ABSTRACT

This article sheds light on how the rights of indigenous peoples and local communities to access and control forest resources have been changing over the time in Nepal. The rights of the indigenous populations to their traditionally used resources have been changed through various state interventions policies, regulations and practices. In the past, they had their own system of property ownership and inheritance. The indigenous peoples have nowadays perceived that their whole life and livelihood security have been threatened because of restrictions on the use of their traditional resources, evictions from their ancestral lands, and due to lack of proper policies and legislations to ensure their traditional and alternative livelihood opportunities. Despite several initiations, advocacy and lobbying and demands of indigenous peoples, constitutional and statutory provisions including sectoral laws, policies and schemes do not provide adequate space to recognize customary rights and laws. The land tenure and forest rights defined without recognizing customary laws and practices can reduce the incentives for local or national forest protection and facilitate the over-exploitation of forest resources. For such reasons, statutory provisions should ensure the rights of local forest-dependent communities including indigenous peoples and Dalits to ownership, use and customary management of their forests.

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1. Background

The indigenous peoples and local dwellers have a very special relationship with natural resources, particularly with land, forests and pastures. Indigenous peoples’ traditional practices for management and conservation of natural resources have a long history in Nepal, particularly in the mountain and middle hills. These natural resources are not only the basis of their livelihoods but are also interlinked with their cosmology and life systems with deeper cultural meanings. These people derive their sense of identity by living in certain areas and using location specific natural resources. The ownership of natural resources, especially land/forests, has always symbolized wealth, power, social prestige and security for most of the indigenous people (Regmi, 1978; Caplan, 1991, 2000; Daniggelis, 1994; Baral, 2008; Sherpa et al., 2009).

Indigenous peoples depend on access to natural resources and particular landscapes to survive, to preserve a unique sense of identity, and to provide livelihoods. Indigenous peoples adopt diverse livelihood strategies, including nomadic hunting-gathering, and herding combined with seasonal agriculture; slash-and-burn rotational agriculture combined with reliance on forest products; fishing and gathering; farming and hunting combined with trade; and other unique and complex mixes of strategies adapted to particular natural and social conditions. For example, Rautes, an indigenous group to Mid-western and Far-western region of Nepal, still enjoy hunting and gathering nomadic life styles. They make wooden products for domestic use such as bowls, plates, box, and drums and barter with cereal food crops or sell them to meet their daily needs (CSVFN, 2011; Sneha, 2012). The Bankariyas and Kusundiyas have abandoned their hunting and gathering life styles but largely depend on forest resources. The Chepangs lifestyle involves shifting cultivation supplemented with collection of edible fruits, roots and vegetables in the forest. Wild tubers such as Dioscorea Spp are still the main staple food of most of the Chepangs. They consume more than 30 varieties of wild edible plants as a substitute for (agriculturally produced) food (Aryal and Kerchoff, 2008). Similarly, transhumance pastoralism (yak, sheep and mountain goat) is a lifestyle and an intrinsic part of the identity of high mountain indigenous peoples like the Sherpas, Jirels and Thamis. Bamboo based economic activities (manufacturing of mats, baskets, households accessories and implements) and collection of various forest products are intricate part of major occupation of Surels Paharis, Rais, Limbus, Tamangs, Gurungs and Magars in the Hills and Tharus, Rajbansis and Danuwars in the Tarai region (Bista, 1972; Goutam & Thapa Magar, 1994). These examples show the inextricable link between nature, indigenous peoples and their livelihoods. As natural resources form such an important component of their culture, any disruption in access to natural resources has deep-seated implications for their identity and sense of self.

This article focuses on how the rights of indigenous peoples to access and control natural resources (mainly land and forest) underpinning their livelihood and traditional occupations have been changing over the time in Nepal. The rights of the indigenous populations to their traditionally used resources have been changed through various state interventions policies, regulations and practices. In the past, they had their own system of property ownership, which sometimes differed with the mainstream private property ownership system. In many cases they had been using the resources without any formal property ownership, but through understanding and traditional practices. Indigenous peoples’ strengths lie in self-organizing abilities, local governance systems, local knowledge, internal accountability, and locally adapted cultures. They derived their cultural meanings and identity from their living in a certain location and using certain natural resources. Even for the management of these natural resources, they had their traditional system to which they
had found meaning and thus had given commitments. The indigenous peoples have nowadays perceived that their whole life and livelihood security have been threatened because of restrictions on the use of their traditional resources, evictions from their ancestral lands, and due to lack of proper policies and legislations to ensure their traditional and alternative livelihood opportunities. Considering these issues in mind, an attempt has been made to answer the following research questions:

1. What are the key state interventions (national policies and laws) and how they altered the customary/traditional rights of indigenous peoples' access and control over the natural resources (mainly land and forest)?

2. What are the consequences of changes in customary practices and tenure system on indigenous peoples in terms of their ways of lives, traditional occupation and livelihood?

The article is based on materials collected through ethnographic fieldwork on Surels during June-September, 2014; January-April 2015, and March 2017 and review of policies, legislations or regulations and practices related to land and forest and other literatures pertinent to the research issues. The review process follows critical analysis of the state’s response (constitutional arrangements and related legal provisions) allocating or restricting on rights to use and access to natural resource. The Surels are one of the 59 indigenous nationalities recognized and identified by the Government of Nepal but not included in the national census. Nepal Federation of Indigenous Nationalities (NEFIN) classified the Surels as one of the ten endangered indigenous nationalities of Nepal based on indicators relating to literacy rate, housing type, land ownership, occupation, language, population and higher education. The category ‘endangered’ not only indicates the near extinction of the number of population but also points out to the lowest level of human development. The ethnographic fieldwork was done at Suri Village Development Committee (VDC) (after GoN's restructuring of the local bodies, now it falls under Gourishankar rural Municipality) of Dolakha district. The Suri settlement located in Suri VDC ward No 7 is the traditional homeland of the Surels. Suri settlement was exclusively inhabited by Surels in the past, but now it is inhabited by different castes (Chhetri, Bahun, and Dalits), and indigenous peoples (Surels, and Newars). The total population of Surels in Suri was recorded 203 (51.47% male and 49.3% female) in 43 households during field study in March 2017.

The article has been organized in seven major sections. The first section provides briefly the context and background, focus, research questions and methodological approach on which this article is based. The second section presents a conceptual framework. Section three presents the overview of customary practices of forest management and tenure arrangements and their abolition through intervention of government policies, laws and agencies. The fourth section discusses the modern statutory provisions on forest tenure rights including, issues and their consequences on sustainable forest management. In section five the overall effects of the state interventions in the form of statutory reform (changes in land and forest policy and tenure arrangements) on indigenous and customary forest management practices of the Surels have been discussed. The section six discusses overall conclusion of the study and section seven provides key recommendations for policy reform.

2. Conceptual Framework

The extent of access, use and control over natural resources (land and forest) can be measured through the assessment of various provisions on resource tenure. Tenure can be
conceptualized as a bundle of rights consisting of access\(^2\), use\(^3\), management\(^4\), exclusion\(^5\) and alienation\(^6\) rights (Schlager and Ostrom, 1992; Meinzen-Dick, 2006 cited in Helvetas Nepal & RRI, 2011). The term ‘tenure’ normally encompasses a variety of arrangements that allocate rights to, and often set conditions on those who hold land, but the term also applies to the resources located on and within those lands. Hence, tenure regulates access to and use of resources. Forest tenure implies rights, whether defined in customary or statutory terms that determine who can hold and use forestlands and resources, for how long, and under what conditions (FAO, 2006). Customary tenure is determined at the community level through the local ownership and management of the forests, whereas statutory tenure is determined by governments, who are the owner of the forests by default in most cases. The issue of ownership that is central to the tenure refers to a particular type of tenure in which rights are allocated to the landholders which includes exclusive and permanent rights, and the rights to sell the property (Gilmour and Fisher, 2011). Security of tenure is recognized as a fundamental requirement to ensuring that resources are managed sustainably.

