

7/3/96
WORKSHOP IN POLITICAL THEORY
AND POLICY ANALYSIS
513 NORTH PARK
INDIANA UNIVERSITY
BLOOMINGTON, INDIANA 47402-2186
Reprint Files -- CPR

NEPAL

HILLS LEASEHOLD FORESTRY AND FORAGE DEVELOPMENT PROJECT

CUSTOMARY USE RIGHTS AND LEASEHOLD GROUP APPROACH FOR THE
MANAGEMENT OF DEGRADED FOREST LANDS

Prepared by: Bijay K. Singh, Social Forester

Kathmandu, Nepal

June 1996

(Paper prepared to be presented in the International Association
for the Study of Common Property 6th Annual Conference to be held
at Berkeley, California from 5-8 June 1996)

ABSTRACT

Attempting to alleviate rural poverty through leasing government forest land to groups of landless and marginal farmers is an interesting new approach in the mid Hills of Nepal. Integrated support is provided to these leasehold groups by the forestry and livestock departments and Agricultural Development Bank both for leaseland development and for income generating activities on-farm and off-farm. Although forest land is, de jure, government property, de facto, customary rights are claimed by local communities. In the past, there were many social obstacles in transforming forest lands to plantations without motivation and involving local people. Lessons learned from the past and recognizing customary rights, a written community consensus is obtained from the local community to allocate forest land for leasing to groups of poor people. This is one of the most time-consuming and difficult tasks in the process of leasing land and engenders many conflicts. The legality and validity of these customary rights as well as community consensus are, however, questionable. Obtaining consensus is nevertheless one of the processes in which the whole community is involved in making decisions for allocation of common resources. This paper provides a detailed discussion of customary use rights of local people related to leasehold forest land, the types of conflicts observed during this process and the strategies adopted to resolve it.

CUSTOMARY USE RIGHTS AND LEASEHOLD GROUP APPROACH FOR THE MANAGEMENT OF DEGRADED FOREST LANDS

(Prepared by B.K. Singh)¹

Introduction

1.01 With the objective to raising the incomes of families living in the hills who are below the poverty line and contributing to improving the ecological conditions in the hills, multi-sectoral integrated approach is being adopted in the project involving four line-agencies (forestry, livestock, agricultural development bank through its small farmers development project and National Agricultural Research Council). In its three years exploratory phase, four adjoining districts of Central Development Region is the coverage of this project i.e. Kavre, Makwanpur, Sindhupalchok and Ramechhap. The project area at present has been extended in five more districts and it is expected to cover total of 12 districts in its eight year's project period by the end of 2000 A.D.

1.02 The Department of Forest is having prime responsibility for identifying potential blocks of land to be leased and obtaining consensus from the community, and processing the lease arrangements. Agricultural Development Bank (ADB) through its Small Farmers Development Project mechanism is responsible for identification of target group families, group formation, provision of credit and on-going support to project families. The objective would be achieved through leasing blocks of degraded forest land to groups of poor families, and building and strengthening their capability.

1.03 Involving the whole community from the initial stage, identification of potential land is done by forestry field staff or involved NGO but in later stage, local people approach to the project staff themselves. In the next step, community consensus is obtained from all the customary users of the forest land in order to avoid/prevent the conflicts in future.

In Hills Leasehold Forestry, community consensus is meant to common consent of the community to allocate government forest land (as customary users of the forest) to a group/s of poor people. This is a process to involve the local community people in the decision making process of common resource of their own (Singh, 1995).

¹ The author is Social Forester (National Expert) in the Hills Leasehold Forestry and Forage Development Project in Nepal.

1.04 In the leasehold forestry, conflict is a very common social phenomena which is being observed chiefly during the process of obtaining community consensus and some cases after the completion of leasing process i.e. handing over lease certificates to the leasehold groups of poor families.

1.05 This paper provides a detailed discussions on customary use rights of local people/community to leasehold forest land and types of conflicts observed during the allocation and management of lease land. Moreover, processes and strategies adopted to resolve these conflicts will also be discussed.

Customary Use Rights: The Most Conflicting Issue

2.01 In hills, all forest areas surrounding village are de jure, owned by the government under Forest Department control, (de facto) customary use rights are claimed by the local community people. Customary use rights are, thus, assumed as one of the most conflicting issues in the group leasehold forestry. Many scholars and practitioners (Gilmour 1989; Molnar 1981; Campbell et al. 1987; Messerschmidt 1987; Fisher et al. 1989) have also reported that although villagers certainly have not had the legal authority to manage non-private land, in many areas they have been exercising their own authority (extra-legal) over much land, which is legally under government control. Villagers are somehow, granted concessions in the forests which permit them to lop trees for fodder and fuel, graze animal and collect minor forest products. They are not permitted to cut trees except with the Forest Department permission and there is no specific demarcation area for each village's use. As a result, the official position is one of access for all villagers living in the general area to the forests for permitted uses.

