

# DEVELOPMENT

## "HANDING IT OVER"

### An Analysis Of The Legal And Policy Framework Of Community Forestry In Nepal

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#### Foreword

Two words come to mind when considering Nepal's forest resources: dependence and degradation. "Dependence" because more than 90 percent of the people of Nepal are engaged in agricultural pursuits that depend on forests to provide a wide variety of inputs. "Degradation" because overexploitation, particularly in the Middle Mountains and lowland Tarai, has resulted in the destruction or serious degradation of large areas of forests over the past 100 years.

In the mid-1970s, His Majesty's Government of Nepal began to realize that the government could not protect and manage the nation's forest resources without enlisting the help of local people. Empowering villagers to protect and manage local forest resources was proposed as a practical way to preserve the green wealth of Nepal and to meet villagers' basic needs for forest products. This process has become widely known as community forestry.

As practiced today in Nepal, community forestry is quite different from what was envisioned when the first legislation was promulgated in 1978. The original community-forestry policy promoted the hand-over of national forests to local government authorities. As foresters and legislators have learned how to implement effective community forestry, policy and legislation have been revised many times. These changes have facilitated the development of a workable methodology for implementing community forestry.

These days, community forests are handed over to forest users without regard to local political boundaries. Instead, the transfer reflects the true nature of forest distribution and use. The current community-forestry policy is open, participatory, decentralized, and pragmatic. As such, it reflects the democratic changes that have swept Nepal since 1990. The success of community forestry can readily be seen in the increasing number of regenerating forests that are being protected and managed by local users.

In this study, Kirk Talbott and Shantam Khadka analyze the political, legislative, historical, and physical backgrounds that affect the management of forest resources in Nepal. They describe the process of empowering local

communities with the rights and the responsibilities of managing forest resources as community forests. The practical, policy, and legal constraints to successfully implementing community forestry are examined and analyzed. The study also reveals that, despite the existence of progressive policy and legislation for community forestry, many factors continue to discourage government field staff from handing forests over to local communities. It is imperative that the centralized bureaucratic agencies responsible for forestry recognize that it is no longer possible to reverse this national policy. Any reluctance and hesitation will only accelerate the degradation of our forests and lead to lost economic opportunities. The increasing area now under user groups and the response from communities is sufficient evidence that the users, the environment, and the government all stand to benefit from community forestry. This should be an agenda for the future.

Although the study focusses more on democratic movements, the authors provide a clear overview of political changes in Nepal, which are directly or indirectly related to recent changes in forestry legislation. These factors are often overlooked even though they have an intrinsic linkage with the use or abuse of forest resources. This study will be of great value to forestry and development practitioners in Nepal, as well as to those in other countries who are trying to promote participatory natural resource management. I hope that this endeavor will promote discussion among researchers, practitioners, scholars, bureaucrats, and legislators. An increased dialogue among them will further advance community-forestry policy and practice, thereby fulfilling local needs for forest products while helping to maintain the ecological balance.

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## Overview

After months of broad-based protest and mass rallies that left more than 100 Nepalis dead, King Birendra Bir Bikram Shah Dev terminated the centralized and party-less *panchayat* system of government in April 1990. The democratization movement that had begun in the early 1980s culminated with the promulgation of a new constitution in November 1990. The first free and multiparty elections in thirty years were held in May 1991.

An integral part of the ongoing reform in Nepal is in natural resource management policy and law. The new constitution committed government to further decentralize its control over natural resources and to greatly increase public participation in developmental planning. Two years later, legislation that delineated the post-*panchayat* system of local self-government and the institutional framework for decentralization granted considerable additional authority and responsibility to local communities. Although its origins predate 1990, the *Forest Act of 1993*, which mandates "the hand-over of community forests" to local users' groups, is emblematic of the intensified devolution of resource management authority to the local level.

Although the language of these new documents is progressive, a major challenge for this agriculturally dependent, mountainous kingdom continues to be to construct a coherent framework for managing its forest patrimony. The new laws and policies are often contradictory or confusing, and discrepancies between various provisions of

the law and the national policy-making framework abound. In addition, many forward-looking tenets of Nepal's current legal system are still being undermined by vestiges of the top-down *panchayat* system and the century-long Rana feudal order that prevailed until 1950.

The promise inherent in the changes in natural resource management law and policy is critical in Nepal since an increasing spiral of poverty and environmental deterioration threatens the resource base. Only by redressing the problems caused by a highly centralized, top-down system of governmental decision-making—one encouraged, buttressed, and legitimized by foreign aid—can the Nepali people begin to achieve equitable and sustainable development.

The tenurial rights of local peoples over natural resources and the role of the state in recognizing and supporting those rights continues to be a paramount issue of development, not only in Nepal, but throughout the developing world. The resolution of the concomitant social, economic, and political side issues may well mean the difference between sustainable development and accelerated economic and environmental impoverishment. The course taken by Nepal—a small but well-monitored country that is frequently cited for its progressive policies—is sure to have repercussions well beyond its borders.

Figure 1. Map of Nepal in the Asian Context

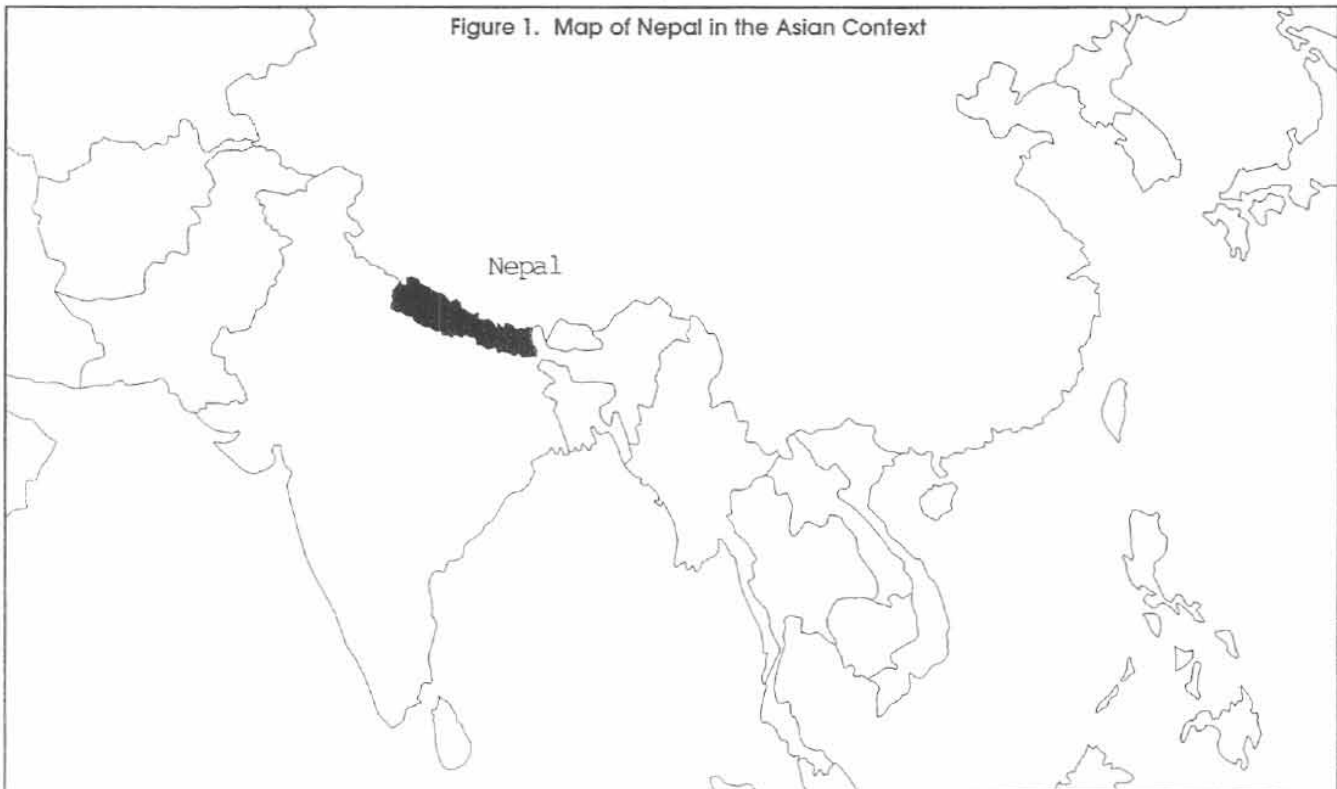
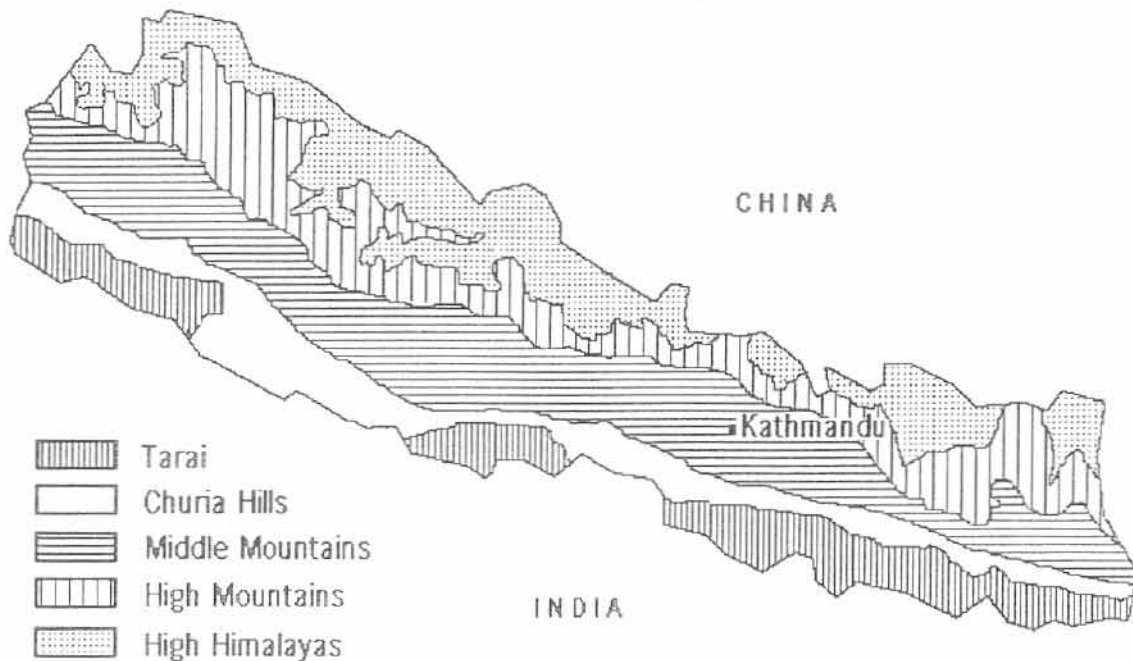


Figure 2: Map of Nepal's Physiographic Regions



Source: His Majesty's Government of Nepal, Ministry of Forests and Environment, "Master Plan for the Forestry Sector, Nepal" pg. 4 (undated)

### Nepal: A Geographical Snapshot

The rectangular-shaped Kingdom of Nepal is bordered by the Indian provinces of Uttar Pradesh to the west and south, Bihar to the southeast, West Bengal and Sikkim to the east, and the Chinese province of Tibet to the north. Stretching roughly 800 kilometers from east to west and 160 kilometers from north to south, Nepal covers 14.7 million hectares, an area approximately the size of Greece or the state of Kentucky.

