in times of widely perceived crisis. From this perspective, possibilities of more deliberative moments rest on mismatches between schemes of perceptions and thoughts of the socially embedded agency, and intended

outcomes in a social field. In such critical moments of increased deliberation, social agents are more likely to engage in the process of what Dewey (1916/1966) calls "cooperative inquiry" to find solutions for the

crisis. The current political crisis in Nepal is likely to create opportunities for greater deliberation in forest policy making in future.

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