2.02 Honouring the customary use rights, where consensus is gained from the whole community, there seems trivial or no conflicts in group leasehold forestry and/or community forestry. On the contrary, serious conflicts have been observed in the groups which are formed in hurry and forest land is assigned without community consensus.

2.03 Lack of effectiveness in some cases of sponsored systems of forest management has sometimes been attributed to their failure of existing use-rights and institutions (Fisher et al. 1989).

2.04 Not only in forestry but also in other common property regime such as, use of water source for drinking water and irrigation, conflicting situation has been noticed in many communities when water-use rights are not honoured.

2.05 Still most of the literature fails to specify who has use-rights, whether these use rights are based on residence or

kinship, where there are sanctions, whether breaches of rules occur or, in some cases, what the rules are.

What is customary use rights?

3.01 Customary system of land and tree tenure described by Moench (1986) is termed as "turf" because of the informal and geographically nature of the tenure system. *Turf* is defined as a system of resource tenure that is (a) geographically based (e.g. territory that is claimed on the basis of proximity to points of use or with boundaries that follow natural divides; (b) associated with a distinct social unit such as village, clan or family; and (c) not incorporated into or recognized by any official, statutory tenure system.

3.02 Because turf is, by definition, associated with a social unit such as the village or the group with use right is clearly delineated and generally small. Turf has basic element as a clearly defined of forest use for the village as a whole although unofficial, is explicitly recognized by other villages. Thus, it controls forest use and access.

3.03 Fisher (1989) argues that use-rights are claims to rights to use specified forest resources regarded as legitimate by people in the same area. In many cases, secondary or residual rights are recognized for people outside the primary user group. These secondary rights may involve restricted access to products available to primary users or a restricted time frame for the collection of products.

3.04 The rationale for the recognition of rights may vary. In some cases, rights are defined by residence in particular areas near a patch of forest. In other cases, rights are inherited by members of a particular clan or lineage. The underlying principle is not always clear.

3.05 The survey of 47 communities, Campbell et al. (1987) found that traditional use rights were usually quite clear and did not coincide with panchayats.

3.06 Arnold and Campbell (1986:426) assert that indigenous forest management systems are "primarily concerned with rights of ownership and the protection and distribution of benefits."

3.07 An indigenous management system that is product specific and concerned with defining use-rights for that product, but with villagers free use other products without restriction. However, often the cutting of large trees for construction purposes is also subject to permission from a local leader and/or a Forest Department Official. This is often an impingement of a state system on a local system (Gilmour, 1989).

3.08 During the selection of lease land and community consensus, customary use rights of local people always becomes a big hurdle for the allocation of lease land to poor families. With some exemption away from heavily settled areas, there was no evidence of claims to exclusive use-rights for products in plentiful supply.

3.09 There are some terminologies which are used as connotation to customary use rights such as 'traditional use rights', 'indigenous use rights', 'customary indigenous rights' etc. Although Fisher (1989) has tried to differentiate "traditional" which implies antiquity but "indigenous" does not. It is possible for an institution to be indigenous ("native born") without being long established. Furthermore, something traditional is not necessarily indigenous. As it seems to the author customary use rights indicate as generally accepted way of behaving or exercising norms. This may be sometimes long established but accepted as general norms or social practice.

Existence of Customary Use-rights in Nepal

4.01 Evidence of the existence of customary use rights relating to forest are proved by many studies and literatures primarily rights of subsistence uses of forests. This practice can be observed in many hill communities.

4.02 It is likely that indigenous codes of practice have existed through the hills region for centuries, but documentation is inevitably rare in a country which was largely illiterate until recent time (Gautam. 1991).

4.03 Under the Kipat system a number of ethnic groups owned the land including forests was being managed for the benefits of the local community. This form of community persists in the local system of forest management by Sherpa community of Khumbu region (Furer-Haimendorf, 1964) and in the Jirel community of Jiri (Acharya, 1989; Acharya 1990). The kipat system itself is evidence of local management for local benefits. (Adapted from Gautam. 1991).

4.04 Fisher (1989) accepts that the existence of a group of people with recognized use-rights is an essential feature of indigenous forest management systems.