Nepal owes both its existence and physical nature to the forces of plate tectonics, in this case the subduction of the Indian Plate underneath the Asiatic Plate. The Great Himalayas, one of the youngest and most active mountain ranges in the world, is the result of this ongoing dynamic.

From the crest of the Himalayas, Nepal descends southward to the Ganges River Valley. The lowest point, approximately 80 meters above mean sea level, lies along the southern border in the subtropical, lowland Tarai. Only India and China have a similar range of topography, but in Nepal, this great variety all occurs within 150 kilometers of linear distance. Climatic and vegetative differences are thus both rapid and pronounced. (See Box 1.)

Mirroring the immense diversity of terrains, Nepal's natural forests range from sub-tropical jungle to alpine shrub. According to the *Master Plan for the Forestry Sector, Nepal* (1989), there were 5.5 million hectares of tree cover in 1985, a figure that amounts to 37 percent of the land area.<sup>1</sup> Hardwood forests, particularly sal (*Shorea robusta*) and the mixed species forests of the lower slopes, account for approximately 60 percent of forest coverage.

As of 1992, Nepal's population was rapidly approaching 20 million.<sup>2</sup> Despite the recent burgeoning of urban communities, approximately 90 percent of the people still live in rural areas where they depend upon agriculture for their livelihood. As sources of fuelwood, fodder, and building materials, forests are vital to an economy where subsistence is still the norm.

### The State of Nepal's Forests

In the lowland Tarai, where level terrain and an extensive network of roads have made for easy access, the natural forests have become seriously threatened by over-cutting—first to make way for settlement projects and then from commercial sale to nearby India. Because timber prices are substantially higher across the border, illegal felling, abetted by officials who collaborate with smugglers, is the dominant factor behind alarming rates of recent deforestation. Given the heavily thinned nature of the Tarai, however, most of the trees smuggled into India now come from the more distant Churia Hills.

Particularly sharp controversy surrounds the status of ecological deterioration in the High Mountains and High Himalaya regions. Several reports insist that recent declines have been especially dramatic.<sup>3</sup> Others take a more benign and cyclical view. Ives and Messerli (1989), for example, argue that predictions of imminent environmental destruction in Nepal aren't as much fact as a rationale for large-scale, centralized development policies predicated on the idea that local peoples' forest practices cause most environmental degradation.<sup>4</sup>

Whatever their extent and condition, Nepal's forests are neither uniformly distributed nor accessible. Indeed, deg-

### Box 1: Nepal's Physiographic Regions

Natural resource management systems in Nepal reflect both the country's long and varied political history and the prevailing conditions in its five major physiographic regions, each of which occupies an essentially horizontal band that stretches across the length of the country from east to west. Changes correspond to quantum changes in altitude, and thus in climate and land cover as well.

Occupying Nepal's southern lowlands, the subtropical Tarai is an extension of the Gangetic Plain. Physical relief here varies less than one percent. This swath of extremely fertile land accounts for 60 percent of the country's total agricultural output: three crops a year are not uncommon. With a relatively well-developed infrastructure and easy access to the massive market of northern India, the Tarai also serves as the country's industrial center. Although it accounts for only 14 percent of the land area, the Tarai is now home to roughly 45 percent of the population.

Immediately north of the Tarai are the Churia Hills—relatively low, parallel ridges that run the length of the country and enclose several elongated valleys known as "duns." Ranging in elevation from 120 meters in the east to nearly 2,000 meters in the far west, the Churia Hills account for 13 percent of the national landscape. With steep slopes and mostly poor, shallow soils, the Churia Hills are not well suited to cultivation, a condition which allows them to account for 26 percent of Nepal's natural forests.

Next come the Middle Mountains, extensively deforested slopes and valley pastures that account for less than a third of the total land area but nearly half of the population. Elevations in the Middle Mountains range from 200 meters in the river bottoms to over 3,000 meters in the Mahabharat Lekh, the major foothill range of the Himalayas. Less than 5 percent of the landscape here is flat, a fact which explains why it accounts for roughly one-third of Nepal's natural forests.

The temperate climate zone of the Middle Mountains is monsoonal, and the people, generally known as "Pahari" (hill people), practice extensive terrace agriculture. The Kathmandu Valley, home to well over a half million Nepalis and the central government, lies in the Middle Mountains. As the traditional center of the Nepalese culture, the Middle Mountains, and especially the Kathmandu Valley, were the first areas of the country subject

to the ecological pressures of concentrated human habitation. Extensive deforestation had occurred here well before Nepal emerged from its self-imposed reclusion in 1959.

The fourth region of Nepal is the High Mountains. The upper boundary of this area corresponds with the tree line at about 4,200 meters while the lower boundary varies between 1,000 meters in the valley floors and 3,000 meters on ridges. The High Mountains contain roughly 30 percent of the natural forests of Nepal on approximately 20 percent of the land area.

Not surprisingly, the steep terrain, harsh climate, and lack of infrastructure have combined to keep population densities in the High Mountains quite low. The indigenous mountain people, known collectively as "Lekhali" (mountain people), share their origins and culture with those across the border in Tibet. Extreme isolation (the nearest roads or markets are often 3 to 8 days of rugged hiking away) strongly influences farming and forest use in the High Mountains. Upland cropping on rainfed and some irrigated fields is generally complemented by the raising of cattle, water buffalo, goat, and sheep in the higher forests and meadows. Those living at the higher altitudes also herd yak. On this remote and rugged landscape, community forestry has few prospects.

Last and certainly least in terms of their contribution to daily life in Nepal are the High Himalayas. Accounting for 23 percent of the national landscape, but negligible portions of forests and people, the High Himalayas nonetheless define Nepal ecologically, historically, and culturally. As in the High Mountains, the people who dwell here are culturally and linguistically Tibetan. To survive at these demanding altitudes, most households practice a combination of agro-pastoralism and trans-Himalayan trading. To bolster meager agricultural returns, villagers cover long distances on trading ventures during the winter months. During the summer, cattle, water buffalo, sheep, and goats are grazed in alpine meadowlands on southern slopes by pastoralists from the High and Middle Mountains.

radation in the steeper, relatively inaccessible areas of the Middle Mountains and the Churia Hills stems mainly from the opening up of new agricultural lands and, secondarily, from overcutting fuelwood and lopping trees for fodder.<sup>5</sup> According to a 1991 government report, fuelwood accounts for 75 percent of the nation's energy needs.<sup>6</sup> In many rural areas, fuelwood is the *only* source of energy for cooking and heating. For example, 90 percent of the national fuel supply is derived from forests.<sup>7</sup>

In addition, 42 percent of total digestible nutrients also come from the forest sector.<sup>8</sup>

A tertiary but still significant effect is the intentional setting of fires by farmers for clearing and livestock herders for encouraging the growth of fresh grazing grasses. These fires occasionally get out of control, causing serious damage to remaining forest resources.

As in much of Asia, deforestation and forest conversion in Nepal are wreaking adverse environmental consequences. Monsoonal rains can be particularly destructive



to denuded or degraded hillsides. In 1993, for example, heavy summer monsoons resulted in floods and landslides that cost an estimated 2,000 lives and the loss of hundreds of head of livestock.<sup>9</sup>

### I. AN HISTORICAL OVERVIEW OF NEPALESE FOREST MANAGEMENT AND TENURIAL SYSTEMS

Despite the enormous political and social influences exerted by its gigantic neighbors, India and China, the small kingdom of Nepal has its own distinct national character. Its self-image, identity, and traditional strengths, however, have all been undermined by a rapid entry into the modern world, a dependence on foreign aid, and a culturally determined fatalism.<sup>a</sup>

Not surprisingly, the extremes and diversity of Nepal's physical setting profoundly affected the country's human history and the evolution of its land laws and policies. One manifestation of this environmental responsiveness is the rich variety of indigenous forest management and land-tenure systems that has developed and persisted, each designed and tempered in response to unique local ecological conditions.

This diversity underscores the importance of localized natural resource management regimes in Nepal. Top-down systems emanating from a centralized government are uniquely unsuited to such a culturally and physically heterogeneous country. Unfortunately, they have been the norm since national "unification" in 1748 as increasingly powerful national governments in Kathmandu have sought to consolidate their control over the country's people and resources. The lasting consequences of these politically successful, but highly exploitative, efforts have played a significant role in undermining government's recent attempts to make sustainable development a reality.

#### Exploitation and Neglect: Forestry Practices Prior to 1950

Throughout its pre- and early history, what is now the Kingdom of Nepal consisted of small, essentially isolated, ethnic principalities and lesser kingdoms whose citizens survived on subsistence agriculture and sporadic trade. Change came from outside, first in the form of successive waves of south Asian invaders who brought with them the Hindu theology and social precepts that continue to define, and sometimes constrain, contemporary Nepalese society. (See Footnote.)