This article briefly reviews the state interventions (policies, legislations or regulations) that govern existing land and forest tenure categories in Nepal and then assesses the elements of bundle rights inherent in them. The impacts of these state interventions in terms of accessing, using, and managing and controlling over the forests by indigenous peoples\(^7\) in general and the Surels in particular is then analyzed. The bundle of rights could have been given by law (de jure) or just by practice based on understanding or tradition (de facto) (Bruce, 1998, cited in Acharya, et al., 2008). Thus, forest tenure, for the purpose of this article, is defined as authority enforcing claims to a ‘bundle of rights’, obtainable from forest and its resources. Forest tenure, thus, shapes the definition of who can use which resources, for how long, under what conditions, for whose benefits and on what basis.

3. Customary Practices of Forest Tenureship in Nepal: An Overview

Customary and traditional practices of natural resource management have a long history in Nepal, particularly in the mountain and middle hills. Indigenous peoples in particular have their own traditional customary practices of forest management system since time immemorial. Built on indigenous knowledge they have their own customary laws\(^8\) of managing forests and offering institutions for administration as well as governance of these laws. Such practices have played a vital role in the management of natural recourses and maintained the integrity of the natural ecosystem management for generations (Gilmour and Fisher, 1991; Chhetri, 1993; Gurung, 1999). The system/practice of forests resource management developed under the overall framework of customary laws and governed by the customary institutions, in simple terms, is known as an indigenous/customary forests

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2 The rights to enter a defined physical area and enjoy non-subtractive benefits, e.g. to camp or rest inside the area.

3 The rights to obtain resource units or products of the resource system, e.g., extracting timber and non-timber forest products from the forest.

4 The rights to regulate internal use patterns and transform the resources by making improvements, e.g., harvesting rules, planting seedling and thinning trees.

5 The rights to determine who will have access and withdrawal rights, and how that right is transferred.

6 The rights to transfer, sell or lease, and all the above-mentioned rights.

7 The ethnic groups and communities having distinct social and cultural characteristics such as distinct language/mother tongue, traditional customs, cultural identity, social structure from those of dominant populations and culture. The National Foundation for Upliftment of Adivasi/Janjati Act, 2058 (2002) has identified 59 groups as Adivasi/Janajati (or indigenous peoples or nationalities) in Nepal.

8 Locally recognized principles, and more specific norms or rules, which are orally held and transmitted, and applied by community institutions to internally govern or guide all aspects of life including nature and natural resources.
management system/practice. Theses indigenous systems are location/site and community specific, therefore, vary across geographical regions and communities (Gilmour, 1990). The customary/Indigenous forests management systems are often complex and are closely related to indigenous people and their life styles, norms values and belief systems. Customary laws are flexible and evolving according to community needs. Such customary practices have been well recognized in both national and international arena for their roles in maintaining the integrity of the natural ecosystems (CBD, 2011; UNFCC, 2010). However, many state of the world including Nepal have not fully recognized these customary laws and natural resources management system of indigenous people.

3.1 Communal Tenure System

Majority of indigenous communities in the hills and mountains of Nepal in the past had their own communal system of land tenures. The area or territory governed by a particular village or community under each of these systems was recognized, defined and their boundaries delineated/demarcated by natural features such as ridges, rivers, mostly the boundary of a watershed or sub-watershed. Rights to use forests and pasture resources were complex and vary across the region’s villages to villages, mostly guided by their purpose of using the resources (wood or grazing or strict protection/conservation), geographical location, resource availability and lifestyles of the dominant population. The rights were guarded by delimiting boundaries with the well-defined rights of households to a particular forests/ grazing areas. These systems were practiced under different types of institutional arrangements at different times and locations.

The Kipat system, for example is a communal land tenure system in which land belonged to the local community under customary laws. A number of indigenous ethnic groups like Sherpa, Jirel, Chepang in Nepal owned lands on a communal basis without any legal title under the Kipat system, the Kiratis ( Rai, Limbu, Sunuwar and Yakkha) of the eastern hills region were the biggest Kipat-owning community in Nepal (Regmi, 1978). It is not known when this system was initiated, but it was certainly of long standing before unification. Under the Kipat system, the whole land, irrespective of its use, was owned by the community. The land was, however, divided into smaller individual plots for cultivation. The individual had the right over use but did not actually own it. By its very nature, the person or family could not dispose of the land because it belonged to the community as a whole. Individuals who cultivated lands in their capacity as members of Kipat-owning ethnic groups owed allegiance primarily to the community, not to the state (Regmi, 1978). Thus the whole land, including forests, was being managed for the benefit of the local community.

Similarly, Khoria/Bhasme cultivation was the dominant agro-forestry practices in the hills and mountains of Nepal till its official abolition in 1957. The Khoria/Bhasme is a shifting cultivation system of rotational agro-forestry or a practice that involves the growing of crops on a plot of land and then letting it rest and recover for several years. In such lands, the land area is cleared off, burnt and crops grown using simple tools mostly hoeing (tilling was prohibited). A distinct cropping phase and fallow forests/period was maintained. The whole process was administered and governed by customary regulatory institutions and indigenous knowledge and skills. This practice was followed by all hill and mountain dwellers but largely associated with indigenous communities. Even after its formal abolition, the Khoria/Bhasme cultivation was in operation in remote and highly inaccessible areas, where state presence was almost lacking. The cultivators continued their traditional way of farming in line with their customary laws or decisions of their institutions. Similar to Kipat holders, shifting cultivators also could not register their traditional lands and get land certificate during the cadastral survey because majority of land were under forest fallow and
many could also not produce required land tax receipt given by their *Mukhiyas* (RIC/MoFSC, 2015).

These traditional practices were initiated to abolish immediately after the end of *Rana* regime during 1950s. The new government after *Rana* regime began replacing the traditional systems of land and forests administration and initiated a series of reforms on land use policies. The aim was to create a uniform system of governance and land tenure for the entire country. At first, all private forests were nationalized in 1957, and then *Birta* tenure was abolished in 1959. A series of new laws (the Forest Act and Regulation 1962; Civil Code 1963, the Land Act 1964, and Land Administration Act 1967) were promulgated to implement these new policies. The pasturelands were nationalized in 1972. Finally, enactment of these laws abolished the *Kipat* system. The Forest Act 1962 declared forests, fallow land, private forests and other uncultivated land or barren lands as national forests. The Land Act 1964 abolished the *Kipat* system and made the provisions for land survey and registration providing the landholders a land certificate known as *Lalpurja* (Acharya et al., 2008)

However, traditional *Khoria/Bhasme* cultivation and *Kipat*-like system, nowadays is confined to limited area, particularly in remote and inaccessible areas of the ancestral territories of a few selected indigenous communities such as *Chepangs, Magars* in the Central and Western region (Aryal and Kerchoff, 2008), Rai and Limbus in the Eastern region, and *Khas* and other *Janajatis* in *Karnali* areas where usufruct rights over the land is still prevalent (Sharma, 2011).

### 3.2 Forest Management Practices

During the period of *Rana* regime until 1950s, forests in many area of Nepal were under the responsibility of local traditional institutions such as *Jimmwal, Subba, ShinghiNawa, Mukhiya* or *Talukdars*. These institutions were functionaries of the state whose primary responsibility was to enforce state law and collect revenue. To carry out this responsibility, these institutions used to control access to forests and distribution of forest products. Forest watchers known as *Chitaidar* or *Chowkidars* were employed and various sub-committee or institutions formed for regular supervision and protection from human disturbances such as forest fire, grazing, and illicit cutting. Based on the ethnicity, geography and life styles of the people the customary practices vary in the structure of the institutions, administration, governance systems, and forest harvesting and use patterns (RIC/MoFSC, 2015).

