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Our Cover

Timber obtained from private forest, piled up for transportation, for selling in timber depot

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Ministry of Forests & Environment
Government of Nepal

Regulatory challenges relating to the sale of timber and other forest products from private and community forests in Nepal

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SUMMARY

The first National Forest Policy of Nepal was developed in the year 1976. It has highlighted the need for people's participation in the forestry sector. Master Plan for Forestry Sector (MPFS), approved in 1989, has also endorsed the concept put forward by the National Forests policy.

The Forest Act 1993 and Forest Regulations 1995 are the two powerful documents that provide all legal provisions pertinent to forestry in Nepal. Chapter 5 (article 25) of the Act deals with the provisions of handing over government forests to the community so as to develop, conserve, use and manage the forests and sell and distribute the forest products independently by fixing their price according to the approved work plan. Similarly, Chapter 4 of the Forest Regulation has provided the determining process for a Community Forests. Forest Act has provisioned (Chapter-8) the concept of private forests. One of the important provisions is that the owners of the private forests may utilise or sell and distribute the forest products. In addition, the private forest owners can fix the price of their products.

As Acts and Regulations are not a static document and are amended with respect to the demand of the stakeholders. Initially, the Forest Act was amended in February 1999. The latest amended version of the act has been published in Nepal Gazette in 2019. This paper provides a brief glimpse on policy formulation process in Nepal and make a comprehensive review of policies, acts, regulations and other directives, specifically aimed at timber sale,

INTRODUCTION

The National Forest Plan of Nepal developed in the year 1976 AD. is the pioneer document in forestry. It has highlighted the need for people's participation in the forestry sector. The concept put forward by the National Forest Plan was endorsed by the Master Plan for Forestry Sector (MPFS) prepared in 1988 and subsequently approved in 1989. One of the objectives of this plan was to meet people's basic needs for forest products on a sustained basis. It has twelve programmes: six primary and six supportive. This plan emphasised on giving high priority to the local communities. Wood based industries development programme was identified as one of the primary development programmes that aimed at facilitating the conversion of wood into commodities needed by the people and to contribute to economic development through industrialisation. MPFS has also identified the type of Act and Regulations that need to be formulated in addition to suggesting on the institutional set-up that attracts private sector involvement. Recently, a review on the implementation status of MPFS was conducted in 2014. The review identified a huge gap in the demand and supply of raw materials for undertaking forest-based industries, also in addition to absence of supportive policies for its promotion. Consequently, the review spells out that "the assured supply of forest products that was needed for sustaining and enhancing Nepal's forest-based industry does not yet exist, although raw materials are now increasingly being supplied from community and private forests" (Forestry Sector Strategy (2016-25, page 3).

The Forest Act 1993 and Forest Regulations 1995 are the two powerful documents that have included all legal provisions pertinent to forestry in Nepal. Chapter 5 (article 25) of the Act deals with the provisions of handing over government forests to the community so as to develop, conserve, use and manage the forests and sell and distribute the forest products independently by fixing their price according to the approved work plan. Similarly, Chapter 4 of the Forest Regulation has provided the determining process for a Community Forests. The Regulation puts forward various articles that describes the constitution and registration of the Users' Group and the process of preparing Community Forestry Work Plan and collection, sale and distribution of forest products. Similarly, provisions relating to private forests are laid out in Chapter 8 (article 38) of this Act. The Act has provisioned that owner of private forest may develop, conserve, manage the private forest and utilise or sell and distribute the forest product by fixing their price according to his/her own will. The Act has also provisioned the process of issuing certificate of private forest ownership.

Similarly, the Forest Act has provisioned (Chapter 8) the concept of private forests. One of the important provisions is that the owners of the private forests may utilise or sell and distribute the forest products. In addition, the private forest owners can fix the price of their products.

