Namaste !
Disputes Relating to Community Forest Conservation: Evolving Judicial Approach
Til Prasad Shrestha
Presentations

Outlines

• Idea of community forest management
• Legal regime
• Current status of community forest
• Disputes raised before the courts
• Evolving judicial approach
Idea of Community Forest
Forest Management Models

• Old model: state claims ownership of all forests

• Dominant model: state claims forests, but forestry staff work like extension works to get communities to share burden of management

• Emerging model: community ownership claims accepted
In Nepal

• Before 1957: Forest treated as source of income for ruling elite or bureaucrats;
• 1957-1976: Nationalization of Elite captured forests - local demands for subsistence needs - environmental degradation in Hills and Mountains
In Nepal
• 1976 onwards:
  National forest plan, 1976
  Forest Act, 1961 amended in 1977
  Accepted the need for people's participation
  Followed dominant model
  Ownership still remains with the state
  Locals have management right
  Forest staff are extension service providers
Forest management regimes in Nepal

- Forests
  - National Forests
    - Community Forests
      - For the poor
    - Leasehold Forests
      - For the corporate body or industry
    - Religious Forests
  - Private forests
    - Protected Forests
    - Government Managed forests
Legal Regime

- Governing laws
  - Forest Act, 1993
  - Forest Rules, 1995
  - Community Forestry Guidelines
The District Forest Officer may handover any part of a National Forest to a Users' Group in the form of a Community Forest Asset entitling to develop, conserve, use and manage the Forest and sell and distribute the Forest Products independently by fixing their prices according to Work Plan.
Cons(tu(on
and
Registra(on
of

• Submit
  written
  applica(on

• Depute
technical
  staff

• Help
  in
  prepara(on
  of
  cons(tu(on

• Compose
   a
   users’
   group
   and
   would
   be
   autonomous
   body
   with
   perpetual
   succession
Cons(tu(on
  and
  Registra(on
• Submit applica(on along with the cons(tu(on.
• Register and cer(ficate to comply with the Act, Rules and other condi(ons
• Register the group and designate the Community Forest
• Prepare a work plan of CF
• Maaers to be included
  – details of the forest
  – map of the forest
  – objectives of the forest management
  – methods of forest protection
Work Plan for the CF

• Maaers to be included – forest promo(ong activities

– income generation programme

– provisions relating to the use of income

– provisions made for penalties

– provisions for the protection of wildlife

– other maaters prescribed by the Dept.
• submit application
• investigate into an application
• review work plan
• hand over the area
• issue a certificate
• if lies two or more districts, get consent
• monitoring and evaluation
Other Provisions

- some functions are prohibited

- can collect, sell and distribute the forest products

- inform the DFO on the sales rate

- community forest may be taken back

- community forest may be re-handed over
Current Status

- **Total User Groups:** 18,326
- **Total Area Handed Over:** 17,17,811 Hectares
- **Percent of People Involved:** 40%
- **Out of Total Forest Area Covered:** 29%
- **Total No of Households Involved:** 22,60,688

*National Workshop Report, 2015*
Nepal
Status of Community Forest Area Handedover

Legend
- Yellow: No CF
- Red: Below 500 Ha.
- Pink: 500 - 5000 Ha.
- Purple: 5000 - 10000 Ha.
- Light Blue: 10000 - 25000 Ha.
- Blue: 25000 - 50000 Ha.
- Green: Above 50000 Ha.

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CF Dev. Section
Community Forest Division
Department of Forest
Date: 9/29/2011

1:2,500,000
CFUG Formation and CF Hand Over Trend
CF handover trend

No. of CFUG Handedover

Area Handed Over

Year

1987    '90    “94    95    2000    '03    '04    06    '09

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“पदार्थ सामान्यिक वन”, नामहार, नलिपुर।
Regional Distribution of CF

- Hill: 65%
- Mountain: 16%
- Terai: 19%
Contribution and Achievements
Contribution

• Capital formation (natural, social, human, financial and physical capital)

• Governance reform

• Community empowerment and social change
Socio-political outcome of CF

- Empowered rural women who are important actors of development
  - 25% of CF executive committee members are women
  - 5.3% of CFs are managed by women only (Budhathoki, 2011)

- Promoted democratic governance
  - 2% of total annual expenditure has been used for grass root democracy (Paudel et al., 2010)
Livelihood Outcomes

• Increased supply of forest products:
  – Forest users consume 79% of the harvested forest products- in 2002 its value was US$ 20 millions (Kanel, 2004)
  – Contributed to reduce the workload of women (Bhattarai, 2011)
Environmental Outcomes

• CF management has been success in reversing forest degradation and restoring the forests

• Improved supply of environmental services e.g. carbon sequestration, soil and water conservation

Dadapakher area along Lamosangu-Jiri, 1978 and 2005 (Source: Pandey, 2009)
Restoration of W/L Corridors
Disputes relating to Forest Conservation
Disputes

• Govt. signed an agreement with the party for providing forest land for the establishment of private medical college

• Govt. decision requiring removal of Saw Mills located within 5 KM of the forest area

• Industry has caused serious environmental degradation to Godavari forest and its surroundings and hindered life and health of people
Disputes

• Differently treated with Tarai region forests denying to register the User Groups and hand over the forest

• Cabinet decision requiring CFUGs to deposit at least 40% of revenue with the government

• Annulment of registration of 11 CFUGs without giving any opportunity of hearing as provided by law
Disputes

• Cancellation of registration of CFUGs in the absence of conditions prescribed by law

• Right to profess religious activities in the community forest area

• Whether an official of CFUG can be held responsible for the missing of members even if he is not involved personally
Judicial Approaches
Judicial Approaches

- Creating environmental rights
- Liberalization of locus standi
- Application of public trust doctrine
- Sustainable development approach
Judicial Approaches

• Balancing the right to freedom (of trade and religion) and the conservation of forest

• Innovations on creating judgment enforcement mechanisms

• Continuing Mandamus

• Enforcement of directive principles
Issues for Consideration

• How to reconcile with the need to conserve the forests with the need to address the livelihood concerns of the poor

• How to maintain balance between forest conservation and development works

• Forest dwellers' right and forest conservation
Issues for consideration

• Don't touch approach on the matters of constitution of CFUGs

• Internal governance issues of CFUGs

• Enforcement of directive orders

• Appreciation of scientific evidence
Issues for consideration

• How to compensate the CFUGs in case taken back the management of CF

Doctrine of alternative choices
At the End

Develop such an approach which promote viability, continuity and the sustainability of the programme.