During the Moghul invasion of India in the 13th century, Rajput aristocrats and their followers fled northward

a. Religious fatalism plays a major role in Nepalese culture and society—one extremely difficult for non-Hindus to appreciate but integral to daily life in the world's only Hindu kingdom. In his 1991 treatise, *Fatalism and Development: Nepal's Struggle for Modernization*, one of Nepal's senior anthropologists, Dor Bahadur Bista, assesses the intricate nature of the frequently debilitating, entrenched "Brahminism" that results from the Hindu principles of caste hierarchy.

into the Himalayan foothills, where they established numerous monarchical valley-states. By the 18th century, these fractured entities had coalesced into a few powerful ones, the most substantial of which was the Kingdom of Gorkha, located in the center of the Middle Mountains. In 1742 the then Gorkha ruler, Prithvi Narayan Shah, launched a twenty-six year assault on the three Malla Kingdoms of the Kathmandu Valley. Its success changed the course of Nepalese history.

Shah died seven years after establishing Kathmandu as capital of a "unified" Nepal. The dynasty he founded, however, continued to annex territory by martial force for another fifty years until a raid into India prompted the British colonial regime there to respond militarily. Forced by the Treaty of Sugouli in 1816 to accept British authority, but not occupation, the Shah dynasty retreated into isolation and reclusion. Beyond the pale of the Shah dynasty's now circumscribed power, unsubjected people continued to live off the land much as they had always done.

In 1846, a young courtier named Jang Bahadur Kunwar seized power in a bloody palace coup. Assuming the aristocratic name of "Rana," he established a hereditary oligarchy that would rule Nepal for 105 years, all behind the facade of the Shah monarchy. The corrupt Rana premiers secured their power through an administrative system "legitimized" by repressive legislation and maintained by tax collection and forced labor. To expand the tax base, they encouraged the conversion of forest land to agriculture, especially in the sparsely populated Tarai.

Ultimately the Rana regime subjugated most of the ethnically diverse Nepali people under an essentially feudal arrangement dominated by elites from specific castes and ethnic groups. As late as 1950, approximately one-third of the forests were still under "birta tenure"—i.e., granted by the state to private individuals on a tax-free and hereditary basis.<sup>a</sup> A full three-quarters of these lands remained in the hands of the Rana family.<sup>10</sup>

Despite their inequitable distribution, forest resources were fairly well managed throughout the Rana regime, primarily because protection and land use were essentially local and based on indigenous practices. Central authorities ignored local forests, except to ensure that they remained open to the Rana elites for profitable exploitation. Nonetheless, indigenous forest-management practices were effectively undermined during the Rana system, according to the Nepalese forest historian Deepak Bajracharya, since "the strained relationship between peasants and landlords deterred the peasantry from taking independent steps to improve the pattern of resource use."<sup>11</sup>

a. Originally *birta* lands were given by the state to an individual as a reward for bravery, especially in military action. They subsequently came to include any land given by the state to an individual which was exempt from land taxes. (Source: *Nepali Legal Dictionary*, eds. Shankar Kumar Shrestha and Sajha Prakashan (1979: Lalitpur) p. 116.)

### The Beginnings of Democratization: Forest Management and Tenure, 1950-1990

Inspired largely by India's successful struggle for independence, anti-Rana movements broke out in Nepal in the late 1940s. Open rebellion followed in November 1950 when King Tribhuvan cleverly evaded his Rana guards and sought asylum in the Indian embassy in Kathmandu. Once the royal family was safely in India, armed partisans of the Nepalese Congress party crossed the border. Faced with an impassioned and publicly-supported insurgency they could not defeat, the Ranas were forced to capitulate. A triumphant King Tribhuvan returned to Kathmandu in February 1951, restoring the Shah monarchy to full constitutional power.

Over the next ten years—a decade of great social unrest and political instability—Nepal experimented with various democratic reforms. At the time, however, those reforms were too economically and culturally unsettling to a country that had just emerged from over a century of seclusion. At the height of the unrest in 1959, Tribhuvan's son, King Mahendra, dissolved the parliament and proclaimed martial law.

#### The Private Forest Nationalization Act of 1957

Two years before its dissolution, however, the Nepalese Parliament passed the seminal *Private Forest Nationalization Act of 1957*. Demand for forest products, already escalating as a consequence of national refurbishing and population increases, had put heavy pressure on forest resources, which were clearly suffering from poor management. Advocated by donors, especially British forestry advisors, the *Private Forest Nationalization Act* abolished the private ownership of forests. Forests still in the hands of the Rana family were declared public property in an effort to help ensure their adequate protection, management, and utilization by all Nepali people.<sup>12</sup>

The Forest Department was charged with policing and licensing forest resources. But with only four professional foresters, such a mandate was highly unrealistic. Further difficulties arose because most of the forest lands covered by the Act were already utilized by millions of Nepalis to meet their basic subsistence needs.

However well-intentioned, the *Private Forest Nationalization Act* is generally considered to have led to the widespread conversion of forest to farm and a corresponding loss of local interest in forest protection.<sup>13</sup> Since the Act offered no compensation for soon-to-be deprived landowners, many deforested so their holdings would not be nationalized.<sup>14</sup> Then, by bribing poorly paid government surveyors, corrupt village elites were able to take advantage of cadastral surveys to appropriate land that otherwise would have become nationalized forest.

The overall effect of the Act, however, is subject to debate. Much of the country remained beyond the reach of Forest Department patrols, and thus relatively unaffected

by the Act.<sup>a</sup> Based on extensive field assessments, the Australian team of Gilmour and Fisher concluded that the Act effectively promoted the development of traditional forest-management systems that had been revived by villagers to protect degraded forests. They note that the Act coincided with "the beginning of a period of relative social and political stability, which, it could be argued, is a precondition for such indigenous communal initiatives. Thus, rather than losing control of their forests at this time, many villagers were asserting effective communal influence to protect them."<sup>15</sup>

Gilmour and Fisher highlight a critical issue of forest management—namely, that adverse forest management laws and policies emanating from the state cannot completely undermine traditional systems, especially when enforcement is lacking. If left alone, or, better, supported and encouraged by central authorities, these traditional forest practices can provide the foundation for the protection and wise utilization of much of a nation's forest resources.<sup>16</sup> That positive emphasis is just what Nepal's new community-forestry program seeks to provide.

#### The Panchayat System

The declaration of martial law and the establishment of the *panchayat* system in 1959 brought a substantial change to daily life. The *panchayat* (literally, "council") system was a hierarchical arrangement of nonpartisan councils that extended from the village to the national level. In many ways, however, it represented a return to the traditional, localized, community governance that had been the historical norm throughout much of Nepal's history. Unfortunately, it also heralded a return to the Rana regime in that it favored local elites.

During the consolidation of power over the next several years, disjointed legislative attempts were made to reform natural resource management policy. For example, the *Forest Act of 1961* sought to restore government control over what was now seen as the national forest patrimony by transferring some state-owned forests to the local level while formalizing village *panchayat* usufruct rights over others. Six years later, the *Forest Preservation (Special Arrangement) Act of 1967* extended government control to *panchayat*-protected forests and strengthened the Forest Department's enforcement role by delineating offenses and punishments. Indicative of the government's hard-line attitude toward violators, Section 7 empowered district forest officers and guards to shoot wrongdoers below the kneecap if they in any way imperilled the life or health of forest officials.<sup>b</sup>

a. Reports continue to surface of villagers who still have not even heard of the thirty-five year old Act.

b. This provision still exists under Sec. 56 of the *Forest Act of 1993*.

Such authoritarianism only reinforced the popular perception of government as adversary in the management of local forest resources. Compounding that impression were the extralegal activities of local leaders intent on solidifying their power: in some cases, rangers surreptitiously placed logs on the property of political or economic rivals so that legal charges could then be leveled against them.

#### The Advent of Community-based Forestry

By the mid-1970s, it became clear that the Forestry Department was physically incapable of achieving its goal of preserving the nation's forest patrimony without the active help of the Nepali people. Beginning in the late 1970s, therefore, the government began to establish a participatory system of integrated, local-level planning. Important legislation was passed that was both directly and indirectly related to community-based forest management. To facilitate matters, the national *panchayat* promulgated decentralization laws, thereby creating the legal framework that local groups needed to manage their resources.

Encouraged by the government's active promotion of community-based forestry, international aid began to flow into Nepal. Among the first donors were the World Bank and the United Nations, whose Food and Agriculture Organization's (FAO) Forestry Division helped the government establish a Community Forestry Development Project and, later, a Community Forestry Development Division within the Department of Forests. As community forestry's popularity increased, other donor agencies, especially those from Australia, Britain, Denmark, Finland, Switzerland, and the United States, also became involved.

Nongovernment organization (NGO) involvement hit critical mass in the wake of a 1975 government-sponsored forestry-management conference in Kathmandu. There, forest officers from across the country met with senior officials of the Forest Department and related ministries in a forum that far exceeded expectations: As a result, the three-day meeting stretched into 23 days.

Over the next couple of years, a series of legislative enactments brought Nepal incrementally closer to its current emphasis on community forestry. The *National Forestry Plan of 1976* explicitly recognized the important role played by local communities in managing forest resources. This plan, along with the *Leasehold Forestry Rules*, the *Panchayat Forest Rules*, and the *Panchayat Protected Forest Rules* (all enacted in 1978), went a long way toward mitigating the effects of the *Private Forest Nationalization Act of 1957*, especially the disincentive to manage resources sustainably.

Articulated in the *Panchayat Forest Rules* and the *Panchayat Protected Forest Rules* was the concept of

"handing over" the forests to those local user groups identified by *panchayat* authorities.<sup>9</sup> That nominal recognition was reflected in the next five-year national development plan (1977-1982) and more emphatically, in the *Decentralization Act of 1983* and its accompanying rules and amendments.

In essence, the *Decentralization Act of 1983* sought to enhance the central government's outreach capacity by:

- 1) utilizing the *panchayat* system,
- 2) strengthening the institutional capacities of local beneficiaries; and
- 3) relying on local people to manage forests with the help of government foresters serving as advisors and consultants.

Political skeptics, however, see the Act, and especially its First Amendment, as the national government's attempt to secure power by increasing local political elites' access to development largesse.