As Acts and Regulations are not a static document and are amended with respect to the demand of the stakeholders. Initially, the Forest Act was amended in February 1999. Subsequently, this Act was amended in 2019 and the amended version of the act has been published in Nepal Gazette in 2019. The act has further clarified the process of handing over national forests to the community (Chapter 5, Section 18) and the process of preparing Operational Forest Management Plans for community forests.

Despite these reforms in Act, Regulations, Directives and Guidelines, there are various regulatory challenges relating to the sale of timber and other forest products from private and community forests in Nepal. Consequently, construction timbers are being imported from other countries and its scale is increasing. Where did we go wrong? It is necessary to dig out the regulatory challenges faced by community forests, and private forests (both registered and unregistered) in Nepal.

This activity was undertaken under the second phase of the project (EnLiFT 2, ACIAR FST/2017/037), which commenced on 2018 AD is being implemented in two hill districts (Kavre and Sindhupalchok) of Nepal and led by Professor Dr. Ian Nuberg at the University of Adelaide.

OBJECTIVES

The overall objectives of this paper is to provide a brief glimpse on policy formulation process in Nepal, and discuss on the policies, acts, regulations and other directives, specifically aimed at timber sale.

FINDINGS OF THE REVIEW

Glimpse on policy formulation process in Nepal

Policy formulation in Nepal, in general, is a lengthy process. It applies in the development of policy in forestry discipline. Normally, policy paper originates from the preamble that states the various opportunities along with the various activities carried out in this sector in the past. It also tries to identify the existing problems and its challenges and the necessity of formulating

the new policy. In the policy paper, institutional set up is also proposed that will translate the policy into action. The economic responsibility is also mentioned in the policy paper. The policy paper also embraces provisions of Acts and Regulations that are needed to implement the policy into action. And the policy paper normally would have the provision of revisiting its past implementation status.

Once the draft policy document is ready, the concerned ministry approves it and sends to other ministries and National Planning Commission to seek comments and suggestions. After incorporating the comments and suggestions received from ministries and the commission, the concerned ministry submit the policy paper to the Council of Ministers for final approval. The Council of Ministers holds discussions and if necessary, it sends to the respective cabinet committee for refinement. With recommendation of cabinet committee, the Council of Ministers then approves the policy paper. The recent policies related with forest in Nepal is provided in Table 1 below. |

Plan and Programme Development and Approval Process (Fiscal policy)

The genesis of planned development in Nepal commenced on the year 1956. Since then, several three-year plans and five-year plans have already been introduced. Presently, the fifteenth five-year plan (2020/21-2024/25) is in operation. The National Planning Commission (NPC), chaired by the prime minister, guides the planning system at the central level. After the federalization in the country, the provincial governments are also preparing provincial periodic development plans.

Policy and programme get into force once the Government announces its annual policy and programme in the parliament. The head of the state proclaims such policies and programmes of the government. The announcement covers almost all sectors of the government that provide service and conduct other business. Once the policies and programmes are passed in the parliament, then it becomes the policy and programme of the Government for that fiscal year.

But before the head of the state proclaim the policy and programme, a lot of internal exercise takes place in the concerned ministries, departments and in many cases at district level. Once concerned Ministry decides the policies and programmes, it goes to the NPC for further discussion and budget allocation. NPC details out every programme with the representative of the concerned Ministry, and Ministry of Finance and NPC allocates the appropriate budget for implementing them as appropriate. The Financial Procedure and Fiscal Accountability Act 2019 has explicitly mentioned the role of the NPC in budget formulation and allocation process. As per the Act, there is a resource allocation committee in place headed by vice chair

of the NPC. NPC has set a standard process for budget allocation which is mandatory, and all sectors of the government have to abide by the norms while developing their specific programmes. After discussing with the NPC and Ministry of Finance, the concerned ministry prepares final policy and programme and sends it to the Office of Prime Minister and Council of Ministers. The Office of Prime Minister and Council of Ministers, in consultation with concerned ministries, gives final shape to the policy and programme. The final document then goes to the Council of Ministers for endorsement. The head of the state proclaims the endorsed policy and programme document in the federal parliament.