4.05 Molnar (1981) claims that systems "based upon local clan, lineage, or village usage rights" (that is common property regimes) are prevalent in Western Nepal.

Legal validity of customary use rights?

5.01 Although legal validity of customary use rights and community consensus is questionable but successful implementation of community forestry and/or group leasehold forestry, without honouring the customary use rights and taking consensus of local community, is also questionable per se.

5.02 Forest area is, although, legally owned by the government (Private Forest Nationalization Act 1957) and collection of any type of forest product and use of any part of forest area without the permission of concerned authority is illegal but no longer in use (in abeyance) for home-use purpose except timber harvesting and commercial export.

5.03 Fisher (1989) states that indigenous use-rights exist outside the national legal system. Use-rights to such forests have no formal legal authority. They exist alongside the legislatively defined systems of land tenure and can, therefore, be regarded as extra-legal or supra-legal.

5.04 It seems user group concept, as a whole, is emerged recognizing the customary use rights of local people in the development programmes and has got legal stature by Decentralization Act 1982 and Decentralization Rules 1984 and Local Development Act and their amendments.

5.05 The concept of user group forestry (community forestry) in Nepal is simply an official recognition of the customary use rights and indigenous management system.

Fundamentals of Customary Use Rights: Access to and Control Over Resources

6.01 Access and control over resources are two basic fundamentals of customary use rights. The Resource Profile of Gender Analysis Package (FAO) presents the answer of the question, Who has what? - meaning who has access to and control over resources. Even if an individual has access and usufruct rights to specific resources does not automatically mean that she or he has control over the resource. Control can be vested to the state, the forestry department, a village development committee (formerly panchayat), or other authorities. Access to and control over resources is often gender based. In Nepalese setting, forest resources are basically controlled by the forest department, but its management and utilization aspect of control and access have been gradually handed over largely to the user groups of community forestry and limited to leasehold groups.

Major Conflicts Related to Customary Use Rights

Conflict for boundary

7.01 In Baramche VDC of Sindhupalchok district, a conflict was observed between two communities (villages) during the identification stage of potential lease land. People of Chihan danda village and Baramche village of same VDC claimed rights over same piece of land which was located between the boundary of two villages as well as two wards. The claim on boundary line came in light when leasehold forestry programme was introduced in this VDC. People of both communities became aware to take lease land as their own. This was a barren land located at steep slope and used as a grazing area by both communities without hesitation. This area was formerly made plantation by Nepal Australian Community Forestry Project (NACFP) with pine species but became failure. Evidence of some of the planted seedlings are still surviving in very poor condition. To resolve the issue, it took a long time and many informal meetings were held. Both communities comprised of Newar people. Both territorial ranger and leasehold ranger along with group organizer of Baramche Small Farmers Development Project worked as facilitator between two communities. This was an example of awareness of local people which was brought by the leasehold forestry project. Gautam (1991) asserts that existence of customary indigenous rights in the hills of Nepal has mainly occurred when they have suffered attacks by those with customary users themselves, by outsiders, by unspecified parties or by local authorities.

Zero grazing vs. open grazing

7.02 In hills, domestic animals are freely grazed in the forest area with or without animal care-taker. Most of the lease sites are joined with forest area or it were remained as a grazing land for villagers. *Grazing is a general problem of most of groups in four districts.* After the handing over, lease land area is protected from free grazing and emphasis is laid to practice zero grazing as prerequisite for lease land development. This is to bring changes in the behavior of lease group members as well as villagers which is adopted with great difficulty and time lag. In most of the places, the practice of zero grazing has created tension between group members and villagers.

7.03 In few leasehold groups of Makwanpur (e.g. Furkechaur), Kanji house (fencing area) has been constructed to put those cattle and goats which enter in the lease land and harm the planted seedlings. Later on, the owners of these animals are fined as per rules made by the leaseholders. Despite of strict protection measures, some of cattle and goats enter in the lease land area and owners are charged to pay fine. Strict functioning

of this "Kanji house" has created a situation of tension between members and non-members living in the same community.

Land tenure conflict over leasehold forest area:

7.04 A nursery was established and 13800 seedlings were produced in the lease land area of Palung VDC of Makwanpur district. Claiming land tenure right over 4 ropani land out of 120 ropani of lease plot, a case was filed at Hetauda Appeal Court against lease group members together with DFO and Ilaka Range Office, Palung. As an action Stay Order is being issued by the court not to do any kind of work in the conflict area. After issuance of Stay Order, the nursery was destroyed, all the seedlings were thrown away and destroyed by the opponent. This is one of the most serious and historical conflicts in the development of leasehold forestry. Still the case has not been finalized. Moreover, the poor leasehold group members are being given threat by the opponent as being a wealthier family of the community.