Whatever its impetus, the *Decentralization Act of 1983* represented a milestone in the government's campaign to surrender resource management to local communities. That mission was established in the preamble: "...it is expedient to decentralize authority in order to enable the people to take decisions and make arrangements themselves in matters relating to their day-to-day needs".<sup>17</sup> The Act specifically promoted the users' group concept as the most effective approach to development and management of natural resources in local communities<sup>18</sup> and it set the tone of legislative development in Nepal, particularly government's willingness to devolve authority to the local level.<sup>19</sup>

The seventh five-year plan (1985-1990) reiterated the priority of "handing over" government forests to the community, but the relationship between forestry laws and decentralization laws remained confusing. So in 1986, government leaders initiated a formal review of the government's forest policy that culminated in the formulation of the *Master Plan for the Forestry Sector, 1989*.

#### The Master Plan for the Forestry Sector, Nepal (1989)

Although it was drafted in the final days of the *panchayat* system, the Master Plan breaks with *panchayat* policy, so it did not have to be overhauled in the aftermath of the democratization movement.<sup>20</sup> Written primarily by a Filipino with the help of Finnish advisors, but co-authored, endorsed, and promulgated by Nepalis, the Master Plan remains the new government's official

a. Under the *panchayat* system, however, the official policy of "handing over" the forests to user committees was substantially undermined by the fact that those committees had to be headed by Village Development Committee members (i.e., elected members of the local *panchayat*) who were not required to be users themselves. Despite the rhetorical promotion, no forest was actually handed over to any user groups.



policy and the departure point for any analysis of the current legal and policy framework of community forestry in Nepal.<sup>21</sup>

While the Master Plan encompasses policies and strategies for all aspects of forestry—including plantations, reserves, and parks—it also renews the commitment to community forestry and the “handing over” process. As a token of that priority, 46.3 percent of all forestry-development budgetary allotments are assigned to the interrelated community and private forestry sectors, and users’ groups are designated as the principal vehicle of local action.<sup>22</sup>

In essence, the Master Plan spells out both the nation’s basic forest policy objectives and its strategies for implementing them. The objectives are divided into five sections:

- 1) production and utilization
- 2) the conservation of ecosystems and genetic resources
- 3) the social aspects of land use
- 4) the role of the private sector and;
- 5) classification of the forests and protected areas.

Decentralization is embraced, community forestry is given priority among other forest-management strategies, and priority is given to poorer communities, or to the poorer people in a community. (“If the availability of forest land exceeds the needs of the local communities, the excess will be allocated for forest management in the following priority sequence: people living below the poverty line, small farmers, and forest-based industries . . .”<sup>23</sup>). Village Development Committees (VDC) replace village *panchayats* as the implementing bodies, and multi-party balloting is instituted, thus making representatives directly accountable to their constituents.

The Master Plan also articulates the objective of gaining the confidence of women, those “who actually make the daily management decisions.”<sup>24</sup> According to the Plan’s guidelines, “one-third of the members of the users’ committees should be women.”<sup>25</sup> The Plan also addresses another persistent problem by stipulating that management agreements should be formulated as quickly as possible, so that bureaucratic and legal complications don’t detract from efficient, field-level implementation.<sup>26</sup>

Because of their common objectives and overlapping strategic approaches, community and private forestry programs are linked in the full policy statement that accompanied the Master Plan. Section 15.1.3, “Supportive Programme Components” cites the following priorities:

- Updating legislation, with the aim of encouraging people, via user groups, to accept full responsibility for the development, management, and protection of community forests;
- Strengthening the government forestry organization to lend full support to the programme; [and]
- Reorienting and retraining forestry professionals and technicians so that they will shed their traditional ‘police’

roles and adopt new ones as the people’s partners in development.

The Master Plan’s community-forestry implementation strategy stipulates that Forest Department officials, from the Minister on down, should adopt a “new role as advisors and extensionists.” Specifically mentioned in this revised job description is facilitating the transfer of forests to their principal beneficiaries, local peoples.<sup>27</sup>

Although some progress was made during the 1980s and early 1990s in handing community forests back to local users’ groups, by 1987 only around 2 percent of available local forests<sup>28</sup> were in local hands. Whether official policy will be translated into substantial action in the aftermath of democratization remains to be seen.

#### Democracy and Decentralization: From 1990 to the Present

Although its top-down administration was in some ways practical, the *panchayat* system was plagued by inflexibility, corruption, and intolerance. In addition, the powers of the national, district, and local *panchayats* were so circumscribed that dissent increased even though organized political opposition was outlawed.

Popular dissatisfaction was fomented in 1989 when food and fuel shortages ensued after India effectively closed the border in retaliation for the Nepalese government’s purchase of Chinese armaments. During mass protests in April 1990, more than one hundred people were killed. As opposition mounted, King Birendra acquiesced to certain popular demands and withdrew the ban on political parties. A month later, the *panchayat* system was dismantled in favor of a return to democracy. That return was based upon a trio of seminal events: the promulgation of a new constitution in September 1990, the advent of legalized multiparty politics, and the national elections of 1991—all of which reflect the spirit of democracy from which they arose.

#### The Constitution of 1990

The Constitution of 1990 replaces the *panchayat* constitution of 1962 and enumerates the principles and philosophies of the new government. Of particular interest in the context of community-forestry management are the Preamble, the Preliminary, and Parts Three and Four. The first sentence of the Preamble states that “the source of sovereign authority of the independent and sovereign Nepal is inherent in the people...”<sup>29</sup>

A similar philosophical departure underlies the first line of the Preliminary: “This Constitution is the fundamental law of Nepal and all laws inconsistent with it shall, to the extent of such inconsistency, be void.”<sup>30</sup> As will be seen later, giving the Constitution precedence over any sectoral legislation is critical when it comes to resolving inconsistencies between community forestry legislation and its enabling by-laws.

Part Three, “Fundamental Rights,” enumerates the legal underpinnings of the prerogative of Nepali citizens to util-



ize local natural resources. These include the rights to equality, freedom, property, and constitutional remedy. Part Four, "Directive Principles and Policies of the State" (Sec. 25(2)), identifies the democratic precepts guiding resource allocation policies.

The fundamental economic objective of the State shall be to transform the national economy into an independent and self-reliant system by preventing the available resources and means of the country from being concentrated within a limited section of society, by making arrangements for the equitable distribution of economic gains on the basis of social justice, by making such provisions as will prevent economic exploitation of any class or individual...<sup>31</sup>

In Part Four, the State is held responsible for "maintain[ing] conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralization ...".<sup>32</sup>

Although the precepts enumerated throughout the Constitution are decreed to be "fundamental to the activities and governance of the State and shall be implemented in stages through laws within the limits of the resources and the means available in the country,"<sup>33</sup> the very next section decrees that "{they} shall not be enforced in any court."<sup>34</sup> Similar philosophical disconnects can be found. For example, it can be argued that the "interests of the nation" and "the general welfare" can supersede the interests and rights of any particular group of citizens, despite the consistent and repeated language underscoring the new presumption of community rights and decentralized authority.

The Constitution of 1962, the basis of the *panchayat* system, also included theoretical commitments to a decentralized political system. But political commitment was so weak then that it took twenty years to produce actual decentralization procedures.<sup>35</sup> In contrast, the government formed by the Nepali Congress Party in 1991 passed a series of decentralizing acts and accompanying by-laws in less than a year.

Among the most important of these first enactments are the *Village Development Committee Act* (VDC), the *Municipality Act*, and the *District Development Committee Act* (DDC), all promulgated in 1992 to replace *panchayat* enactments. Taken together, these three acts lay the legislative groundwork for further national decentralization—defined not merely as delegating the powers of

The three new acts also strengthen public participation in both development planning and implementation, primarily through numerous provisions promoting the formation and involvement of NGOs. These laws are not beyond criticism, however, since they give the government great latitude in suspending or dissolving any NGOs so formulated.<sup>36</sup>

### The Eighth Development Plan

In July 1992, the National Planning Commission of Nepal produced a draft *Eighth [Development] Plan* for the period 1992 through 1997. Underlying the Plan's stated objectives is the remarkably candid admission that during the *panchayat* era "no economic improvements were made in the life of the vast majority of the people. Instead, {t}he economic condition of some segments of the population deteriorated."<sup>37</sup> The Plan estimates that 49 percent of the population lives below the poverty line, without "even the basic necessities of life."<sup>38</sup>

While the Plan addresses the full range of development issues, it specifically reiterates the government's general support for community-forest usage rights. For example, it commits the government to "engaging the people themselves as the centre and effective source of all actions and decision-making."<sup>39</sup> Better still, it clearly states the motivation for this commitment:

In keeping with policies of democratic socialism, the formulation of plans will do away with the top-down approach to give way to the bottom-up approach. Until a practice of development for the people and by the people is realized, the mass of the population cannot possibly be engaged in development.<sup>40</sup>

To try to eliminate bureaucratic and administrative obstacles to the new bottom-up approach, the Plan advocates adopting supportive policies that will "be made more liberal, simple, and clear."<sup>41</sup> Although community-forestry practices are not dealt with at length, the Plan does call for 5,000 users' groups to be constituted during the five-year period and for 252,000 hectares of community forest to be transferred to these groups. During the lifetime of the Plan, some 25,000 households are to be involved in the development process.<sup>42</sup>

The language of the Eighth Plan, as well as that of the 1990 Constitution and the various decentralization laws, raises many issues related to the implementation of the new community-forestry policies. Collectively, they suggest the need for a clear analysis of the new forestry laws and by-laws—one that focuses on the practical, social,

## The Forest Act of 1993<sup>a</sup>

The *Forest Act of 1993* builds upon the policy directives in the Master Plan. Over two years in the drafting, this document represents the culmination of many years of development and reform in the management and exploitation of Nepal's forest resources. The Act provides the same legislative framework as the Master Plan does by repealing the *panchayat* forestry legislation of 1961 and 1967. The draft by-laws provide the legal bases for implementation.