Based on the policy and programme, the concerned ministries prepare budget programme and discuss with the NPC and the Ministry of Finance. Especially the Ministry of Finance organizes focused discussion with cost centre heads regarding the proposed programme's direct benefit to rural poor, employment opportunities, and overall output and relevance. Once budget programme is through from the Ministry of Finance, it is approved by the Council of Ministers and is announced in the Parliament by Finance Minister. As per the Constitution of Nepal, it is mandatory to announce the budget programme for coming fiscal year on 15th Jestha (end of May). The fiscal year in Nepal starts from mid-July every year.

In this context, Government of Nepal announced its policy and programme recently (15 May, 2020) 02 Jestha, 2077 in the Federal Parliament for the fiscal year 2077/2078 (BS) and it has been endorsed by the Federal Parliament. Of the various Government policies and programme, "Forests for Prosperity" is one of the major programme in the forestry sector. It is expected that the programme would increase the production of wood and non-timber forest products, boost up forest-based industries through infrastructure development attracting private sector in this field. Appropriate budgets are allocated to implement the activities envisioned. It is expected that the prevailing policies, act and regulations will be strictly followed while implementing approved activities in the field. Ministry of Finance provide the details of budget allocation as per the activity ([http:// www.mof.gov.np](http://www.mof.gov.np))

Table 1: Recent forest policies in Nepal

Policy	Provisions
National Forest Policy (2019)	The recent forest policy of the country has put forward 11 objectives (article 6.2). The policy aims at using forest resources on sustain basis. Article 8.3 specifically aims at development of forest area, development and expansion of forest-based industries including Non-Timber Forest Products. The policy also aims to help private forests owners through providing soft loans (article 8.6) and deals extensively on the strategy of private forest development.

<p>National Agroforestry Policy, 2019 Approved by the Cabinet in 2019</p>	<p>One of the objectives of this policy is to enhance livelihood of people through generating employment and other income generating activities (Article 5). Article 6 of National Agroforestry Policy (2019) has provisioned various new strategies and working policies that supports the development of agroforestry in community land, private land in all the three (federal, provincial and local level) systems of government. The strategy covers construction of trails, providing irrigational facilities and technology for agroforestry development. It has also provisioned to facilitate agroforestry primary development and processed product value addition and to develop agroforestry business plan. The provision of loan arrangement and facilitating tree insurance for private tree growers is a paradigm shift in promoting agroforestry in private land.</p> <p>Article 6.4.2 of the policy is oriented towards providing relief on the loan and interest if the agroforestry practices have problems originating through natural calamities. Government will provide quality seedling distribution that are recommended for a particular agroforestry model. But it must be noted that these are only policy provisions, these provisions have to be endorsed by Act and Regulations for its implementation.</p>
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Forest Act and Regulations, Directives related with timber sale

Once the policy gets approval, the formulation of respective acts begins. The process of developing the acts is more or less the same that have been stated above. It is also a very lengthy process because various ministries are involved in its formulation, validation and to ensure avoiding duplications. Ministry of Law, Justice and Parliamentary Affairs and Nepal Law Commission has a great role to play in formulating the Act. Similarly, once the act is approved by the parliament, the regulations are prepared. Table 2 provides Forest Acts and Regulations and their key provisions. Regulations are approved by the Council of Ministers. Actually, the regulations are very important to translate the provision of the acts into action. Acts and Regulations, once approved, get published in Nepal Gazette.