These institutions in most cases, for an example *Jimmawal* and *Mukhiya*, were inherited but formally recognized by the state and, therefore, were considered the representatives of the state machineries. They generally accepted gifts such as *ghee* (butter), *dahi* (yoghurt), chicken, free labour, and even grain in return for permitting small scale harvesting of forest products by the local people, but charged no fee in cash. Nonetheless, they had to keep a record of all trees marked and felled, and report to the *bada hakim* (the representative or an employee of Rana regime in the district). All trees near water sources, main tracts, religious sites, and resting place (*chautara*) were to be preserved. Such system of local forest control, in many districts, ceased to exist after the promulgation of the Private Forest Nationalization Act of 1957 and the introduction of the new forest administration. While in most of the remote rural areas away from the district headquarter remnants of this system continued with new names and forms (Gurung, 1996)

Survey of available literatures (Regmi, 1978; Gilmour and Fisher, 1991; Chhetri, 1993; Daniggelis, 1994; Gurung, 1996, 1999; Baral, 2008; Sherpa et al, 2009; and Uprety,
2008) indicate that decision making and implementation process among all the functional customary institutions are nearly similar to each other. There is neither a written law nor a written system of registering complains and making decisions. Issues were presented orally and so was the decision making process. Formation of executive body varies across the ethnic group, community and location or geography. For example, in some community the executive position is held by a particular group of people (hierarchical, e.g., the Kipat system, Conventional Jimnawal and Mukhiya system), in some all household share the executive position on a rotation basis and in some communities executives are nominated or elected democratically. The whole system appeared highly democratic and bottom up. Issues are presented either orally or in written before community members and witnesses, discussions, verification, facts, submissions, vows, and oaths are the general process of resolution and decision-making. Experienced and elderly persons from the communities were invited as symbols of fairness and justice, and concerns and opinions of each of the social institutions and networks and other elderly and experienced persons of the community were considered and respected. Finally, the head of the institution would pass the law orally and individuals would abide by them. This highlights the close linkages between spiritual beliefs, traditional knowledge, customary laws and landscapes and natural resources. Customary law contributes to generating and sustaining knowledge by regulating practices, while beneficial practices or knowledge can become established customs, and some customs serve as norms or laws (e.g., limiting over-use of natural resources, use of pesticides, and hunting at certain times).


Land tenure and forest property rights are critical issues which directly determine who is eligible to access, use, control and receive incentives from the forest. Thus, clear and secure forest tenure is conditional to ensure both forest's sustainability and an equitable distribution of benefits (Bruce et al., 2010). A number of decentralized policies, and legal frameworks and a number of community-based management and conservation (Protected Area systems) programs and action plans on forest, biodiversity watershed and climate change have developed and implemented. These policies and legal frameworks define tenure rights of forest resources, explain what is permitted and what is not in the management and conservation activities, benefit sharing mechanism, forest products harvesting, distributions and their trade (Chhetri, 2006). However, forest tenure shifts in Nepal have been taking placed through enforcing various statutory measures by the state without taking enough efforts of legitimizing and recognizing traditional and customary tenure systems discussed above. Thus, all these policy instruments have had effects on customary institutions and customary practices.

The Constitution of Nepal 2015, the Forest Act 1993, National Park and Wildlife Reserve Act 1971, the Land Act 1964, Land Revenue Act 1978, Local Self-Governance Act 1999, and the Muluki Ain (General Code) 1963 are the key legal instruments which regulate land and resource tenure in Nepal. The Forest Act 1993 and Forest Regulation 1995 have classified Nepal’s forest into two broad tenure categories – national and private forests. According to the Forest Act, national forest is further classified into six sub-categories – Government-managed forest, Collaborative Forest, Protected Forest, Community Forest, Leasehold Forest, and Religious Forest. The National Parks and Wildlife Conservation Act 1973, and various subsidiary regulations, govern the protected area systems. Legally, the government holds the rights to land in all types of forest management regimes except private

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9 Includes Constitution, Policy, Acts and Regulations, Strategies Directive, Guidelines/manuals issued by GoN, Periodic Development Plan, forest, watershed or Protected area management/conservation plans including Operational or forest management plans of community-based forestry.
forest. However, access and use rights vary across forest management regimes. Community-based regimes are endowed with certain rights to manage and use forest resources, whereas in government-managed forest use rights to forest products remains with the government (Singh & Chapagain, 2006). Key forest tenure categories and associated rights are shown in Annex I & II.

The recently enacted Constitution of Nepal 2015 provides several additional provisions related to land and resource tenure. Article 25 of the Constitution of Nepal has recognized the rights to secure property rights and land/resource tenure of individuals. The rights of private landholders are protected according to these fundamental rights ensured by the Constitution. The government has authority to develop and implement plans and programs for environmental protection and planned housing and urban development by following due process of law.

The Constitution has not incorporated any specific fundamental rights for securing rights of Indigenous Peoples (IPs), though under the state policies of the constitution the state has expressed strong policy commitment for the promotion of traditional rights of IPs. For this purpose, the Article 51(j)(8) has expressed that the state will make an appropriate arrangement for the indigenous nationalities to participate in decisions concerning that community by making special provisions for opportunities and benefits in order to ensure the right of these indigenous nationalities to live with dignity, along with their identity, and protect and promote traditional knowledge, skill, culture, social tradition and experience of the indigenous nationalities.

According to the Forest Act of 1993, Nepal’s forests are legally categorized as either national or private, with ownership and control under the state or individual owners, respectively. The state owned national forest includes all forests other than private forest, regardless of the demarcation of their boundaries and including cultivated or uncultivated land, roads, ponds, lakes, rivers, streams and the shingly land that is surrounded by or in the vicinity of a forest. Under state-owned national forests, there are various management regimes such as community-based forests, which includes collaborative, leasehold, religious, and community forests and; state-managed forests, which include government-managed national forest, protected and conservation area. The private forests are the planted or protected forests on land that belongs to an individual in accordance with the Land Act 1964, but are regulated by the Department of Forests in accordance with the Forest Act 1993.  

The Government of Nepal (GoN) is the land owner of all forests (Section 67 of the Forest Act, 1993) including community forests, leasehold forests and religious forests which are provided to communities or people for the conservation, management and sustainable use of the forest and its products. A more or less similar condition applies with other forest management regimes that are managed under the National Parks and Wildlife Conservation Act 1971. The Forest Act 1993 which ostensibly support forest user groups and their autonomy is considered as the prime factor of proliferation of the Community Forest User Groups

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10 It makes a provision for registering a private forest with the District Forest Office (DFO) to the avail of government support and incentives. On the contrary, restrictions are imposed, viz. the Gazette notification of December 31, 2001; the government banned harvest, transport and export of six timber species (Champ (Michelia champaka m. kisopa), Khair (Acacia catechu), Sal (Shorea robusta), Simal (Bombax ceiba), Satyalal (Dalberia latifolia) and Vijaya sal (Pterocarpus marsupium)). Furthermore, it banned the collection, sale, transportation and export of two NTFPs, viz. Panchaule (Dactylorhiza hatagiera) and Okhar (Juglans regia). Similarly, eight other species are prohibited for export in unprocessed form without permission of the Department of Forest (DoF). It can be argued that the act is not fully favorable for private forestry because it still retains some of the legacy of the Private Forest Nationalization Act 1957 (Acharya et al., 2008)
(CFUGs) throughout the country. There is strong evidence of ecological restoration in many community-managed forests including an expansion in social capacity through regular decision-making and management activities. In some instances, CFUGs are able to make investments in local development such as potable water, trail and road improvements, and the setup of a rural electricity grid (Pandit & Bevilacqua, 2011).

The Forest Act 1993 has provided a clearer picture on property rights for community forestry compared to all the community-based forest management regimes. The Act is relatively stronger but frequent attempt of government agencies to roll back the rights given by the Act indicate that the legal basis of tenure reform is still not secure enough. Securing these rights can be challenging in practice, particularly in case of harvesting or forest product sales. This indicates that CFUGs need secured forest tenure rights and the users of other community-based forest management regimes needs clarity on their tenure rights.

