

# State-Community Contestations in Governing Forests: Reimagining Regulatory Framework

A Roundtable Interaction on Forest Policy Process in Nepal  
4 February 2011, Kathmandu

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**Organized by**

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## Introduction

Over the year 2010 and in subsequent months, there has been a renewed and intense contestation in Nepal over how the country's forests should be governed. This contestation revolved around the initiation of the Government of Nepal (GoN) to amend the Forest Act 1993, which had received widespread acclaim for devolving rights to local communities. In 2010, the GoN drafted an amendment bill to reinstate some of the powers vested to communities under the Act back to the government itself. The community groups and their federations have argued that the bill was prepared without consulting rightholders and stakeholders, and that the amendment would curtail their rights over forests. The debate on this bill has unproductively been narrowed to make it an either-or problem. This has pointed out the need to fundamentally reflect upon the possibilities and frontiers of state-community partnership in governing forest to inform initiatives for policy and regulatory change.

In this context, ForestAction Nepal organized a policy roundtable interaction on 4<sup>th</sup> February 2011 in Kathmandu with support from Growing Forest Partnership (GFP) to understand and reflect on the complexity of forest policy process in Nepal. The Roundtable took the Forest Act amendment process as a case. The following were the key questions on which the presentation and discussions of the Roundtable focused:

- What is the current regulatory framework of state-community partnership in governing forest? What are the strengths and pitfalls of the Forest Act 1993?
- Why was the change in forest law conceived at this time of political transition? What does the proposed amendment entail? What would be its likely consequences?
- What are the key aspects / domains of regulation in governing forest through state-community partnership under democratic governance?
- What process of regulatory reform can yield legitimate laws / rules with higher prospect of getting respected and applied in practice?
- What are the pathways of translating people's mandate into the forest policy decisions?

## Participants and Program

There were a total of 50 participants, representing a wide range of forestry stakeholders such as Ministry of Forest and Soil Conservation (MFSC), FECOFUN (a federated body of community forest users in Nepal), Nepal Foresters Association (NFA), researchers, activists, civil society organizations, and donor funded forestry projects. Seven panellists, each with their expertise in a particular aspect or sector of public policy, actively contributed to the roundtable interaction (See Annex 1 and 2 for the lists of panellists and participants respectively). The following was the programme of the Roundtable.

<b>Program</b>	<b>Presenter/Moderator</b>
Current issues in Forest policy process	Presentation by Dr. Naya S Paudel
Panel discussion on  Challenges of transforming public policy process  There were seven panelists including senior government official, civil society activist, researcher/public policy expert.	Dr. Hemant Ojha

The Roundtable commenced with a background presentation (see Annex 3 for presentation slides). In this presentation, Dr. Naya Sharma Paudel of ForestAction highlighted chaotic policy terrain in Nepal’s forestry sector. The presentation shed light on the forest policy processes that emerged during the post-2006 movement period. He mentioned that over a dozen policy initiatives are ongoing in Nepal’s forestry sector, but they have little coherence between each other. In several cases, the policy decisions have triggered strong resistance from communities and civil society organizations thereby making them hard or at times impossible to implement. The presentation pointed out the poor link between research and policy making while drafting the proposal and amendment bill to change the Forest Act 1993. Further, issues of elite capture, inadequate poverty reduction, inequity and unsustainable harvesting in some parts of the country were also highlighted in the presentation. It was spelled out that the amendment would have far reaching consequences on forests and forest governance. The presentation emphasized that the potential consequences of the amendment would particularly be increased illegal felling, corruption and elite capture.

### **Perspectives of the panellists**

The seven panelists of the roundtable interaction presented their views on the process and contents of the MFSC proposal and amendment bill, and on Nepal’s policy process in general. The expertise of panelists corresponded to different arenas of public policy and thus there were diverse and multiple perspectives regarding forest policy process. Experts in decentralization and local governance had argued that local government should be made responsible for managing natural resources, not the centralized forestry authority. They also criticized the proposal of MFSC – giving more power to government forestry officials – as it will increase corruption, and urged to enhance local control over management of forests. In addition, they also indicated that the MFSC leadership has long been showing reluctance to accept and implement Decentralization Act 1982 and Local Self-Governance Act 1998.

Experts in sustainable forest management and resource economics highlighted the need to sort out existing policy deadlock within the forestry sector, as it has been an obstacle to harness economic potentiality and to stride for sustainable forest management. They also criticized the MFSC’s usual decisions to ban tree harvesting as being absurd, irresponsible and unscientific.

Panelists having expertise in community-based forest management criticized the attempts of MFSC to curtail rights of local communities. Urging to acknowledge the contribution made by community forestry, they suggested MFSC not to generalize anecdotal cases of irregularities in Chure and Terai for the whole country. They also warned of strong protests if MFSC failed to scrap the proposal and amendment bill. Likewise, public policy experts argued that accountability of political leaders to citizens is crucial for ensuring good governance. They mentioned that regressive decisions, corruption and deforestation emerge as prominent problems in the context of unelected or less accountable government and political transition.