Table 2: Key legal provisions related to forest product business

Act/ Regulation	Key provisions related to forest product business and marketing	
	Community Forests	Private forests
Forest Act, 1993	Provisioned CFUGs to sell and distribute the Forest Products independently by fixing their prices according to Work Plan (Chapter 5)	Owners of the private forests may utilize or sell and distribute forest products. Private forest owners can fix the price of their products (Chapter 8)
Forest Regulation, 2051	Chapter-4 of this regulation put forward various articles that describes constitution and registration of the Users' Group and the process of preparing Community Forestry Work Plan and collection, sale and distribution of forest products.	Registered private forests owner may transport the forest products of the private forest to the concerned District Forest Office along with the recommendation of a member of the concerned Village Development Committee or Municipality, explicitly mentioning the category and quantity of the forest products to be endorsed by the Forest check posts located en-route (Chapter 7)
Forest Act (2019)	FUGs can fix their own price for forest products (Chapter 5, article 18) The amended act has further clarified the process of handing over national forests to the community (Chapter 5, Section 18) and the process of	

	<p>preparing Operational Forest Management Plan.</p> <p>This act has provided some scope of opening forest based industries in Community Forests and has open up the possibility of wild life farming.</p>	
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Directives of Forest Ministry

The Ministry of Forests and Environment (MoFE) brings out directives, and manuals for clarifying the provisions of acts, regulation to be implemented in a more convenient, transparent, competitive and justifiable manner based on the previously proclaimed Act, regulation directives. Sometime the new directives provide additional clauses as well. Table 3 gives a glimpse of recent directives of Nepal Government on sale of timber and fuel wood from community forests

In this direction, the Ministry of Forests and Soil Conservation (now MoFE), brought out a directive solely devoted to the collection of timber and firewood obtained from community forests and its sale, in the year 1915 and is still in force.

Table 3: Directives on collection and sell of timber/ fuel wood from community forests

Directives	Main provisions	Implications
<p>Directives for collection and sale of timber/ fuel wood from community forests, 1915.</p>	<p>“Forest User Groups should complete the harvesting timber, hauling, within October 17to 28 May of each fiscal year. But transporting them in the depot can go till end of 14 June” (Chapter 1, article 4).</p> <p>This directive has provisioned on selling timber, and fuel wood outside Forest User Groups. It has laid five</p>	<p>Forest User Groups are discouraged to sell their forest products outside their groups.</p>

	<p>points procedures for such sale. Forest User Groups has to follow bidding process if they have to sell for commercial purpose.</p> <p>Chapter 3 provides rules on timber marking, cutting, hauling, harvesting and transporting up to timber.</p> <p>Chapter 5, deals with sale of timber outside Forest User Groups. Article 33 provides auction procedure the concerned CFUGs has to follow. The procedure consists of 10 important rules with several annexes to follow and appears to be complicated for Forest User Groups follow.</p>	
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STATUS OF FOREST-BASED ENTERPRISES IN NEPAL

Despite the prevailing provisions of developing industries based on forest products they are not flourishing these days. The case applies to enterprises run by private and community level. Almost all forest-based enterprises are running in low capacity. One of the important reasons is the availability of raw materials.

In order to examine the status of forest-based enterprise in Nepal, and to make appropriate recommendations to the Government, the Ministry of Industry, has formed a task force in 2018. The task force examined the industries based on forests, agriculture and mineral resources of Nepal. It found that almost all forest-based industries, which were in operation in the past (Sal seed, churi fruit, and match factory) are not functioning and those based on Khair tree and resin are functioning in low capacity. One of the reasons of this was unavailability of raw materials to run the industry in full capacity.

The task force has revealed that although the policy documents are in place, they are not being implemented properly in the field. Provisions stipulated in the Forest Act and Mineral Act are different in terms of royalty fixation. The task force has revealed that almost all forest-based enterprises (large, medium and small sized) depends on the raw materials from other sources (private, government and community forests) and these industries in most cases are not running in their full capacity because of the shortage of raw materials. The task force has suggested that private forests should fix their own price for timber sale. Local government should facilitate the insurance facility for theft and unforeseen natural calamities and provision of soft loans for agroforestry development and production enhancement (value addition).

Some of the recommendations of the task force were-

- Land Use Policy, 2012 of the Government needs to be materialised for enhancing enterprises. Forests needs to be managed to obtain resources on sustained basis.
- Trees grown on private land should be insured in terms of theft and other unforeseen calamities.
- Private enterprises should use the modern tools and technology for reducing the cost of production.