The *Forest Act of 1993* acknowledges the same five categories of national forests formally established during the *panchayat* period, viz.:

- community forests that are entrusted to user groups for management and sustained utilization;<sup>b</sup>
- leasehold forests on land that has been leased by central or local authorities to individuals or groups;
- government-managed forests in which production forest units are managed by a centralized government system;
- religious forests belonging to religious institutions; and,
- protected forests such as gazetted parks.

In each of these categories, however, the land is still owned by the national government. In the case of community, leasehold, and religious forests, the respective community users' group, lessee, or religious institution owns the trees.

The *Forest Act of 1993* also provides for a sixth category: private forests, in which landownership, as well as tree tenure, is granted to a private individual or community. As stipulated in Sections 38 and 39, owners of private forest can develop, protect, manage, and/or fix the price of their forest products and sell at will. If owners of private forests want to register them, they can do so in the District Forest Office (DFO), which can also help in technical matters.<sup>43</sup>

As it currently reads, the *Forest Act of 1993* both legitimizes and actively promotes community-forestry users' groups, qualities that were conspicuously absent in pre-

a. Originally proposed in 1992, the Forest Act was not enacted until the following year, so it is now known as the *Forest Act of 1993*. As of early 1994, the accompanying by-laws had still not been enacted. The *Forest Act of 1993* will take effect once its by-laws and operational guidelines are reviewed by selected representatives of donor agencies, NGOs, and government officials. Based on their evaluations, revised by-laws and operational guidelines will first be submitted to the Ministry of Law and Justice for review and then to the Cabinet for final approval. Since this review process was still in progress as of early 1994, the authors of this study have only had access to unofficial English translations of the *Forest Act of 1993* and preliminary drafts of the by-laws and Operational Guidelines.

b. During the *panchayat* period, *panchayat* forests and *panchayat* protected forests were considered to be community forests. The local *panchayat* had ownership rights to the trees, as well as to the land in the *panchayat* forests, but no land ownership was granted to the local *panchayat* in the protected forests.

vious legislation. The Act specifically recognizes users' groups as legal entities and provides for their formation, registration, and administration. Like the Master Plan, the *Forest Act of 1993* gives special priority to community forestry. Section 30 stipulates that "any part of the National Forest suitable to hand over to the Users Group as Community Forest shall not be handed over as Leasehold Forest." A recent general survey concluded that 61 percent of the national forests have the potential to be legally designated "Community Forests".<sup>44</sup> Skeptics, however, dispute this figure, claiming that it includes degraded, bare, shrubby, ecologically fragile, or generally unmanageable lands that local communities have little interest in utilizing.

The *Forest Act of 1993*, along with its draft by-laws, outline a relatively straightforward functional approach for implementing a community forestry strategy. According to the proposed by-laws, a community forestry user group is formed through consensus within the community. Once the community formally recognizes it, the user group applies to the District Forest Office for management responsibility for a particular parcel of forest land by completing and submitting a formal management plan (officially, an Operational Plan).

### The Operational Plan

The Operational Plan delineates such functional formalities as proposed boundaries, access and usage rules and procedures, enforcement mechanisms, and decision-making guidelines. According to the discussion draft, "Operational Guidelines of the Community Forestry Programme" (Second Edition, October 1991), the Operational Plan should be short and simple. Once the application process is completed and the necessary forms are in order, the DFO then issues a formal and legally recognizable certificate acknowledging the acceptance of the application and the legal empowerment of the users' group.

As stipulated by the *Forest Act of 1993*, the users' group must submit annual reports to the DFO to show that the community forest is being managed sustainably and that the terms of the Operational Plan are being met. Should the underlying conditions change, the users' group can revise the Operational Plan accordingly. In principle, the "handing over" process is to be renewed annually in perpetuity. Community forests may be "taken back" only under special circumstances (when, say the users' group can't implement the Operational Plan or violates any of the terms and conditions set forth in the Forest Act or in the rules framed under it). The Act also allows for community forests to revert back to the government when poor or inappropriate management practices lead to significant environmental damage (Sec. 27).

Any users' group objecting to the district forest officer's decision to cancel its rights may complain to his supervisor, the Regional Director. But, "[t]he decision taken by the Regional Forest Director on such complaints

shall be final." (Sec. 27(2)) Obviously, such provisions undermine the confidence local communities might otherwise have in the new system.

Since the exact wording and status of the *Forest Act of 1993*'s laws and by-laws remain undetermined as of early 1994, a detailed assessment of each of the potentially relevant provisions is premature. But it is useful to examine some of the key policy concerns and the overall direction of the community forestry program in Nepal, as well as to identify some of the problems that must be resolved if the *Forest Act of 1993* is to accomplish its stated objectives.

## II. CRITICAL ISSUES: ACHIEVING A COHERENT AND EFFECTIVE APPROACH TO COMMUNITY-FORESTRY MANAGEMENT

### A. Inconsistencies and Contradictions in the Laws and Policies

Several aspects of the *Forest Act of 1993* are confusing or philosophically inconsistent with the stated policy of "handing over" forests to sanctioned users' groups. Some inconsistencies occur because the legislation was drafted during a period of dramatic political change so old and new laws overlapped (as they still do).<sup>45</sup> Further, much of the legislation proposed and enacted under the new democratic government, including some on forestry and natural resource management, is based on *panchayat* era policies. As these pre-existing policies are amended or even curtailed, new legislative enactments can be deprived of their context or administrative framework.

Many of these inconsistencies and oversights are relatively minor and easily corrected; by and large, they have already been identified by national and international experts whose revisions of the Act redress incongruities. But a number of fundamental discrepancies between the laws and the policies remain, including inconsistent wording and inconclusive program directives—the stuff of protracted legal battles and delays.

#### Tenurial Rights

The tenurial rights of users' groups illustrate how legal ambiguities can impede community-forestry initiatives. Strong arguments based on the Constitution of 1990 can be made for handing community forests completely over to the intended beneficiaries—legitimate and responsible communities of local forest resource users. Indeed, the Preamble clearly states that the source of all legal authority in Nepal is "inherent in the people." On the other hand, current legislation, particularly the *Forest Act of 1993*, implies that community forestry rights continue to emanate from the state, which in turn hands them over to users' groups.

The key issue is ownership. Current forestry laws clearly stipulate that community forest users' groups do not have direct ownership rights to the land, only usufruct rights of management over the trees and the forest products derived from the land. Even so, that is much more

than they had before: a recent study shows that the mere knowledge that forest protection committees were sanctioned by the government led to significantly more effective forest conservation efforts.<sup>46</sup> Although the current community-forestry program represents an advance over government sanction, there is still a legitimate need to provide full land ownership rights—even if only on a temporary, but renewable basis.

No matter what the tenurial arrangement, the success of community-based management programs ultimately depends on how much responsibility the people accept. Empirical evidence from around the world shows that farmers and peasants are reluctant to fully participate in government programs that provide only limited tenure rights to local forests.<sup>47</sup> Because tenurial control over trees and management rights of harvest provide only partial security, Nepalese villagers aren't likely to fully accept the management duties that Nepalese policy-makers seek to hand over.<sup>48</sup>

In short, the official policy is to "hand over" the forests, but by retaining possession of the land itself, the government is not truly "handing over" the forests at all. Such arrangements (common in much of the developing world) perpetuate esoteric legal conundrums: do the sub-surface roots of the trees belong to the community or to the state? And what about fallen branches or organic material that composts into the ground? Such questions are not purely academic; they strike to the practical core of local users' rights over natural resources.

According to the *Forest Act of 1993*, those who have rights to private forests attain ownership over that land. The differing nature of ownership rights in community and private forests highlights a fundamental discrepancy between law and policy. If the government of Nepal sincerely believes that handing forests over to local communities is essential to improving local-level forest management, then the tenurial package should be expanded to cover community forests, too.

As the Act currently reads, community forests are given priority over leasehold forests. While this encourages villages to organize and assert control over nearby forestlands, it also makes it more difficult for smallholder cooperatives to obtain long-term leases over certain forests. Nor does the Act provide clear guidance on the relationship between leasehold forests, community forests, and private forests—each of which is held to different tenurial standards and rules. Some of the confusion destined to result from this trifurcated structure could be resolved by policies that designate and promote priority areas for community forestry.

#### Obstacles to Exercising Those Rights

Whether private and leasehold forests will become accessible only to financial and political elites is a subject of frequent speculation. It also remains to be seen whether implementing stated policy will cause logistical confusion at local levels, a common problem in many



countries, and one that undermines the stated objective of providing the poor with the best opportunities.<sup>49</sup>

The current implementation mechanism is clearly prejudiced against those at the base of the resource-user pyramid. All prospective forest users must complete applications, formulate an operational plan (and if necessary, amend that plan), and file annual reports. For a predominantly illiterate rural population<sup>50</sup> inexperienced with administrative procedures, these requirements can be quite onerous. Such administrative hurdles seem antithetical to a program that targets society's poorest and most disadvantaged.

Additional problems occur because DFOs are charged with helping users' groups meet the procedural requirements. In areas of high illiteracy and administrative naivete, this can mean a substantial amount of time-consuming work for District Forest Offices, the vast majority of whom are already short on adequately trained staff. Since the DFOs must also regulate and enforce the law, conflicts of interest are a risk, too. For poorly paid district forest officers, the temptation for corruption can be overpowering—especially if it only involves not enforcing, or overlooking, a statutory stipulation.

The "handing over" mandate is further compromised by the fact that government authorities retain considerable, if not overriding, jurisdiction and discretion over the entire process. For example, the DFO's power to delay or deny the submission of an Operational Plan can prevent a user group from legally functioning, and unfavorable decisions cannot be appealed.

The role of the DFO, problematic in this case, is a source of strength in another. Current community-forestry legislation is quite flexible, allowing local DFOs considerable discretion in decision-making. An Operational Plan for the Tarai, for example, is likely to differ substantially from one for the Middle Mountains. (See Box 2.)