7.05 In addition to the above mentioned case, some of the demarcation pillars of the same leasehold area were destroyed by the opponent. Provided with spot-evidence of the destruction of pillars, another case has been filed at Makwanpur District Court, Hetauda to take action against violator of Demarcation pillars. This second case has not been finalized yet.

7.06 Involved in two cases, the lease group members are being harassed from the leasehold forestry. Going to court each month is considered as an extra burden for their families. No any off-farm training on income generating activities have been conducted to earn tangible benefits from the lease land except grasses. Although some seedlings of fruit trees have been planted in the lease land which will take at least five years to get financial benefits by harvesting its fruits.

Defining boundary of customary users

7.07 Community control of resources has often been associated with geographically bounded communities where ties of kinship buttressed territorial ties. But neither community nor community membership is so easily defined. Even if we are conservative and take community to mean a geographically specific place, community membership can be defined by present or previous residence, by property ownership, or by kin ties, using various definitions, a single individual could, were it advantageous, claim membership simultaneously in a number of communities (Anonymous).

7.08 When all the customary users are not identified and groups are formed in hurry, outcome of such work is painful and

unpleasant in latter stage. For example, a serious conflict has been observed between two communities of Kavre district. Five lease groups have been formed by the community people of Chalal Ganeshthan VDC and lease certificates have been handed over to them. But land area is situated between Bhumi Danda and Chalal Ganeshsthan VDCs. And a Magar community of Bhumi danda VDC is also claiming as actual customary users of the lease site who are not involved in obtaining community consensus nor in group formation. As a result, some of the demarcation pillars have been destroyed and all the planted seedlings have also been uprooted. Some of the group members are resided about two hours away from the lease site who do not have access to the lease site. Group members are not in position to protect planted seedlings nor to implement their operational plans according to their schedules. Although customary rights on land area is claimed by the both communities.

7.09 Same type of case was observed in the Baramche VDC of Sindhupalchok district. Lease land development was done by the group of Chihan danda community planting improved variety of grass species (napier, molasses, stylo and ample grass was produced even in first year. Lease certificate has been handed over to the Chihan danda group. During the Dasain vacation of 2051, the grass was looted by the nearby community of Vedabadi people. This is an organized communal effort made by a community against a leasehold group. In fact, customary right is also being claimed on same piece of land by the Vedabadi community. It seems, identification of all the customary users was not done at its initial stage and Vedabadi community was not involved in the decision making process for providing community consensus.

Conflict Resolution Strategies

8.01 Field staff, community people or lease group members adopted myriad of strategies to resolve their conflicts. Despite of many efforts, some of the conflicts have not been solved yet. Some key strategies are briefed hereafter.

Identify all the customary users:

8.02 Involving the users, all the customary users of the forest land is identified using the participatory tools. This is a very vital step in the group leasehold forestry.

Conflict is considered as common social phenomena:

8.03 In the group leasehold forestry, conflict is accepted as a common social phenomena, thus, field staff are equipped with on how to deal with these conflicts. As a result all the stakeholders are identified and involved them in resolving conflicts.

Role of field staff as facilitator rather than administrator:

8.04 Field staff of three line-agencies (forestry, livestock and ADBN) have been involved at field level. They work as facilitator to strengthen the capacity of group members rather than administrator.

Involvement of all the users in decision making process:

8.05 In order to reduce conflicts in future, all the customary users are at first identified and involved in the decision making process. For example, community consensus is obtained to allocate lease land for poor families of the same community. In many cases, lease group members are identified and finalized by the mass meeting of the whole community. Moreover, landless and marginal farmers are being given the priority in this selection of group members.

Mediators

8.06 In order to resolve the conflicts related to leasehold forestry, rangers, Group Organizer of Small Farmers Development Project or Agricultural Development Bank, NGO staff, local elected body, social leaders or district level authorities act as mediator between two parties. In many cases, these mediators have played vital role in the resolution of serious conflicts.

Selection of lease land where abundant land is available and people are interested

8.07 Where there is shortage of forest land for grazing and

other purposes, it is very difficult to get consensus from the community. Thus, lease land is generally selected where abundant forest land area is available and people are interested in the leasehold forestry programme. This criteria is developed to minimize the conflict for the development of leasehold forestry.

Wide motivation and gaining confidence of community

8.08 Through wide motivation, concept and programme of leasehold forestry are introduced in the initial stage of leasehold forestry. Making visits to potential users, confidence of community is gained by the field staff which becomes very helpful in the resolution of conflicts related to leasehold forestry.