Similarly, a study commissioned by the Ministry of Forests and Soil Conservation, carried out by Mr. Dangi (2013) and four other senior officers of the Ministry of Forests and Soil Conservation has identified several factors that are hindering the collection of timber, firewood and selling of these materials. One of them is government agencies are seen as controlling institutions rather than facilitators. (Task force report on problems perceived in institutions and agencies involved in the collection of timber, firewood and selling. Ministry of Forest and Soil Conservation, 2013

Paudel *et al* (2018) have indicated that five factor – (resources, market, policy, institutions and external) are responsible for development of forest-based enterprises in Nepal. However, it has been pointed out that existing legal and administrative procedures do not encourage forest-based enterprises to develop.

Community-based forest enterprises

According to the data of the Office of the Prime Minister and Council of Ministers a total of 45,000.00 hectares of national forests has been handed over to communities. About 40% of the total forest area of the country is being managed by communities (OPMCM, 2019). This figure may provide some scale of forest-based enterprises throughout the country. It has been reported that a total of 1,829 small and cottage industries have been established in the country (Smbriidhi ko Arambha, 2019). It is difficult to pinpoint the exact date of commencement of community-based forest enterprises (CBFEs) but small-scale enterprises (Lokta, Chiuri, Soap nut) are being run by the communities since a long time ago. However, the Fifth Community Forestry National Workshop held in 2008 can be taken as a landmark in enterprise development. Since then, CBFEs are in operation with the production of various items based on Non-Timber Forest Products.

Paudel and Paudel (2010) argue that there are various policies and regulations for operating small-scale enterprises in Nepal. These include the Industrial Enterprise Act 1992, the Companies Act 2006, Cooperative Act, 1993, and Forest Act 1993. These policies and regulations are equally valid for running of forest based small-scale enterprises at the community level.

Recently in 2018, the Asian Centre for Development Private Limited has undertaken an assessment of factors associated with success and failure of CBFEs in eight different districts of Nepal. Table 4 summarises the assessment of the conditions for success and failure of CBFEs.

Table 4: Factors responsible for success and failure of CBFEs

Factors	Conditions for success and failure
Investment	Enterprises with adequate investment for infrastructure and other facilities are successful while the enterprise with inadequate investment are less successful or have failed
Partnership	Partnership of the enterprise with other business partners including private sector leads to successful enterprise
Forest area	Community forests having large areas are generally more successful than CFUGs with the smaller areas.
Raw material Supply	Sustainable supply of raw materials lead to success of enterprises

Households	Enterprise in which there is adequate number of households having high level of willingness towards enterprise development is successful
Income and employment	Higher income and employment generated from the enterprise leads to success of that enterprise
Gender and social inclusion	Inclusive enterprises are more successful than the enterprise with elite capture
Transparency	Transparency in all activities leads to success of CBFs
Benefit sharing	Enterprises with fair and equitable sharing of benefits are successful
Production quantity	Adequate production quantity in which benefit is higher than the cost of production is needed for the successful enterprise
Market status	Availability of market is needed for successful enterprises
External support	External support at the initial phase leads to the success of enterprises as adequate resources is required infrastructure development
Networking	Enterprises which have good networking with other organisations are found to be successful

Adopted from Asian Centre for Development Private Limited 2018.

The assessment report suggests that “overall the forest policies are gradually progressive about the provisions of enterprise development in the community forestry”. It further says that “these policies are theoretically fine but fail to incorporate the practical aspects of enterprise development”.

Private enterprises based on forest resources

Private forests provide a lot of resources for enterprise development both for large scale and small-scale enterprise in the country. Large saw mills, ply wood factories and veneer factories are in operation only because they obtain raw materials from private forests.