In addition, there are equally pressing issues regarding intra-community equity in benefit-sharing in community-based forest management regimes. Nepali society is highly differentiated and hierarchically structured along the lines of caste and ethnicity, gender and economic status. Internal inequities in access to benefits and decision-making persisted within many CFUGs due to such social hierarchy. Usually, upper-caste men from wealthier families dominate the CFUGs and influence decisions that usually end up in unfair benefits flowing to a few elite families. Consequently, there are persistent problems of elite favoritism in decision-making and benefit-sharing even in community based forestry including Community Forestry (CF) (Anderson, 2011; Thoms, 2008). In order to avoid the trend of elite control, the rules need to be revised and it should be made mandatory for all User Group Committees to include proportionate representation of poor, women, IPs, Dalits and other underrepresented community members. The same provisions should be applied in trainings, sensitization, workshops, and other activities at all levels of meetings, discussions and interaction (RIC/MoFSC, 2014a).

Besides, tenure rights under community-based forest management are often limited to the management of forest resources with strict compliance requirements to follow the agreed forest management plans. These plans are mostly conservative in terms of harvesting of timber and demand adherence to still more complicated procedures for use of forest products. The technical complexity involved in preparing management plans increases the dependency of active forest users on foresters.

4.1 Statutory Recognition of Customary Practices

Most indigenous peoples have highly specialized land use practices and livelihood strategies, developed over generations and embedded in knowledge and belief systems that are often undocumented and governed by customary institutions that often remain unrecognized. As a result, some forms of traditional or customary practices related to land and forest management are still alive in the remote areas, particularly in the High Mountain areas, where the access of the Government in implementing the rules and regulation of land and forest is weak. In fact, these customary systems have evolved, taking into consideration both conservation of resources and people’s livelihood, since time immemorial.

12 In 2010, the Government of Nepal drafted a bill to amend the 1993 Forest Act to return some of the powers given to the communities back to the government. Proposed changes include expanding the role of the forestry department in CFUG forest planning, harvesting, and marketing activities; requiring CFUGs to contribute 50 percent of their forest revenues to the national treasury; and restrictions on tree-felling (Sunam et al., 2010). After facing strong resistance from FECOFUN and other civil society organizations in early 2011, the amendment is presently on hold.
Although one of the preambles of the Forest Act 1993 and Forest Regulations 1995 was on the social and economic development along with environmental conservation and fulfillment of the basic needs, the recognition of traditional collective forest and land management has not been the priority in the management regime of the forest regulation. Community Forest Guidelines (2008) have some flavors to respect customary rights and indigenous knowledge in forest management. The guidelines speak of the protection of customary practices and traditional knowledge. The National Forest Policy 2015 and National Forest Strategy 2016 recognize customary rights over forest resources and made some provisions to use of indigenous knowledge and customary practices in the management of the forests. However, the provisions envisioned in the policy, strategy and guidelines are yet to be implemented meaningfully.

Despite this, the existing forest management regimes governed by the statutory provisions (Annex I & II) have not explicitly recognized the customary forest usages. The forest management plans have failed to recognize and include customary rights during the regular revision of forest management plans of all types of forests management regimes. The Indigenous Peoples (IPs) perceived that after promulgation of the Land Act, Forest Acts and National Parks and Wildlife Conservation Acts have denied the customary rights of local peoples. IPs in Nepal particularly claimed that these acts did not recognize any basis for the customary system of management of resources, though Nepal has ratified numbers of international treaties (ILO 169), which categorically guarantee the customary rights of IPs.

Under Convention No. 111, the ILO supervisory bodies have addressed indigenous peoples’ land and resource rights, considering that ‘access to land and natural resources is generally the basis for indigenous peoples to engage in their traditional occupations. Recognition of the ownership and possession of the lands which they traditionally occupy, access to land which they have used for traditional activities, and measures to protect the environment of the territories they inhabit are therefore crucial with a view to enabling indigenous peoples to pursue their traditional occupations’ (ILO, 2007, p. 14).

4.2 Statutory Conflict and Contradiction on Forest Tenure Rights

In Nepal several laws and regulations have conflicting provisions and overlapping authorities over the use of forest and control the forest area. Laws governing land, forest and mining all contain substantial areas of overlap that cast serious uncertainty on entitlements to receive benefits from the forest. There are overlaps of activities/rights in the Forest Act 1993 and the Local Self Governance Act (LSGA) 1998, which sometimes invite conflict in forest resource management and use. The LSGA has specified the rights of use of forest resources and their duties to protect the environment and forest to the local bodies, e.g., VDCs, Municipalities and District Development Committees (DDCs) in their respective areas, which are inconsistent and conflicting with the community forest provisions of the Forest Act 1993. The most prominent being the use of stones, sand and gravel within and outside the forest areas. The local bodies, as per LSGA 1998, want to use the stones, sand and gravel for development purposes whereas the Forest Act prohibits extraction of stone, sand and land under the forests which have to be used or conserved. The perceived dual ownership of these products by the DDC and DFO has created ownership, management, utilization and monitoring problems in forest areas which have plenty of stones, gravel and sand.

Similarly, Nepal Mines Act 1966 and the Mines and Minerals Act 1985 empower the Department of Mines and Geology for issuing licenses to extract the minerals underneath the land including forests. But the operation of mining and extraction of minerals in any forest lands is strictly prohibited by the Forest Act of 1993. The Public Roads Act 1974 gives the
Department of Roads (DoR) the authority to build roads in the forests. The act also gives the department the authority to excavate and utilize the soil, stones or sand lying nearby roads for construction and maintenance of roads. Likewise the Water Resources Act 1992 empowers the state to use water without affecting the environment. However, the forest act defines forest products as anything including water that lies within the jurisdiction of forest area. These rights and authorities all conflict with the provisions of the Forest Act of 1993. This conflict in jurisdiction and authority between these state departments, and the Ministry of Forests and Soil Conservation has affected the conservation of forest.

These contradictions, conflicts and overlapping claims indicate the need for coherence between the forest acts and other legislation affecting forests. Conflicting claims on ownership, use and protection of forest have directly or indirectly accelerated the depletion of forests in Nepal. For instance, there is massive program of village road construction throughout the country, where all forests that are alienated for road surveying, are subject to clear felling. Also a number of hydropower projects licensed under Water Resource and Electricity Acts are being constructed on forest lands clearing significant forest areas.

4.3 Issues of Gender and Social Inclusion

Gender equity in relation to forest tenure can be measured by the existence of gender-equity mechanisms, their use in practice, and gender equity impacts of forest tenure and rights on the forest carbon balance, conservation and livelihoods. While community and leasehold forests apply different approaches to gender mainstreaming, there is no mechanism for government-managed forests. In both community and leasehold forestry, women are mandated to hold at least one-third of the forest committee positions. Likewise, the Forest Act 1993 identifies women as ‘primary users’ of the forest, outlines their dependence on the forest, and underpins their rights in forestry programs. However, the act and related policy documents neither adequately appreciate women’s contribution in forestry nor identify them as primary actors and agents of change. Despite the fact that women make up a significant proportion of the overall members of the CFUGs, only a little over 5% of CFUGs are led or managed by women out of the total 18,133 community forestry user groups (CFUGs). The CFUGs comprise approximately 40% of the households in the country (CBS, 2011 & 2012; MoF/GoN, 2014). In terms of forest administration, women represent only 3.25% of the total 6,835 civil personal in the forestry and natural resource management sectors. Women comprise 6% of the 448 staff at the gazette level while they represent 3.6% among the 2,679 staff in non-gazette positions. In addition, 3,709 staffs have no grade, of which 2.7% are women (ADB/DFID/WB, 2012).