### Region-Specific Programs

The decision-making latitude accorded the DFOs highlights the need for region-specific programs and initiatives in Nepal. Indeed, the different ecological and cultural characteristics of Nepal's five major physiographic regions (see Box 1) makes such a multifaceted approach particularly warranted.<sup>51</sup>

Developing a successful approach to community forestry in the Tarai is the most obvious and pressing example of the need for regionally-specific programs. (See Box 2.) While the *Forest Act of 1993* allows local users' groups to develop site and region-specific operational plans, it gives little guidance on how to carry out community-based forestry and natural resource management in the Tarai. Specific legislation, Forest Act by-laws, for example, should recognize the unique nature of the Tarai, as well as the cultural differences that exist between the peoples who actually use those resources—not only in the Tarai, but throughout Nepal.

### Defining and Prioritizing User Groups

Other problems arise because "users' group" has never been defined precisely. What criteria will be used to decide what constitutes a community forest users' group? Who will resolve the conflicting claims of two or more legitimate users' groups, and what mechanisms will they use? How will transgressors be sanctioned or punished? Will long-term occupants of the forest lands be given priority, or will recent immigrants get equal consideration?

Resolving this last question, in particular, will have significant consequences for resource management. Generally speaking, those who have lived for generations on a particular tract of land have developed the most sophisticated and sustainable management systems. Not surprisingly, migrant communities' agricultural and forestry practices are usually the least so because they have im-

### Box 2: The Tarai: A Study in Contrasts and Contrasting Needs

The Tarai—Nepal's subtropical, lowland region—is as unique socially as it is geographically. For centuries, the Tarai was populated by scattered tribes of indigenous inhabitants. Most prominent was the malaria-resistant Tharu. Now that malaria has been eradicated, the Tarai is populated by people of mixed castes and ethnicity, including Nepalis who have moved down from the hills, and an estimated 1-3 million Indian migrants who have crossed the open border to escape overcrowding and the shortage of economic opportunity in northern India.

As recently as 1900, the Tarai was densely forested. But unsustainable exploitation has since resulted in large-scale deforestation: the Tarai now accounts for only 8 percent of Nepal's natural forests. Hardwoods predominate with sal (*shorea robusta*) accounting for 53 percent. High-quality sal is illegally exported to nearby India, where market prices are appreciably higher than they are in Nepal. Meanwhile, Nepal imports cheap, low-quality Indian sal for its own domestic use.<sup>52</sup>

Even though the most productive lands are already at or near their human carrying capacity, the government of Nepal still looks upon the Tarai as an overflow area for surplus populations. Resettlement schemes devised in the 1960s and 1970s had limited success in actually relocating people, but substantial adverse effects on the environment.

Although the Tarai now accounts for nearly half of the national population, most of Nepal's legislative and policy framework for community forestry is still based on forest-management programs developed in the historically dominant Middle Mountains. As a result, little allowance is made for the Tarai's dramatically different historical, social, cultural, and ecological conditions. This shortcoming needs to be recognized and addressed in the current spate of community forestry laws and policies.



ciate needs to meet and don't know local conditions well. The relationship between long-term residents and recent immigrants is just one of the issues that needs to be addressed in the emerging community-forestry program either through by-laws, government extension services, or land-use zoning regulations.

The length of tenure arrangements is another. Unlike private or leasehold forests, community forest registrations must be renewed annually. Especially in remote locations, the process can be cumbersome and time-consuming. Although the program is designed to create a perpetually repeating "handing over" process, the law clearly stipulates that community forests revert to the state whenever certain criteria are "met". The problem with this is that the DFO has been designated to be the arbiter of these often subjective criteria. Social pressure makes it unlikely that a DFO would terminate a functioning community forest, but the potential for abuse and corruption is clear. In addition, a localized drought or other adverse condition outside the users' group's control might prompt a misguided or corrupt DFO to decide that the forest is not being managed sustainably and deny renewal.

Similarly, the administrative avenues for appealing adverse decisions made by the DFOs are limited—and the state is accorded final word. Just compensation for any reversion or conversion of the legal status of local forests is simply not addressed. Matters such as the availability of independent arbitration, the exhaustion of administrative procedures, and the role of judicial review are mentioned, but not adequately defined. Such vagaries highlight the fundamental issue at stake—due process of law for users' groups.

Confusion also arises from dissimilarities in the language used by the *Forest Act of 1993* and that of the various decentralization laws. The *District Development Committee* and *Village Development Committee Acts* of 1992 give District Development Committees (DDCs) and Village Development Committees (VDCs) essentially unchallengeable authority over users' groups, their decision-making procedures, and project implementation. According to the draft of the *District Development Committee Act's* "Plan Implementation" section:

As regards the projects which will be executed with the participation of the people, the concerned offices shall have to, under the direction of the District Development Committee, implement them through the users' groups.<sup>53</sup>

Under "Coordination," the law reads:

The district development office heads shall have to follow the directions of the District Development Committee in their activities relating to planning, implementation, monitoring and evaluation of the district development plan.<sup>54</sup>

Clearly, the *Forest Act of 1993* needs to be amended to clarify the role of users' groups and the District Develop-

ment Committees in relation to the government's District Development Office. Specifically, the District Development Committees and Village Development Committees should be statutorily empowered so that they can implement the new decentralization laws.

Another contradiction apparently exists in the Forest Act's mandating authority over the decisions and actions of community-forestry users' groups. According to Department of Forestry hierarchy, ultimate authority rests with the Ministry of Forestry and Soil Conservation, not with the people, as stipulated in the 1990 Constitution. Rectifying such inconsistencies in language and the resulting uncertainties in delegated authority is an essential prerequisite to community forestry's success.

#### Forest Department Resistance

One of the greatest constraints to implementing the new community forestry laws effectively is bureaucratic resistance, especially from those government officials charged with implementing and overseeing forestry policies. As in many other developing countries, few government foresters in Nepal believe in the unqualified rights of local people to own or manage forest resources. Traditional forestry training emphasizes the role of the enforcer, a role reinforced by the body of forestry legislation in Nepal prior to democratization.

Experience in Nepal and elsewhere shows how difficult it is to overcome such philosophical predispositions among forestry staff. In his inaugural address to the 2nd National Community Forestry Workshop (February 22, 1993), Birmani Dhakal, the Minister of State for Forest and Soil Conservation, addressed this institutional inertia and professional reluctance.<sup>55</sup> In an exhortation that bodes well for a new partnership between government officers and local communities, Dhakal called on his field staff to "act as helping hands to manage the accessible forests by user groups. This is the time, [he said], to take action seriously."<sup>56</sup>

#### B. The Challenges of Implementation: Reforming Policy and Building on What Works

Nepal is currently blessed with a political climate favorable to translating its progressive forestry laws and policies into effective action on the ground. Countering the many areas of dissonance that persist in the present legal framework is a commitment to community forestry from the highest levels of government. A further asset is the favorable environment that currently exists for donor coordination and NGO involvement.

Still, a remaining challenge for Nepalese policy-makers in the mid-1990s is forging the link between the philosophy of decentralization and community forestry initiatives. Recent legislation makes it clear that the District Development Committees, and the Village Development Committees below them, have the authority and responsibility to carry out that decentralization at the local level.

The three decentralizing acts promulgated in 1992, along with their still unfinalized by-laws, are vital to the effective implementation of new community forestry policies. The concept of decentralization articulated in both is integrally linked to that of community-forestry users' groups and provides a viable framework for local resource governance that is in concert with the national structure. What's more, the government is currently considering strengthening the decentralization framework.<sup>57</sup>

In his 1992 report to His Majesty's Government, "The Keys to Democracy, Decentralization, and Development in Nepal," UNDP advisor Quentin Lindsey argues for an overarching development strategy in which all local people would have the freedom and flexibility to organize for development.<sup>58</sup> Drawing on the experience of both Nepalis and foreigners who have worked at the grassroots on forming and operating users' groups, Lindsey identifies ten critical precepts of local development and natural resource governance.<sup>59</sup> Taken together, they provide for a foundation of self-sufficiency and integrity in which federal power and authority are neither compromised nor diminished by decentralization. "Instead, central power rests on the ability to make and enforce key central decisions that will indeed enable and inspire local people to make effective local decisions."<sup>59</sup>

#### Building on Tradition

Another major area of community forestry policy reform lies in the incorporation of traditional forest-management systems. Abundant literature from around the world documents and analyzes the legitimacy and value of traditional systems of ecosystem management. While romanticizing the lives and practices of indigenous peoples is a mistake, much is lost if traditional systems of natural (and human) resource management are overlooked.<sup>60</sup>

Nepal benefits from having both old and new resource-management techniques. In many areas of the country, ancestral inhabitants are joined by more recent residents—whether spontaneous migrants or participants in government-sponsored resettlement programs.<sup>61</sup>

These people, who are indigenous in their own right, often implement their own innovative resource-management practices—proven techniques that can complement and even improve upon more traditional ones through a dynamic of experimentation and sharing. Of course, such groups can also import ecologically destructive systems, as marginalized people forced into ecologically fragile areas often do. Speedy assessment and effective informa-

a. In terms of community forestry, the four most germane ones are: a) emphasizing empowerment at the lowest levels of society (ward, village, and town as opposed to the district level); b) elected representatives and other political leaders should support and facilitate this local development, NOT dominate and control it; c) political partisanship activities should be eschewed at all costs from all users' group activities; and, d) users' groups should be free to arrange for technical and other assistance from NGOs and other sources, but these outside agencies should not dominate and control.

tion dissemination are thus crucial to thwarting destructive practices and promoting efficient ones.

#### Donor and NGO Activity

Regardless of their age, traditional systems constitute a foundation of sound forest resource-management practices and principles upon which to build. As most donor agencies and NGOs working in Nepal on forestry issues now recognize,<sup>62</sup> their success depends largely on their ability to work in concert with the government officials who carry out community-forestry policies.

Examples abound of such harmonious collaboration. Researchers affiliated with the USAID-assisted Institute of Forestry Project in Pokhara, part of Tribhuvan University, have made substantial progress toward developing strategies for exploiting local forest products sustainably, largely because they build on traditional forest-management systems.<sup>63</sup>

Similarly, the Australian, Swiss, Japanese, American and Danish foreign assistance agencies (among others) are working closely with His Majesty's Government and the World Bank to improve community-forestry practices throughout Nepal. The Australian International Development Bureau and Swiss Development Corporation in particular have achieved measurable impacts in their many years of supporting local forest-management systems. Other international organizations, such as UNDP and the Asia Foundation, are indirectly contributing by supporting democratization and decentralization efforts. While implementing new policies takes time, the donor community in Nepal and the relevant government offices have made progress simply because they are willing to work together and to learn from each other—and each other's mistakes. In many cases, the interaction of different agencies and organizations with varying agendas has led to innovative complementarity between sectors.