Quick hand over of lease certificate

8.09 Hand over of lease certificates have ended the conflicts in many groups. With the lease certificate, the lease group members feel confident and come in position to show legal document to others. Moral and administrative supports are also provided by the district forest office and ADBN/SFDP.

Form more leasehold groups in an around

8.10 In Padam Pokhari VDC of Makwanpur district, one leasehold group was formed first year. This group faced a lot of grazing problems from the local community people. By the third year, four lease groups have been formed by the motivation of first year group which has relaxed grazing pressure providing mutual cooperation and support to each others.

Community Forestry and Leasehold Forestry together

8.11 In places where community forests have not handed over and when leasehold forest is handed over only to few families particularly landless and marginal families, this creates some confusion that rest of the community people are estranged from the forestry membership. Leasehold forestry programme can not include them all in leasehold members. In such cases, both community forestry and leasehold forestry should be started together to include the whole community in forestry matters. It is reminded that it is the community people who decides on where they would like to form the groups of community forestry, or leasehold forestry or both. Field staff should have only the role of facilitator to clarify the concept of both programmes. Leasehold forestry could be complementary to community forestry.

Use of cadastral map

8.12 Where there is severe conflict for land tenure or

boundary between forest and private land. Use of cadastral map and field book of during this surveying clearly depict the boundary of forest area and private land. Thus, it becomes easy to take decision on land tenure conflict.

Informal and formal meetings

8.13 Many conflicts were solved by organizing informal and formal meetings with contending parties. These meetings provides outlet to express suppressed feelings on common property regime and also furnish forum to clarify vagueness and confusions. Thus, all the rival parties are involved in the decision making process on common property regime of their own concern.

Acknowledgement

The valuable support of several persons mattered so much in the completion of this paper and presentation at higher level gathering, the author expresses his deepest gratitude and appreciation:

Mr Arjen Sterk, CTA, Hills Leasehold Forestry and Forage Development Project. for the encouragement, inspiration and wholeheart support in the preparation of the paper.

International Tropical Timber Organization (ITTO) who generously awarded the Fellowship to deliver the Conference Paper in the 6th Annual IASCP Conference, Berkeley, California.

The Program Committee of IASCP Conference 1996 for accepting my paper to be included in the Conference.

Messrs M. Haque, K.R. Pandey and B.N. Tiwari for encouragement and moral support.

Messrs Binshnu Shrestha, C.D. Rai and Ms U. Rai for all kinds of administrative cooperation.

Finally, to God Almighty for giving me wisdom and strength to complete this piece of work.

REFERENCE

- Baral, J.C. 1991. Indigenous Forestry Activities in Achham District of Far Western Hills of Nepal. F.D. No. 15. HMG/UNDP/FAO Community Forestry Development Project, Kathmandu, Nepal.
- Campbell, J.G., R.P. Shrestha, and F. Eupharat. 1987. "Socioeconomic Factors in Traditional Forest Use and Management: Preliminary Results from a Study of Community Forest Management in Nepal." Banko Jankari 1(4):45-54.
- Fisher, R.J. 1989. Indigenous Systems of Common Property Forest Management in Nepal. Working Paper No. 18. Environment and Policy Institute, East-West Centre, Honolulu, Hawaii.
- Fisher, R.J., Hukum Bahadur Singh, Deepak Raj Pandey, and Helmut Lang. 1989. The Management of Forest Resources in Rural Development: A Case Study of Sindhu Palchok and Kabhre Planchok Districts of Nepal. Discussion Paper No. 1, Mountain Populations and Institutions, International Centre for Integrated Mountain Development, Kathmandu.
- Gautam, K.H. 1991. Indigenous Forest Management in the Hills of Nepal. A thesis submitted for the degree of Master of Science of the Australian National University, December 1991.
- Gilmour D. A. 1989. Forest Resources and Management in Nepal. Working Paper No. 17. Environment and Policy Institute, East-West Centre, Honolulu, Hawaii 96848.
- Molnar, A. 1981. "Nepal-The Dynamics of Traditional Systems of Forest Management: Implications for the Community Forestry Development Project." Report to the World Bank.
- Singh, B.K. 1995. Community Consensus in the Hills Leasehold Forestry and Forage Development Project. The Project Working Paper No. 10 . . Kathmandu, Nepal.

*Moench, M. 1986 Cooperative Resource mgmt
in an Indian Mountain village. WP-873, Environ.
ment and Policy Institute, East-West Center
Honolulu.*