The issues of social inclusion are very pertinent in the forestry sector because nearly 80% of Nepali rural households derive some or their entire livelihood from the forestry sector. For some, their livelihoods are totally dependent on access to forest resources; for others, forests provide important household products, inputs to agriculture, income and environmental services. The community forestry and participatory protected area management system are globally recognized as best practice models for insuring social inclusion. The CF Guidelines (2009) outlined provisions for social inclusion and established explicit mechanisms, tools and techniques to address the existing exclusion in the governance structure, programs and activities. Despite these provisions, there are multiple forms of exclusion in operation in the forestry sectors. Apart from economic factors, social factors such as gender, caste, ethnicity and location, greatly influence who accesses forest resources, who is involved in decision-making processes, and who receives the benefits. The distance of the forests from the settlements (particularly the southern belt of Tarai), the forms of property regimes (state, community, common property, private, and open access) and enforcement of
the rule all dictate the degree to which households gain or are prevented from access to forest resources. The loss of access to forests through either degradation or changed management regimes often will have the greatest impact on the communities who depend on the forest resources.

5. Implications of State Interventions on Customary Practices of Forest Management

This section discusses the overall effects of the state interventions in the form of statutory reform (changes in land and forest policy and tenure arrangements) on indigenous and customary forest management practices of the Surels. The Surels are the original inhabitant of Suri village of Dolakha district. They had their own historical territory and possess different and distinct cultural traditions from other community. In 18th century, the Surels practiced a form of communal land ownership, known as Kipat, and probably lived a life largely undisturbed by outside influences (Carter, 2011). In the Kipat tenure system, equity was ensured by determining the amount of land for each family based on the community’s assessment of how much each family needed. When a family failed to utilize their land, the excess was given back to community ownership. It was then re-assigned to a family who needed it. Thus land never remained fallow.

Later on, these autonomous territories and communities came under the folds of unification and were conquered and unified by Privithi Narayan Shah, which today comprise Nepal. Scholars (Bhattachan, 2003 & Lawati, 2005) have argued that the territorial unification process lead by King Prithvi Narayan Shah made the indigenous peoples and other local communities victims of domination of one caste – Khas Bahun and Chhetri (KBC), one language – Khas Nepali, one religion – Hindu, and one culture – Hindu. The neglected sociocultural groups have been denied cultural and political autonomy to decide on matters relating to their culture, lifestyles, and other issues that affect them. However, in order to get the Kirants of east Nepal to agree to become part of the Gorkhali Empire, King Prithvi Narayan Shah agreed to allow the Kipat system to prevail ‘from generation to generation as long as the land remains in existence’ (Regmi, 1978, p. 29).

During the Rana regime and later, Kipat lands were increasingly brought under state control, taxed, ceilings set and reallocated. Adopting the usual means of State expansion, the rulers organized the levying of taxes and investigated means to exploit resources and otherwise generated revenue for the State coffers. Metal deposits, especially gold, were discovered in the Tama Kosi area, and as a result the Suri area was invaded by a wave of settlers seeking work in the mines. Despite influx of the new settlers in the area, the Surels still retained much of their kipat (communal) land. Later on, they completely lost kipat. Carter (2011) in her book called Suri Ko Kura has nicely narrated how Surels surrendered their rights to Kipat. Carter (2011) writes:

‘The known fact is that in 1918, the five [Surels] headmen of Suri signed a deed renouncing all rights to their Kipat, and that this land was then given by the Rana government as a tax-free grant to a certain Colonel Dal Bahadur Khadka, in recognition of his distinguished services in the army. The colonel seems to have played a pro-active role in this turn of fortunes. According to the Surels, he invited the unsuspecting headmen to a big feast, at which he regaled them with food and drink. He himself drank nothing, but this would not have raised eyebrows. One of the ways by which Chhetris and Brahmins demonstrate their ritual superiority is to abstain from alcohol – the drinking classes being known as matwali. Once the Surels were well and truly drunk, the colonel got them to put their signature to the document renouncing their rights, which he then used in his petition to obtain the land himself’ (p 10).
What all the other Surels thought of their headmen is not recorded, but it was obvious that those who immediately evicted of their land had little option but to left the area and migrate to Darjeeling, Sikkim, Bhutan, and other parts of India – a trend that has continued ever since. Even today, nearly half of the total populations of the Surels have been reported to be settled in India.

The Surels were mainly hunter-gatherers and are now mainly subsistence farmers growing paddy, maize, millets, ginger and fruit trees like oranges, lemon and seasonal vegetables. They have traditional knowledge related to all areas of life – food, medicines, and housing, crafts, and integrated pest management, forest and water resources. It is said that Surels learnt paddy cultivation from the Khadka Chhetri, the first non-Surel group settled in Surel’s ancestral territory. They settled on the best land (the khet), and began cultivating it by plough – an innovation they apparently introduced to the area. At present, most of the fertile land, grazing land, forest has been registered in the names of Khadkas, Karkis, Acharyas as private property and their forest has been handed over to local user as community forest.

The Surels heavily depend on forests. It is the forests that are the source of much of the fuel by which people cook and warm themselves on cold winter days, of the material used for house construction, and of the fodder eaten by livestock. Forests also yield the bamboo from which a plethora of articles are woven (baskets, stools, animal shelters, and winnowing trays, amongst others); seasonal food (mushrooms and young leaves); medicinal herbs; and fiber for ropes or sometimes even cloth (made of nettle fiber). Perhaps most importantly of all, in the absence of chemical fertilizer, it is also forests that serve to boost agricultural productivity, through the dung of livestock that have been fed on forest fodder, and the application of leaf litter that is carried to the fields (Carter, 2011). Through their reliance on forests, they have developed extensive knowledge of bio-resources, medicinal and aromatic plants and wild foods, including unique remedies for number of diseases like fever, high altitude, and skin diseases. The rich traditional knowledge of the group is on the verge of extinction due to lack of recognition. The communities use these resources for food and medicine in a sustainable way, with self-imposed limitations on forest clearance, restrictions on hunting certain species, protection of sacred groves/plants and rotational use of some rich biodiversity areas. These are clear examples of stewardship and customary rights over their common property resources. The cultural traditions of the Surels reflects principles of common property (or heritage), reciprocity (collective sharing) and harmony (symbiotic relationship).

5.1 Impacts of Declaration of Gaurishankar Conservation Area (GCA)

Abolition of Kipat, nationalization of forest in 1957 and consequent enactments of policies, acts and regulations to govern forest management and declaration of Gaurishankar Conservation Area have put both positive and negative impacts on indigenous groups in the area in general and the Surels in particular.

The areas of forests and pastures that had been used under the indigenous and customary practices of the Surels and other of Indigenous groups in Suri areas now fall under either Gaurishankar Conservation Area (GCA) or community-based forestry. The Conservation Area covers an area of 2,179 sq. km with 22 Village Development Committees (VDCs) of three districts, namely Dolakha, Ramechhap, and Sindhupalchok. About 12,000 households live inside the conservation area territory. Nearly two third households within the conservation area belong to indigenous group. Tamang is the largest ethnic group accounting for 25.84% of the total population followed by Sherpa with 22.42%, and Chhetri 18.36%. Newar, Thangmi, Gurung, Jirel are other ethnic groups along with Brahmin and Dalits (Kami, Damai and Sarki) (DNPWC, 2012).
The declaration of GCA on January 11, 2010 and entrustment of its management responsibility to the National Trust for Nature Conservation (NTNC) for 20 years has brought some adverse sociocultural impacts and changes in their traditional life styles, particularly of transhumance herders and community forest users. The Surels and neighboring local communities perceived that the declaration of GCA circumvented community forestry, a prevailing forest management regime. They argued that the community forest user groups at local level have been conserving forests and biodiversity while meeting their needs for forest products. According to them, through strong restrictive regulations, GCA would undermine the rights of local communities to access and maintain control over natural resources.