Private forests are providing lions' share of timber for running forest-based industries both in small and big scales in Nepal. Amatya *et al.* (2015) further showed that mainly *Pinus roxburghii* and *Alnus nepalensis*, followed by *Schima wallichii*, are the main tree species grown on private lands that contribute significantly to sawmills in Sindhupalchok, Kavrepalanchok, and Lamjung districts. Official records of the Community Forestry Division of the Department of Forests shows that a total of 321, 867 m³ of timber was sold in the market in the fiscal year 2015/16. The share of timber supply in the market from private forests is very high (83.17 %): higher than those obtained from community forests and government managed forests (CFD 2017) (Table 5).

Table 5: Fuel wood and timber sold in the market produced by different forest management regimes in Nepal

Forest tenure type	Fuel wood (m ³)	Timber (m ³)
Private forests	69,332	267,710
Community forests	20,852	31,285
Government managed forests	17,940	22,871
Total	108,124	321,866

Source: CFD 2017

Amatya and Lamsal (2017) argue that there is still skepticism, mistrust and fear amongst private forest owners, saw millers, and forest administration that prevents the full use of bundle of rights that legal and policy provisions have promised. An unusually slow pace of private forest registration, lengthy and multi-stage processes for obtaining harvesting and transportation permits, and official bans on important commercial species, among others, are found to be the factors that mostly hinder the private forest owners' and tree growers' interests.

Pandit *et al.* (2014) also report that a private tree owner who wants to transport products from one place to another needs to pay the required royalty amount and get the transportation permit (*Chod Purji*) from the District Forest Officer. Amatya *et al.* (2015) have observed that there are more than fourteen steps that private tree owners have to fulfil before harvesting and selling trees planted on their registered private land. These steps are very lengthy and difficult to abide by in practice.

Likewise, Amatya (2013) have carried out a review for INDUFOR. The review identified that forestry programmes in Nepal are not being translated in the field. The overall physical progress is only 87 % whereas the financial one is 83%. The review further reports that the poor progress was because of lack of capacity in implementing the set targets, inconsistencies in legislations related to forests, and lack of good governance. Weaknesses in management of the forestry sector, among other things, have opened up many risks of corruption. Moreover, there are problems of revenue leakage.

Recently, the central Nepal forestry industry value chain map developed by Dr. Craig Johns and his team (Nepal Trip Report, October 2019) (Figure 1) provide a good example of the status of forest-based enterprises of central Nepal