Following the expert remarks of the panellists, the Roundtable participants were encouraged to raise questions to the panellists and express their views regarding the Forest Act amendment proposal and bill. The summary of the discussions have been presented below.

### **Forest policy process still top down**

The participants of the roundtable interaction expressed serious concern over the process that MFSC followed in drafting the amendment bill to the Forest Act 1993. Most participants including some government forest officials vehemently opposed the amendment bill for three main reasons. First, the amendment bill was drafted without broad consultation with stakeholders and rightholders, and was not informed by adequate evidence and research. Instead it was prepared in response to the orders of the Commission on Investigation of the Abuse of Authority (CIAA), the Parliamentary Committee on Natural Resources, and the ministerial decision. These orders were based on the media news and anecdotal cases about corruption and illegal harvesting in community forests of Chure and Terai. Second, the bill directly undermines the autonomy of community forest user groups to access to and control over forests. It was indeed in contrary to the findings of various studies that giving autonomy to local communities has positive results in managing forests and improving livelihoods. Third, the bill was untimely in the sense that the country is in political transition, within which a new forestry strategy is in the offing and an independent study on the impacts of community forestry is in progress.

MFSC has considered poor governance (corruption, elite capture and illegal harvesting) in community forest user groups as the key reason behind the amendment of the Forest Act. However, most participants had rubbished this argument since not only local elites of CFUGs but also government forest officials and politicians are indulged in corruption. Further, it was also discussed that CFUG institutions are governed better than bureaucratic institutions since the key pillars of good governance - participation in decision making, transparency of management and accountability of leaders are inherent within CFUGs. Likewise, market dynamics was considered as a key force to understand corruption as it is quite powerful to establish the corruption network from local to national level.

Although little deliberation was on the consequences of the amendment bill, some participants had warned that the bill will have far reaching negative consequences in community forestry. They

emphasized that the amendment would eventually result in the collapse of community institutions and is likely to usher massive deforestation.

## **Contestation remains**

There were clearly distinct views of bureaucrats, civil society actors and other stakeholders in the roundtable interaction. Although MFSC claims the bill was to respect the orders of the higher authorities, some MFSC officials seemed convinced that some powers given to the communities be taken back to government officials. This has supported the argument that forest bureaucracy is lobbying to resurrect their traditionally exercised power over forests. Public policy experts argued that political transition and weak political institutions in the country have provided forest bureaucrats an opportunity to manipulate policy process to quench their thirst for power. “In political transition, the dominance of forest bureaucracy in policy process has been, in most cases, counterproductive in Nepal’s forestry sector,” as noted by a public policy expert.

Federation of Community Forest Users, Nepal (FECOFUN) had a clear stance that MFSC overlooked multi-stakeholder and deliberative process in forest policy making. Likewise, other stakeholders including public policy experts argued that the amendment bill is untimely, is not informed by adequate evidence and grounded research, and it is against the principles of decentralisation and democratic governance.

## **Still fruitful interaction: Some actionable opportunities**

The roundtable interaction provided a deliberative platform to understand the perspectives of diverse stakeholders from grassroots people to high level bureaucrats over the chaotic policy environment in Nepal’s forestry sector. It also provided a good case to understand how political transition, global environmental politics, aid dynamics, vibrant civil society activism form a complex policy terrain.

Organising such an interaction in the future would translate policy deadlock into opportunities for transformation of forest policy process in Nepal. Most often, the organizers that host such roundtable interaction fail to engage politicians who are amongst the key actors to influence policy decisions in democratic process. So politicians from different political parties particularly those who represent the Parliamentary Committee on Natural Resources should be engaged in debate, discussion and interaction related to forest policy. Definitely, these all will help identify avenues for reimagining regulatory framework for governing forests in a way that forges democratic engagement between local communities and the state in governing forests.

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and candid opinion on the issue. We are highly grateful to Dr. Hemanta Ojha (moderator) and Dr. Naya S Paudel for conceptualizing and facilitating the event. Last but not least, thanks go to Amrit Adhikari, Anju Khand, Arjun Gyanwali and Lalit Thapa for their special support.

## Annex 1: List of panellists

S.N.	Name of Panellists	Affiliation	Representation of perspective
1	Apsara Chapagain	FECOFUN	Community rights
2	Bihari Krishna Shrestha		Decentralization history
3	Deepak Gnyawali		Public policy and multiple sectoral governance
4	Devesh Tripathi	NFA	Technical forestry and biodiversity
5	Hem Raj Lamichhane	ADDCN	Local governance
6	Keshav Kanel		Economic analysis and social choice
7	Ram Prasad Lamsal	MOFSC	National government

## Annex 2: List of participants

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### **Annex 3: Presentation slides**

PowerPoint presentation is attached as a separate document.