Some procedural flaws can be observed while declaring and implementing conservation area system. The GCA was declared as per the provisions of National Parks and Wildlife Conservation (NPWC) Act 1973. Article 3.1 of this Act provides full authority to the Government of Nepal to declare an area as a National Park or reserve or conservation area by notification in the Nepal Gazette and indicating the boundaries there of. However, it is quite relevant to view this Act in the context of international commitments of the Nepal Government such as International Labour Organization (ILO) 169, United Nations Declaration on the Rights of Indigenous Peoples, and Convention on Biological Diversity; which require the government to ensure free, prior, and informed consent (FPIC) of local and indigenous communities before establishing Protected Areas (PAs). Besides, full Environment Impact Assessment (EIA) is required before declaration of protected areas as per Environment Protection Act 1997 and Environment Protection Regulation 1998 of Government of Nepal. In this case, the Nepal government largely ignored EIA as per GoN requirements and FPIC as per international commitments in declaring the GCA. In the process, the government ignored public hearing and consultations with important stakeholders and right holders including community forest user groups (CFUGs), and would-be-affected people in and around the new protected areas (Sunam et al., 2015). The government was determined to implementing the decision despite local CFUG's series of protest programs, strikes, signature campaigns; and lobbying with local communities, politicians, and concerned stakeholders. Their key demand was to recognize the existing community forest user groups and provide management responsibilities to local communities, reconstituting the GCA as the Gaurishankar Community Conservation Area (FECOFUN, 2011). But their demands were categorically ignored by the government. However, as assumed and expected the declaration of conservation area has become instrumental for development of infrastructure such as roads and market center in their area/territory. Such developments have also opened up many new opportunities and options of income, employment and economic enhancement. However, discussions with Surels and other community peoples in Suri clearly indicate that majority of them have not able to benefit from these opportunities and options. Pandit and Bevilacqua (2011) and Stevens (2013) also observed the similar phenomena.

5.2 Impacts of Community-based Forestry

The expansion of community-based forests in Suri area has some remarkable negative repercussions to local people, particularly those who have been engaged transhumance herding from many generations. Operation of community forestry not recognizing the traditional use rights of transhumance herders threatens the century-old indigenous practices of transhumance herding and the livelihoods of herders. With the change in land and forest policy of the government and community forestry imposing ban on grazing visibly affected the livelihoods of transhumance herders. The exclusion of these herders from the access to their winter pastures has already resulted in severe adverse socialcultural, economic and
ecological consequences. Transhumance herding is being abandoned by many indigenous peoples due to restriction imposed by community forest and declaration of national parks and conservation area without assessing potential social impacts of accessing pasture lands being used from many generations.

5.3 Impacts on Forests and Biodiversity Conservation

The statutory interventions initiated after abolition of customary practices of natural resources management had some positive implications as well. The participatory and decentralized forests and protected areas policy and program of the forestry sector, particularly the community-based forestry, have brought about significant positive impacts on forest resources in term of area coverage, density, species diversity (biodiversity), productivity and protecting wild animals from poaching and hunting in many parts of the country. Forests in Suri areas are not exceptions. The forest is actually in better condition than it was. This conclusion was primarily based on the observation and experiences of numbers of Surels of Suri village. A number of factors have contributed to this progress, but a very significant one is that the forests of Suri are now converted into Community Forests. Under community forestry, all the households using a particular forest area formally constitute themselves as a Community Forest User Group (CFUG), and discuss and agree a forest management plan. The plan is based on an assessment of the forest condition, and balances what harvesting is allowed against the needs of the different users. Special provision for the poorest and most disadvantaged is a mandatory legal requirement. There are also other factors involved in the improved condition of the forest today. One is a reduction in the number of livestock kept in animal shelters in the forest, due to lack of local labor and people’s preference rather to become migrant workers instead of keeping animals for livelihood. Another possible factor is the cessation of potato cultivation in forest plots, this being now practiced more intensively around homesteads instead. However, in terms of area covered, the potato plots were never highly detrimental to the forest. Probably of greatest significance is the increase in tree and bamboo planting on private land (Carter, 2011)

5.4 Weakening and Declining of Indigenous Knowledge and Customary Laws and Values

These communities had their own customary laws and values which set out their rights and responsibilities relating to management of natural resources based on their traditional knowledge. They include customary worldviews, principles or values, rules and codes of conduct, and established practices. They are enforced by community institutions, and can have sanctions attached. These customary laws and values were in practice from many generations. According to Surel worldviews, everything (living and nonliving) is interconnected, inter-dependent and complex and they are part of nature. They are also interconnected and interdependent on landscapes, cultural and spiritual values and customary laws. People have a strong belief in supernatural powers and many customary and conservation practices owe their compliance to the fear thereof. They believe on spirituality – everything (e.g., land, soil, biodiversity, forests) has a spirit or god, which is respected and feared. If nature is exploited, it will hit back with poor harvests, disease, and other detrimental effects. The Surels believe that they derive their knowledge and resources from the supernatural powers and the cosmic world – Bhume and ancestor gods and goddess. They believe that the Bhume bless them with seeds and rain for growing crops. The gods give innumerable cosmic and natural indications related to the timing and volume of rain. The Surels show their appreciation by way of a series of Bhume worship and rituals. It is a cultural and religious ritual that establishes live relationship with the surround natural environments. The Surels perform Bhume Puja with a wish to bring happiness, progress and
Prosperity in their life, and with an expectation that the crops flourish, rainfall occurs timely, insect and wild animals give no trouble, crops ripe well, natural disaster and adversity is prevented, shortage of food does not occur, and so on others. Such spiritual values and livelihoods are tied up with the landscape (e.g., Bhume deity residing in forests and other gods and goddess living in hill and mountain).

Generally, the Surels possess three categories of indigenous knowledge system with specific customary rules attached: 1) Communal Knowledge, such as agricultural practices, woven bamboo articles, seeds, collection of forest products and everyday health knowledge. It was noted that access to this body of knowledge was freely open to all. This means that any one among the Surels and neighboring communities should also ensure open access to the knowledge they receive and derived products; 2) Specialized Knowledge, usually medicinal, is restricted to family, clan or kin, and holders of this knowledge must ensure its proper use for community healthcare. This means that third parties should recognize individual as well as collective rights; and address community health needs (e.g., by preparing remedies to treat community illnesses) and 3) Sacred Knowledge, is held by elders and healers, and must be kept secret.

These and many other practices evolved to address new challenges and were vital for the way of life of the Surels and their customary use of resources to continue. However, it is revealed that customary laws, rituals, practices and institutions have been weakened and eroded by various factors, including extension of government authorities and replacement of customary laws by so-called modern statutory provisions, and alienation from community lands. Besides, traditional practices, norms and values are in declining with the younger generation having little interest in learning it and observing customary laws. Loss of ancestral land and sacred sites is a key factor in this; for example, the Surels have lost their kipat and their forests had been converted as Khadka ko ban – the forest of the Khadkas and they were no longer allowed free access to the forests. Later on, the forest has been handed over to the local users as Bajredanda Community Forests. Even in community forestay system, use of indigenous knowledge, tools and technique of using forest resources are either prohibited or considered an offense instead of recognizing and utilizing their strengths. Similarly, there are number of events and cases where indigenous communities are restricted from using community forests and park resources to derive their livelihoods.

Despite these shortfalls, a new trend is evident in Suri village amongst the Surels – a search for their own identities and serious efforts are being made by the older generation and adults towards revival of their language and cultural practices. This would promote demand for traditional products and knowledge, thereby supporting conservation. Constant usage and transmission of knowledge from one generation to another following customary practices and principles can safeguard farmer’s knowledge and seeds. Cultural values to a great extent are still strong and there is a possibility of increasing demand for traditional products in the market. These products have the potential to qualify for international certificates and labels such as organic and fair trade.

6. Concluding Remarks and Recommendation for Policy Reform

It is clear from the above discussion that forest use rights of citizens have historically been recognized both legally and customarily in Nepal. However, before the forest nationalization, only mukiyas and jimuvals exercised forest control rights as state functionaries. The forest tenure reforms in the 1980s attempted to reverse this trend through participatory forest governance that sought to reconnect forest communities with local user rights, stewardship responsibilities, and the long-term benefits of sustainable forest use. The Master Plan for the Forestry Sector (MPFS), approved in 1989, particularly marked a new era.
when it officially prioritized the devolution of key forest tenure rights to local communities, as long as these communities were willing and able to manage them. The Forest Act 1993 established different forest tenure categories and management arrangements between the state and the forest users (Annex I & II). Among different management regimes, the CFUGs are considered one of the few – and certainly the most inclusive and best organized – local institutions. CFUGs have also supported for village development activities, using their funds for matters such as maintaining paths or repairing the school roof. Indeed, community forestry can be seen as a means of facilitating social change beyond a tool to promote the sustainable management of forests. The achievements made nationally in community forestry over the past 20 years – in terms of user participation in decision making, sustainable management and the generation of income - are very significant.