Complementing the governmental and donor organizations is an increasingly active group of international and local NGOs representing a broad array of religious, developmental, and environmental perspectives. Not surprisingly, NGO activity in Nepal skyrocketed after 1990; more than 4,000 of them are currently registered with the government.<sup>64</sup> IUCN, CARE, ICIMOD, Winrock, World Neighbors, Save the Children, and United Mission to Nepal are just a few of the more prominent international ones currently working in community forestry.

In addition, a growing cadre of dynamic Nepalese NGOs is well positioned to play an increasingly significant role in environmental policy-making and implementation. Among these are LEADERS, SCOPE, and the NEPAL LAW SOCIETY, all legally oriented NGOs whose members work closely with government officials. Another Nepalese NGO, the Institute for Human Rights, Environment and Development (INHURED), is beginning to address environmental issues in the context of human rights. Other groups, including the Nepal Forum of Environmental Journalists and the editors of such maga-

zines as *Green Peace Call* and the *Quarterly Development Review*, continue to bring environmental and tenurial issues to the fore in development debates and forums.<sup>65</sup>

#### Prospects

In the wake of the recent opening of the political process, the government of Nepal is struggling—with some success—to strengthen its environmental laws and policies and to develop effective strategies for implementing them.<sup>66</sup> The *Forest Act of 1993's* by-laws and operational guidelines are being carefully drafted to ensure that they are both realistic and practical. Amendments to the Act are already being considered to address areas of substantial dissonance, several of which have been identified here. In addition, the Nepalese government increasingly recognizes and accepts the need to work closely with donor organizations, NGOs, and, most important, the local people themselves. As a result, new organizations are evolving and linkages between organizations are being forged.

Constraints, however, remain daunting. Making policies and reforming them, drafting laws and amending them, and setting targets for large numbers of users' groups are all considerably easier than implementing a lasting and equitable community-forestry program. This is especially true in Nepal, where poverty compounds a feudal legacy that emphasized highly centralized and exploitative resource management. A culture of dependence upon foreign aid and an elite governing system based on "Brahminism" exacerbate development challenges, even as democratization proceeds.

Among the most demanding of these constraints are the problems posed by tenurial insecurity and the lack of effective legal recourse to oppose Forest Department decisions. Unless their time, effort, and material investments stand a good chance of paying off, community-forest users' groups will be reluctant to participate fully. Conversely, they are sure to pursue those management schemes with a proven record of increasing material benefits.

But if personal gain is incentive enough for implementers, what about administrators? Training courses and exhortations by ministers may make the "handing it over" mission seem credible, but they provide no guarantee that local foresters will carry out the charge. A history of institutional inertia needs to be overcome, and perhaps more important, real disincentives exist—additional workload, increased responsibility, loss of some control over (and thus credit for) successful innovations, and the loss of profit from current loopholes and weaknesses. Until community-forestry implementation has more to rely on than the good will of the Forest Department, such economic and psychological factors may well prevail over both the spirit and the letter of the new laws.

Only time will tell whether Nepal's transition to democracy will succeed, nationally and locally. If the past four years are any indication, the political and social climate for improving policies and the lives of the Nepalese people continues to be promising. And if real progress can be made in Nepal, an impoverished country beset with a wide range of ecological threats, then there is also much that can be transferred to other developing countries, especially those characterized by mountainous terrains.

Perhaps the most significant harbinger of the impending change, however, comes not from the words of statutes, but from changes in the attitudes of the people. Before 1990, many Nepalese villagers referred to the forests as *sarkari ban* (government forest); now they increasingly refer to them as *hamro ban* (our forest).<sup>67</sup> In light of the entrenched legacies of both the Rana Regime and the *panchayat* system, this semantic change indicates a long ways to have come in just four years.

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Although we have tried to be current in our discussion, political and legislative events in Nepal continue to progress rapidly in the aftermath of the return to democracy in 1990. During the writing of this paper, for example, the status of several legal instruments has changed, while others are on the verge of enactment, amendment, or implementation. But up-to-the-minute reporting is not our purpose. Instead, it is to contribute to the development of an effective policy framework for community-based forestry management. That said, the authors accept full responsibility for any and all inaccuracies.



## NOTES

1. This same figure was used in His Majesty's Government's National Report to the United Nations Conference on Environment and Development in Rio de Janeiro in June 1992. Although exact figures are not available, it has been argued that much of that 37% consists of degraded forests.
2. According to 1991 World Bank statistics, the population of Nepal was 19.4 million. His Majesty's Government, however, estimates considerably less: its National Report to the United Nations Conference on Environment and Development (1992), listed the current population as being 18.5 million.
3. Among the most well known and vocal of these is Erik P. Eckholm whose 1975 article "The Deterioration of Mountain Environments" (*Science*, 189:746-770) sounded some of the first alarms. Subsequent writings qualified and reiterated Eckholm's crisis assessment, especially *Losing Ground: Environmental Stress and World Food Prospects*, New York: W.W. Norton & Co., Inc., (1976) and "Nepal: A Trek Through a Forest in Crisis" *New York Times*, February 14, 1984, pp. C1 and C5. A particularly dramatic visual representation of the alleged crisis was depicted in "The Fragile Mountain", a 1982 film produced by Sandra Nichols.
4. Ives, Jack D. and Bruno Messerli. *The Himalayan Dilemma: Reconciling Development and Conservation*. London and New York: Routledge and The United Nations University (1989). See also Ives, Jack D. *The Status of Nepal: Development in the Face of Uncertainty*. The United Nations University: printed privately (1986).
5. Richard Pardo, personal communication, 1993. See also Pardo, Richard, "A Review of the Forest Policy and Legislation in Nepal," a report for the HMGN/USAID Forestry Department Project, Draft, (October, 1992).
6. Central Bureau of Statistics. *1991 Year Book of Nepal*. Kathmandu, Nepal: National Planning Commission Secretariat, p. 174.
7. Ibid
8. His Majesty's Government of Nepal. *National Report to The United Nations Conference on Environment and Development*. Kathmandu, Nepal: His Majesty's Government (1992). p. 31.
9. Kansakar, Dr. Dibya Ratna (senior geologist with the Department of Interior). "Is Forest Cover the Answer to the Environmental Problems?," in *The Rising Nepal*, (October 22, 1993) Friday Supplement, page I.
10. Regmi, Mahesh C. *Land Tenure and Taxation in Nepal*. Bibliotheca Himalayica Series 1, Volume 26. Kathmandu, Nepal: Mr. Pustak Bhandar, p. 348.
11. Bajracharya, Deepak. "Deforestation in the Food/Fuel Context, Historical and Political Perspective from Nepal," *Mountain Research and Development*, Vol. 3, No. 3 (1983), p. 231.
12. The birta system was officially abolished by the *Birta Abolition Act of 1960*, enacted during the parliamentary session of the Nepali Congress Party.
13. See Joshi, A. L. "Nationalization of Forest in Nepal: Why Was It Needed?," *The Nepal Journal of Forestry*, Vol. VII, No.1 (Oct. 1991), pp. 13-15.
14. See, e.g., Khadka, Shantam S. and Surya K. Gurung. *Popular Management of Forest Resources in Selected Districts of Selected Zone: Review of Laws and Regulations on Forestry User Groups*, Kathmandu, Nepal: Centre for Economic Development and Administration, Tribhuvan University (1990); Bajracharya, Deepak, "Deforestation in the Food/Fuel Context, Historical and Political Perspective from Nepal," *Mountain Research and Development*, Vol. 3, No. 3 (1983).
15. Gilmour, Don and Bob Fisher. *Villagers, Forests, and Foresters: The Philosophy, Process and Practice of Community Forestry in Nepal*, Kathmandu: Sahayogi Press (1991), p. 12. See also, Joshi, A. L. "Nationalization of Forest in Nepal: Why Was It Needed?," *The Nepal Journal of Forestry*, Vol. VII, No.1 (Oct. 1991), pp. 13-15.
16. See also, Joshi, A. L. "Effects on Administration of Changed Forest Policies in Nepal," Policy and Legislation in Community Forestry, proceedings of a workshop Jan. 27-29, 1993. RECOFIC, Bangkok (October, 1993), p. 106.
17. Regmi, Mahesh C. "Decentralization Act (1982), (English Translation)," *Nepal Miscellaneous Series Vol. 15/84*, Kathmandu, Nepal: Regmi Research Ltd., p. 1.
18. The Decentralization Act made it compulsory that all plans of the local *panchayat*, as well as those of HMG's district-level authorities, were to be implemented through users' groups (Sec. 84). Those users' groups are also responsible for the maintenance of completed projects (Sec. 85).
19. In the aftermath of the governmental change ushered in by the events of 1990, the *Decentralization Act of 1983* has fallen into limbo-like status. The Act's preamble identified its objective as creating an exploitation-free society and strengthening the institutional development process, both under the auspices of the *panchayat* system. The dissolution of the *panchayat* system has rendered the Act contextless, but it has yet to be officially repealed or amended.
20. Richard Pardo, personal communication, 1993. The full forest policy statement is given in the Revised Master Plan Policy, a document whose "revisions" are editorial, rather than substantive, in na-

ture. The only changes contained in the Revised Master Policy Plan are those in the names and structures of official government bodies that resulted from the transition from the *panchayat* system to a multi-party one. A major review and revision of the Forest Policy Plan of 1989 has yet to be carried out.

21. The popular perception among many Forest Department officials is that the Master Plan is not a Nepalese plan, but a Finnish one, undertaken for the sake of expediting continued international aid. Because of this "nonownership", there is a substantial undercurrent of resentment to the plan among government foresters. This resentment commonly manifests itself in a number of ways—from subtle administrative "sabotage" to passive nonendorsement.