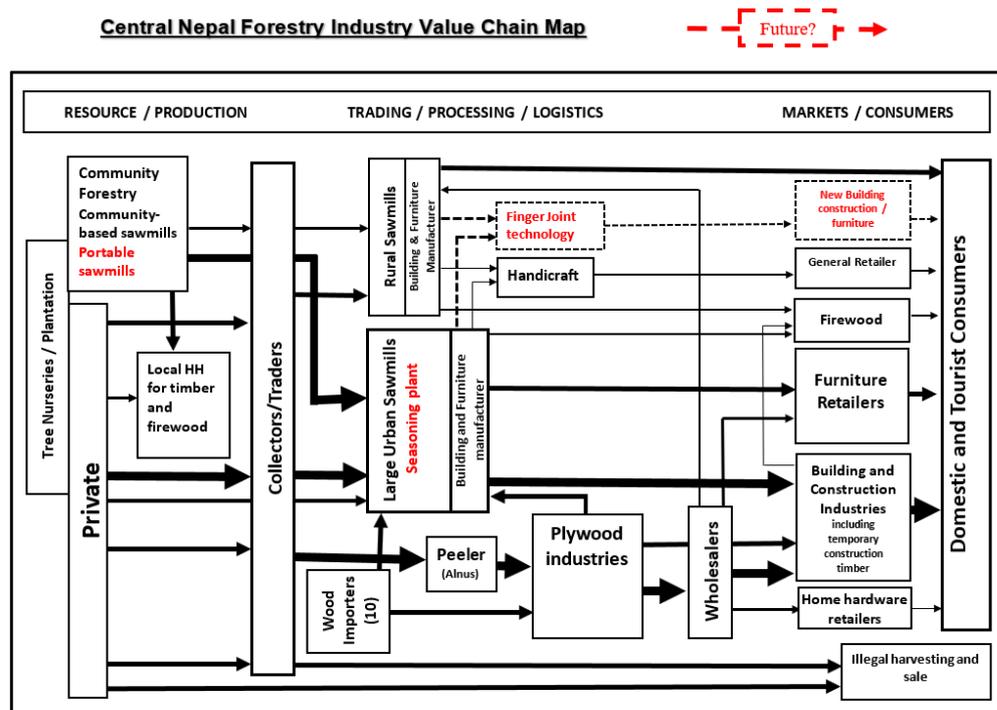


Figure 1: Central Nepal forestry industry value chain map (Adopted from Nepal Trip Report, October 2019 developed by Dr. Craig Johns and his team.

CONCLUSION

The above descriptions show that a robust policy formulation process exists in Nepal. Similarly, Acts and Regulations are laid down and enforced accordingly but in some cases the provisions of Acts and Regulations are dismissed by some order. And a sort of vacuum is created. One such case is the recent order of the office of the Prime Minister and Council of Ministers.

Office of the Prime Minister and Council of Ministers issued an order on 28 May 2020 (2077/02/15). The order says “it has been noted that extensive illegal cutting of trees, including that of Sal trees and others, collection and transportation are taking place which has grossly misused and abuse of forests. Hence, Ministry of Forests and Soil Conservation has been asked to take necessary action on harvesting of trees, including Sal tree and others, collection of logs, transportation as it is, and where as condition.”

This sort of order nullifies the provisions of policy, act and regulations and jeopardize the functioning of sale of timber and other products smoothly.

Additionally, inconsistencies in legislations related to forests, and lack of good governance are also some of the challenges in timber sale. Our attitude towards service delivery and its indirect linkage into corruption is some of the challenges in this case but these have to be probed during workshop.

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ANNEX 1: DOCUMENTS REVIEWED

Policies/ Act and Regulations

Forest Policy, 2076 (BS),

National Agroforestry Policy, 2076 (BS).

Forestry Sector Master Plan (FSMP) 1988 (AD)

Forest Act, 1993 (AD) and Regulation, 1995 (AD)

Study reports

- 1 Study report on Policy Provisions, Gaps, and Practical Constraints in Promoting Small-scale Forest-based Enterprises in Nepal. Micro-Enterprise Development Programme (MEDEP), Kathmandu, Nepal, July 2010.
- 2 Final report of the Assessment of Factors Associated with Success and Failure of Community Based Forest Enterprises in Nepal. A report submitted to the Government of Nepal, Ministry of Forests and Environment, Department of Forests, Community Forestry Division, Kathmandu, Nepal by Asian Centre for Development Private Limited, Kathmandu, 2018.
- 3 Small-scale forest enterprise development in Nepal: overview, issues and challenges. Rome, FAO. 84 pp. Prepared by Paudel N.S., Adhikary A., Mbairamadji J. & Nguyen, T.Q. 2018 Licence: CC BY-NC-SA 3.0 IGO.
- 4 Current Status of Community Forestry in Nepal. Study report submitted by Keshav Raj Kanel, Deputy Director General, Department of Forests, Government of Nepal, to Regional Community Forestry Training Center for Asia and the Pacific, Bangkok, Thailand.
- 5 Task force report on industries based on forest, agriculture and minerals. Government of Nepal. Ministry of Industry, Singh Durbar, Kathmandu, Swoyambhu Man Amatya, Shiva Sunder Shrestha and Chandra Man Dongol, 2074 BS.
- 6 Task force report on problems perceived in institutions and agencies involved in the collection of timber, fire wood and selling. Ministry of Forest and Soil Conservation, BS 2069.
- 7 Nepal Trip Report, Oct 2019. Dr. Craig Johns and his team, October 2019.