Despite these positive efforts, the land tenure of all the existing forest management modalities officially rests with the government except for private forests, whereas forest use right and product benefit-sharing varies amongst the different management modalities (Annex I & II). The executive committees of different community-based forestry regimes also exercise control rights to a certain extent, transfer rights have often remained exclusively with the government. However, the de-jure forest control rights holders (the forest departments) are frequently criticized for transferring the forest lands for other uses including settlements, infrastructure development, educational enterprises, high tension lines, irrigation canals, and hydropower plants, indiscriminately, and against the prevailing forest policy. It is also often blamed that the governments fail to exercise their control rights to arrest deforestation and forest degradation due to a variety of reasons, including lack of resources and capacity. There are many instances of conflicting sectoral policies that have created conflicting claims over forest products and land use and control rights, eventually resulting in weak governance. For example, there is some overlap of rights on natural resources between the Forest Act 1993 and the Local Self-Governance Act 1999. This overlap in rights means that, under the Local Self-Governance Act 1999, local political units can overrule the management plan and decisions of CFUGs. These local political units have also been given rights over all natural resources within their jurisdiction and they can also charge taxes.

Furthermore, introduction of new property rights without recognizing the traditional system of keeping land as a community property and using land on rotation as swidden farming\(^\text{12}\) to generate various products for their survival made many of indigenous and local peoples totally landless. Centralized administration and nationalization of forests and other resources associated with it such as pasture further marginalized these peoples. Restrictions on the use of traditionally used resources because of declaration of protected areas in their ancestral lands were extremely harsh for their livelihoods. Their traditional knowledge system has been eroded, which further increased their vulnerability.

The mechanism of benefit-sharing among the various right holders as illustrated in Annex II shows that private forest products are discriminated compared to other products (e.g., Value Added Tax (VAT) is applicable for forest products whereas it is not applicable for agriculture products) from the same piece of land. Even in private land, the poor and marginalized people are reluctant to plant trees on the land they cultivate as tenants or sharecroppers due to ambiguities related to the tenure security over the trees. The Annex I & II also indicate that collective management such as CF is enjoying greater benefits compared to other forms of management. Still, community forestry in Nepal faces many challenges, especially in ensuring that the rights of the poorest and disadvantaged are fully respected. For

\(^{12}\) Also known as shifting cultivation or Khoriya Khane (in Nepali), can be defined as a farming system in which temporary clearings are cropped for fewer years then they are allowed to remain fallow.
this, statutory reforms with their strict execution to ensure for all Forest User Group Committees to include proportionate representation of poor, women, IPs, Dalits and other underrepresented community user members are urgently required. The same provisions should be applied in capacity building measures through trainings, sensitization, workshops and other activities at all levels of meetings, discussions and interaction.

Despite the forests being nationalized and local/indigenous communities being alienated from their ancestral communal land and control of these resources, communities continue to conserve the natural resources at landscape level following and observing customary norms, practices, restriction and taboos. Despite several initiations, advocacy and lobbying and demands of indigenous peoples, constitutional and statutory provisions including sectoral laws, policies and schemes do not provide adequate space to recognize customary rights and laws. The land tenure and forest rights defined without recognizing customary laws and practices can reduce the incentives for local or national forest protection and facilitate the over-exploitation of forest resources. For such reasons, statutory provisions should ensure the rights of local forest-dependent communities including indigenous peoples and Dalits to ownership, use and customary management of their forests. If the goal of forest tenure is to enhance communities’ control over the forest resources and the benefits therein, as well as delivering sustained forest conservation, then forest management institutions and policies need to cater to the needs and decisions of all key stakeholders, including forest dependent communities, women, indigenous peoples, and Dalits.

The following policy actions are prescribed based on the discussion detailed above:

1. The discussion makes it clear that State ownership remains the predominant mode of tenure regime in Nepal. Therefore, reforming forest tenure by transferring ownership rights from state to other actors, particularly to local communities who have been managing the forest customarily from many generations, could better contribute to achieving ecological, social, and economical objectives of forest management. Local management of forests will offer a viable alternative in cases where governments have not performed well as lone stewards of the land. For this, a special community forestry operational guidelines (that recognized and integrated fully the traditional and customary practices) needs to be developed for handing over forests to local communities. However, active participation of indigenous people should be ensured in tenure policy formulation and law making processes so that the constitutions and forest operation plans of community-based forests can be revised harmonizing the key strengths of indigenous and customary practices.

2. Though the current policy and institutional mechanisms have scant positive influences on safeguarding and promoting customary practices, it has largely failed to address the needs, unique characteristics and the challenges of indigenous knowledge and customary practices of forest management. An awareness and capacity building program should be formulated to enhance the awareness and capacity of indigenous people and forest users groups particularly those engaged in traditional and customary practices, and other service providers (government organizations and non-governmental organizations) to strengthen the understanding and issues of indigenous people.

3. Securing property rights on forest of indigenous peoples is, then, perhaps the single most important step that can be taken to protect forests where government of Nepal has failed to exercise its right to mitigate deforestation and degradation. Indigenous peoples have a strong interest in managing natural resources sustainably, one that runs deep in their culture and world view, and they are the best suited to sustainably manage the natural resources. Clear and secure forest property rights will decrease resource conflict, will put
the forest sector on a stable footing, will encourage investment, and will thereby contribute to broader social and economic development.

4. The indigenous people like Surels who have been using and managing local resources regulated by well-defined and mutually agreed open rights and rules, and backed by various social controls and sanctions indicates them as judicious users of the forest resources of their area. Adoption of a conducive policy formulation process recognizing and integrating the strengths of these age-old systems, and the rights of indigenous communities will not only make positive contribution to address drivers of deforestation and degradation but also comply with the international obligations of respecting the rights, FPIC and achieve active participation of indigenous people and other local communities in natural resource management.

5. Indigenous knowledge based forests management are dynamic in nature, and are subject to change. Research and study of such dynamism and their documentation is vital to understand fully the policies, socio-economic and ecological implications. Thus research program to explore and document different traditions of knowledge on customary forest management should be developed and executed by government of Nepal in collaboration with universities and research institutes.
Annex I: Categories of forest tenure in Nepal and their associated bundle of rights

<table>
<thead>
<tr>
<th>Categories of forest tenure</th>
<th>Access</th>
<th>Use</th>
<th>Management</th>
<th>Exclusion</th>
<th>Alienation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Private forest</strong></td>
<td>Private land owner can enter in their forest at any time</td>
<td>Land owner can extract, collect, or harvest forest resources</td>
<td>Land owner can invest and choose species and silviculture practices for the management of forest</td>
<td>Land owner can prevent other from entering into the forest land</td>
<td>Land owner have rights to lease, transfer or sell the land and forest resources at any time</td>
</tr>
<tr>
<td><strong>National Forest</strong></td>
<td>General public have access right in such forest except in rainy season</td>
<td>Forest users can collect basic forest products (such as grass, fodder, firewood, etc.)</td>
<td>Legally there is no provision for community involvement in the forest management and decision making</td>
<td>Government can prevent to enter into this forest and also can exclude from decision making process</td>
<td>Government can transfer property right to others such as leasehold company or private sector for a define period</td>
</tr>
<tr>
<td><strong>Government managed forest</strong></td>
<td>Forest users have rights to enter into forest within specified period and months</td>
<td>Forest users can collect basic forest products during specified period</td>
<td>Committee members involve in the decision making and management activities</td>
<td>Committee can exclude the non-users</td>
<td>Collaborative forest users group have no rights to alienate forest land</td>
</tr>
<tr>
<td><strong>Collaborative forest</strong></td>
<td>Forest users have limited access in the forest</td>
<td>Forest users can collect forest products from protected forest as per approved plan</td>
<td>Individual council decides on protection and management of protected forests</td>
<td>DFO and council can exclude non-users</td>
<td>Nobody has right to alienate land of protected areas, though resources can be alienated</td>
</tr>
<tr>
<td><strong>Protected Forest</strong>¹³</td>
<td>Forest users have limited access in the forest</td>
<td>Forest users can extract, collect, or harvest forest resources</td>
<td>User groups have right to decide for the utilization of resources and management of the forest</td>
<td>User groups can exclude the non-members</td>
<td>User groups can allocate some areas of forest to poor group for pro-poor leasehold forest, but can’t alienate the land</td>
</tr>
<tr>
<td><strong>Community Forest</strong></td>
<td>Each member of group has access rights according to approved management plan</td>
<td>User groups have right to decide for the utilization of resources and management of the forest</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