22. *Ministry of Forests and Environment/Finnida/Asian Development Bank. Master Plan for the Forestry Sector, Nepal, Forestry Sector Policy Revised Edition. (English Translation), Kathmandu, Nepal: His Majesty's Government (1990), p. 10.*

23. *Ibid.*, pp. 19 and 21.

24. *Ibid.*, p. 14.

25. *Ibid.*, p. 14.

26. *Ibid.*, p. 14.

27. *Ibid.*, p. 14.

28. Karmacharya, S. C. "Community Forestry Management: Experience of the Community Forestry Development Project," in *Banko Janakari: A Journal of Forestry Information for Nepal, Special Issue on Community Forestry Management, Vol. 1, No. 4 (1987): pp. 30-36.*

29. His Majesty's Government, Ministry of Law, Justice & Parliamentary Affairs. *The Constitution of the Kingdom of Nepal, 2047 (1990). (English Translation). Kathmandu, Nepal: Law Books Management Board, (1992), p. 1.*

30. *Ibid.*, p. 3.

31. *Ibid.*, p. 16.

32. *Ibid.*, p. 17.

33. *Ibid.*, p. 16.

34. Purna Man Shakya. "Towards a Stronger Constitutionalism" in *Essays on Constitutional Law, Vol. 10. Nepal Law Society, Kathmandu, Nepal. According to Purna Man Shakya (1991), the enforcement of the Constitution's directive principles "is the responsibility of the political wings of the government and its sanction by the will of the people." Those political bodies which are elected by the people (i.e., the executive and legislative branches) have a primary responsibility to uphold the Constitution and press for the promotion and enforcement of the Constitution's directive principles. The due process rights of*

citizens and communities to uphold and demand enforcement of the government's community forestry policies is thus relegated to the legislative branch.

35. Khadka, Shantam et al. "Report on Decentralization in Nepal, A Review of Existing Legal and Institutional Status," DANIDA, (1992), p. 42.

36. *Ibid.*, p. 43. For a detailed historical analysis of recent development in Nepal's decentralization movement, see "Local Self Government and Decentralization in Nepal 1992," a report prepared by Nepal Law Society in co-operation with Swiss Development Co-operation/Nepal, Kathmandu, Nepal.

37. His Majesty's Government, National Planning Commission. "Past Development Efforts, Achievements and Constraints" in *Eighth Plan (1992-1997), Summary, (Unofficial Translation) (July 1992). His Majesty's Government, Kathmandu, Nepal, (July 1992), p. 1.*

38. *Ibid.*, p. 2.

39. *Ibid.*, p. 13.

40. *Ibid.*, pp. 13-14.

41. *Ibid.*, p. 17.

42. *Ibid.*, p. 41.

43. Purna Man Shakya, personal communication, 1994. It is interesting to note that the government is still the legal owner of the trees on any plot of land which is given to an individual as part of a resettlement program (*Forest Act of 1993, Sec. 40*). Generally speaking, the government will try to remove these trees as soon as possible. Any attempts to remove them without prior approval of the government is a punishable offense.

44. Shrestha, M. L. "Community Forestry in Nepal: Need for Uniformity," a paper presented at the 2nd National Community Forestry Workshop, Kathmandu, Nepal, February 22-25, 1993. Published in *Banko Janakari: A Journal of Forestry Information for Nepal, Vol. 4, No. 1 (March 1993): pp. 6-8.*

45. Tirtha Man Shakya, personal communication, 1993. Tirtha Man Shakya, formerly a lawyer with the Ministry of Law and Justice and now the secretary of the Nepal Law Reform Commission, was actively involved in the drafting of the Forestry Act between 1990 and 1992. He recognizes the significant inconsistencies and contradictions related to community forestry, which he attributes, in large part, to the drama and confusion of political events that were unfolding then. The replacement of the *panchayat* system by a new democracy, with all of its conflicting voices, made it inevitable that the new laws would reflect the prevailing confusion and inchoate nature of the transition process. Great effort was made to ensure that the legislation was consistent with the emerging new policies, but that proc-

ess needs to continue with the drafting of by-laws which effectively realign the act with the policy framework.

46. For a detailed assessment of the effects of tenure reform in one Middle Mountain community, see, Fox, Jefferson. "Forest Resources in a Nepali Village in 1980 and 1990: The Positive Influence of Population Growth," in *Mountain Research and Development*, Vol. 13, No. 1 (1993), pp. 89-98.

47. See, e.g., Lynch, Owen. "Securing Community-based Tenurial Rights in the Tropical Forests of Asia," World Resources Institute Issues in Development, Washington, D.C., (1992); Talbott, Kirk and Lauren Morris. "Ethnicity and Environment in the Mountains of Laos and Vietnam," *Praxis: The Fletcher School Journal of Development Studies*, Volume X, No. 2 (Summer 1993), Boston; Davis, Shelton H. *Indigenous Peoples, Environmental Protection and Sustainable Development*, Gland, Switzerland: International Union for the Conservation of Nature and Natural Resources (1988); Thrupp, Lori Ann. "Legitimizing Local Knowledge: From Displacement to Empowerment for Third World People," *Agriculture and Human Values* (Summer 1989), Gainesville, Florida; and Talbott, Kirk. *Central Africa's Forests, The Second Greatest Forest System on Earth*. World Resources Institute Issues in Development, Washington, D.C., (1993).

48. A number of ancillary issues are raised concerning the operational and functional aspects of the community forestry program, all of which relate to the basic rights of local peoples vis-a-vis the nation state. These issues can be categorized as follows: 1) recognition of customary property rights; 2) nature-of-rights, i.e., the manner in which customary property rights are legally deemed to be held; 3) due process; 4) protection-of-rights; 5) regulation (zoning); and 6) public domain. This methodological framework for analyzing the tenurial rights of local peoples within common property forest areas is being developed by the World Resources Institute as part of its tenure policies project. See Lynch, Owen. "Tenurial Rights and 'Public Forest Zones, a Methodological Overview," (draft) World Resources Institute, August 1992.

49. Amulya Tuladhar, personal communication, 1993. Skeptics of the practical intent of the law see such written and legal prerequisites as an ideal way to continue to solidify social inequality while ostensibly promoting just the opposite.

50. The Economist Intelligence Unit estimated the national literacy rate to be 36% in 1989. (The Economist Intelligence Unit. *India, Nepal Country Profile 1990-91*. The Economist Intelligence Unit: London (1990), p. 61.) That figure is undoubtedly much lower in rural areas—exactly where community forestry is most likely to be practiced.

51. A. L. Joshi, among others, has been urging this for some time. The cause was taken up at the 2nd National Workshop on Community Forestry in

Kathmandu, February 22-25, 1993 in a Concept Paper entitled "Community Forestry Planning: Meeting Basic Needs and Beyond", presented by J. A. Canonizado, P.N. Pyakuryal, and Tej B.C. (unpublished).

52. A. L. Joshi, personal communication, 1993.

53. "Planning and Implementation Process for Local Development," as Defined in the Working Rules Under the District Development Committee Act of 2049, (Draft Translation), (February 23, 1993), (Rule 87 (1)) p. 25.

54. *Ibid.*, (Rule 91 (2)), p. 28.

55. Dhakal, Birmani. *Inaugural Address to the 2nd National Community Forestry Workshop*. Kathmandu, (22-25 February 1993), (printed privately) p. 2.

56. *Ibid.*

57. Paul Lundberg, personal communication, 1992.

58. Lindsey, Quentin. "The Keys to Democracy, Decentralization, and Development in Nepal," a report prepared for the National Planning Commission and Ministry of Local Development in Conjunction with the Strengthening Decentralized Planning Project, Kathmandu, Nepal: UNDP, NEP/88/009, (July 1992).

59. *Ibid.*, p. 5.

60. Indigenous societies, particularly those that have occupied so-called ancestral homelands, have extensive knowledge of native plants and medicines, agricultural techniques, wildlife management and forest systems. Their local knowledge of the land and the life it supports is part of the ancient gnosis of humanity, now an endangered part of human culture and heritage in many parts of the developing world. For an overview of this thesis, see Edith Brown Weiss' "Cultural Resources: Knowledge of Natural Systems," *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity*, The United Nations University, Tokyo, (1989), Chapter IX.

61. Gilmour and Fisher mention the studies of Campbell et. al. (1987) and Campbell and Bhattarai (1982) which document the median age of forest protection to be less than 20 years in several areas of Nepal. See also, Cerci, J.B.S., R. Pokharel, et al., *Tree and Land Tenure in the Churia Hills of Eastern Nepal*. Kathmandu: Nepal-German Churia Forest Development Project and the Institute of Forestry (1993); Acharya, H.P. "Processes of Forest and Pasture Management in a Jirel Community of Highland Nepal." PhD Thesis, Cornell University, (1990). Also, Tracy Parker, personal communication, 1993.

62. See, e.g., Tamang, Devika. *Indigenous Forest Management Systems in Nepal*, Research Report Se-

ries, # 12, Kathmandu, Nepal: HMG Ministry of Agriculture-Winrock International, (November, 1990).

63. Personal communication, Sher Plunkett, USAID-Nepal, and Kapil Chitrakar, former Dean, Institute of Forestry Project, Pokhara, Nepal; *See also*, Messerschmidt, Don and A. L. Hammett. "Indigenous Knowledge of Alternative Forest Resource Extraction and Marketing: Significance for Community Forestry Planning and Management," Draft (Revised Version), Pokhara and Hetauda, Nepal: Institute of Forestry Project (1993).

64. It must be noted that NGO is a very general term including everything from large traditional non-governmental institutions with large offices in Kathmandu to the much less formalized village-level cooperatives and informal groups. By no means are all registered NGOs legitimate or even real. As is the case in many developing countries, establishing and registering an NGO can be a front for self-promotion and/or profiteering.

65. *See generally*, *Together We can Make a Difference (Annual Report of the Nepal Forum of Environmental Journalists)*. Kathmandu, Nepal: Nepal Forum of Environmental Journalists, (1992).

66. *See*, Messerschmidt, Don and C. Richard. *User Groups in Community Forestry: Lessons Learned and Case Studies from Nepal*. IOF Project Technical Paper, Pokhara, Nepal: Institute of Forestry Project (in press).

67. *Ibid.*