¹³ Protected forest is not Protected Area and it is a part of National Forest. Government of Nepal has developed separate directive to regulate protected forest. Most of the protected forest is declared in the areas of community forests.
| **Leasehold forest** | All members have access to forest land and forest resources | All forest resources can use by the members except those forest products which were produced before leasing of forest | User groups have right to decide for the management of forest | User groups can exclude the non-members | Users group have no rights to alienate land- no sale, transfer, inherit, mortgage or put as collateral |
| **Religious forest** | All members of religious group have access to forest and forest resources | All forest resources can be used only for domestic purposes by the members | Religious groups have right to manage such forest based on approved management plan | Religious groups can exclude the non-members | Religious groups have no rights to alienate land and forest resources. |

Source: Jhaveri et al. (2015); FAO (2015)
### Annex II: Tenure arrangements, bundle of rights and right holders in different forest management system in Nepal

<table>
<thead>
<tr>
<th>Management System</th>
<th>Type of Forestry</th>
<th>Bundle of Rights</th>
<th>Right Holders</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>State/government</td>
</tr>
<tr>
<td><strong>Collective Management</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Community Forest (CF)</td>
<td>Access &amp; benefit (Use Right)</td>
<td>Approve Operational Plan (OP) &amp; handover. Tenure period guaranteeing access (but not ownership) not defined by law, normally for 5-10 years with extension.</td>
</tr>
<tr>
<td></td>
<td>Management (Control Right)</td>
<td>Approval of OP, allowable cut, sets targets for expenses in particular fields, pose taxes, monitoring.</td>
<td>Rights to make management rules and revise management plans. Executive Committee (EC) and hamlet committees guide decisions for CFUG related to protection, plantation, silvicultural practices, benefit-sharing, fund management, and monitoring/evaluation.</td>
</tr>
<tr>
<td></td>
<td>Alienation (Transfer Right)</td>
<td>Revoke rights, can change land use (Giri, 2012).</td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>Leasehold Forest (LF)</td>
<td>Access &amp; benefit (Use Right)</td>
<td>Lease forests for a period of 40 years extendable to 40 years. System of inheritance not defined.</td>
</tr>
<tr>
<td>Management System</td>
<td>Type of Forestry</td>
<td>Bundle of Rights</td>
<td>Right Holders</td>
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<tr>
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<tr>
<td></td>
<td></td>
<td></td>
<td>State/government</td>
</tr>
<tr>
<td></td>
<td>Management</td>
<td>Approves operational plan. Restricts forest type and tree use.</td>
<td>Operational plan provides the basis for forest protection, management, access and distribution of products among the leasehold group members.</td>
</tr>
<tr>
<td></td>
<td>Alienation</td>
<td>Revoke rights, can change land use (Giri, 2012).</td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>Collaborative</td>
<td>Tenure is unlimited, 50% benefits from the forest go to state.</td>
<td>The communities are granted access and withdrawal rights. Local government and communities get 50% of the income from the sale of firewood and timber.</td>
</tr>
<tr>
<td></td>
<td>Management</td>
<td>Approve management plan and it is managed through an annual scheme or 5-year plan</td>
<td>Involvement of both nearby and distant forest users, and is coordinated through a District Forest Coordination Committee dominated by the local forestry department.</td>
</tr>
<tr>
<td></td>
<td>Alienation</td>
<td>Revoke rights, can change land use</td>
<td>x</td>
</tr>
<tr>
<td></td>
<td>Religious</td>
<td>Tenure is unlimited. Sale of forest products for commercial purpose is Restricted</td>
<td>100% benefits go to local religious group for only religious purpose</td>
</tr>
<tr>
<td></td>
<td>Management</td>
<td>Management is defined usually through an annual scheme or 5-year plan</td>
<td>Management plan prescribes protection and management responsibilities</td>
</tr>
<tr>
<td></td>
<td>Alienation</td>
<td>Revoke rights, can</td>
<td>x</td>
</tr>
<tr>
<td>Management System</td>
<td>Type of Forestry</td>
<td>Bundle of Rights</td>
<td>Right Holders</td>
</tr>
<tr>
<td>-------------------</td>
<td>-----------------</td>
<td>------------------</td>
<td>---------------</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>State/government</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Management plan and get 50-70% benefits</td>
</tr>
<tr>
<td>Buffer zone (BZ) CF</td>
<td>Access &amp; benefit (Use Right)</td>
<td>Tenure is unlimited but government approve Management plan and get 50-70% benefits</td>
<td>CF is required to work based on the management plan of the buffer zone approved by government CF has no authority to sell timber to outsiders</td>
</tr>
<tr>
<td></td>
<td>Management (Control Right)</td>
<td>Management is defined usually through an annual scheme or 5-year plan</td>
<td>CF is required to work based on the management plan of the buffer zone approved by government CF has no authority to sell timber to outsiders</td>
</tr>
<tr>
<td>Alienation (Transfer Right)</td>
<td>Revoke rights, can change land use</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>Conservation Area</td>
<td>Access &amp; benefit (Use Right)</td>
<td>Tenure is unlimited but government approve Management plan</td>
<td>Entry through membership.</td>
</tr>
<tr>
<td></td>
<td>Management (Control Right)</td>
<td>Management is defined usually through an annual scheme or 5-year plan</td>
<td>CF is required to work based on the management plan approved by government CF has no authority to sell timber to outsiders</td>
</tr>
<tr>
<td>Alienation (Transfer Right)</td>
<td>Revoke rights, can change land use</td>
<td>x</td>
<td></td>
</tr>
<tr>
<td>State Management</td>
<td>Government forest; Protected forest and National Parks and Wildlife reserves</td>
<td>Tenure is unlimited. All benefits go to the state.</td>
<td>GMF: Only licensee would have rights to get access pursuant to forest rules; Free access for religious purpose. Protected forests: Only licensee would have rights to get access;</td>
</tr>
<tr>
<td>Management System</td>
<td>Type of Forestry</td>
<td>Bundle of Rights</td>
<td>Right Holders</td>
</tr>
<tr>
<td>-------------------</td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>State/government</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>National Parks/WR: Access restricted but can be opened for grasses.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Management (Control Right)</td>
<td>Management is defined usually through an annual scheme or 5-year plan and protected through guards (army and armed policy).</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Alienation (Transfer Right)</td>
<td>Full ownership</td>
</tr>
<tr>
<td>Private Management</td>
<td>Private forest (registered or nonregistered)</td>
<td>Access &amp; benefit (Use Right)</td>
<td>Provide written permission to sell forest products in the market</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Management (Control Right)</td>
<td>Restriction on growing certain species and also imposed VAT unlike on agricultural products grown on private lands and necessary to pay land revenue</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Alienation (Transfer Right)</td>
<td>X</td>
</tr>
</tbody>
</table>

Source, Bastakoti & Davidsen, 2014; Giri, 2012, and Acharya et al., 2008
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