

Fostering Partnership:

Report on Regulatory Analysis and Developing a Collaborative Framework for CF and LG

Output 27 of Objective 2 – EnLift 2

Mani Ram Banjade
Naya Sharma Paudel
Bidya Nath Jha,
Mohan Paudel
Krishna K. Shrestha
Hemant Ojha

January 2021

Table of Contents

1. EXECUTIVE SUMMARY	2
2. INTRODUCTION	2
3. CONSTITUTIONAL AND LEGAL PROVISIONS FOR CFUG-LG COLLABORATION	6
4. REGULATORY PROVISIONS FOR POTENTIAL COLLABORATION	8
3.1 RIGHTS TRANSFER AND PERPETUITY	9
3.2 MANAGEMENT RIGHTS: PREPARATION, APPROVAL AND IMPLEMENTATION OF MANAGEMENT PLANS	10
3.3 TRANSACTION WITH MARKET	10
3.4 REVENUE SHARING AND FUND MOBILIZATION	11
3.5 TAX AND SERVICE CHARGES	12
3.6 CHANGES IN FOREST MANAGEMENT MODALITIES	12
3.7 IMPLICATIONS OF FOREST TENURE REFORM ON COMMUNITIES AND INDIVIDUALS	13
5. POTENTIAL AREAS OF COLLABORATION	14
6. POTENTIAL AREAS OF CONFLICTS.....	17
4.1 TENURE INSECURITY	18
4.2 INFRASTRUCTURE DEVELOPMENT INSIDE FOREST TERRITORIES	18
4.3 CONFLICT IN UTILISATION OF WATER RESOURCES.....	18
4.4 SERVICE PROVISIONING.....	19
4.5 TAX COLLECTION BY LGs	19
4.6 POLITICAL INTERESTS:	20
7. FOSTERING PARTNERSHIP: WORKING MODEL FOR ESTABLISHING COLLECTION BETWEEN CFUG AND LG LEADERSHIP	20
8. CONCLUSIONS	23
9. REFERENCES	25

1. Executive Summary

Local institutions often work best for protecting the environment, and minimising risks and maximising benefits for local communities, especially when the interdependence between the community and environment is historically strong. A good example of this is the functioning and resilience of Community Forestry User Groups (CFUGs) over a long period of political turbulence in Nepal. With the recent state restructuring and the rise of elected local government as a democratic institution at the local level, many environmental responsibilities and authorities of local government are overlapping, and at times, competing with those of CFUGs, while there is a unique opportunity for local governments to partner with CFUGs to maximise local benefits and sustain the local environment. However, there is no clarity on policy, or institutional arrangement that enables a robust partnership to emerge and function. A significant gap in knowledge and policy exists as to how, when and why an effective partnership between local governments and CFUGs can be developed and nurtured. This report aims to analyse opportunities to develop a partnership model between local governments and CFUGs with a view to advance SDGs at the local level. By reviewing legal texts, interview with LG representatives, leaders of FECOFUN, Divisional Forestry Staff, leaders of CFUGs and workshops of CF stakeholders on CF - Local government partnership options, we offer a hands-on analysis of the likely scenarios of cooperation and conflicts between CFUGs and LGs under federalism in Nepal and recommend strategies and mechanisms for developing an evolving partnership model that might work for all parties.

2. Introduction

In a global movement promoting democracy, justice and sustainability, decentralisation is now the centrepiece of policy reforms around the world today. Decentralisation as a development approach to provide democratic benefits to the grassroots people has been sought as the mainstay approach around the globe today. This was a result of a long-term dissatisfaction with the centralisation approach to public service delivery which took the path into the new direction towards decentralization in every field (Ahmad et al, 2005). Before 1980, Nepal undertook the policy of forest management through centralized approach chiefly aimed at restoring degraded forests and satisfying subsistence forest needs. While initial thrust rested on giving rights to local government, it was not effectively implemented on the ground, which is largely attributed for not been able to garner needed support of local people. However, in line with the political changes that occurred in Nepal, it has instituted a

drastic change in forest policy towards empowering the locals. The user group forestry, which follows the principles of decentralization and devolution, is the major policy initiative of Nepal after the promulgation of Forest Act 1993. This forestry decentralization in the beginning was comprising three steps: a) formation of user groups (CFUGs), b) decision-making rights for forest management to the CFUGs, and c) benefit decentralization in CFUG (Gilmour and Fisher, 1989).

Decentralisation in natural resource management (DNRM) is a major strategy in a host of developed and developing countries around the world. In Australia, the Natural Heritage Trust, the national environmental program, introduced in 1996, made decentralised governance the dominant response to natural resource problems (Lane et al., 2004; Morrison, 2007). Developing countries such as Nepal, the Philippines and Mexico have established national programs on DNRM, often initiated and supported by the work of national and multi-national donor agencies and international NGOs. The United Nations has been a prominent supporter of DNRG (Leach et al., 1999). DNRG has become popular in response to examples of failed top-down planning and management of natural resources (Ostrom, 1990; Li, 1996; Ostrom, 2003). Supporters of DNRG argue that the benefits are manifold, ranging from improved plan development through to implementation (Gray et al., 2001). It helps harness local agency and knowledge to make and implement context-sensitive plans (Healey, 1998; Li, 2002), enhances equitable process (Scott, 1998) and improves sustainable outcomes (Mahanty et al., 2006).

Meanwhile, community forestry remained a key approach for forest governance globally, and more prominently in Nepal. It is argued that state failure of conserving forest, and resulting massive deforestation, was a key trigger for adopting community-based forestry (Malla 2001, Ojha 2009, Gutman 1997). Despite the rhetoric of community forestry as a success modality, we saw continued contestations between forestry officials and communities managing a patch of forest. The conflicts are observed across use rights, trade of valuable resources, and monitoring aspects. The evolving policies and politics around climate change in general and REDD+ in particular have strengthened the role of the state (Phelps et al., 2010).

Collective action within and between groups, communities and government agencies plays a crucial role in effective DNRG. However, it cannot be assumed that individual actors and groups, who possess unequal power and diverse needs, interests, expectations and capacities, will cooperate within a system of DNRG to manage and use resources in an equitable and sustainable way. It has been argued that cooperation among self-interested rational individuals and groups is often impossible because it may actually harm individual interests (Olson, 1965; Hardin, 1968). In contrast, many writers have suggested that collective action of self-interested individuals is possible by improving institutions (Ostrom, 1990; Agrawal, 2001a). Many critics now have argued that the actions of individuals are not exclusively determined by self-interest, but trust, norms and power influence actions and thereby offset pure self-interest (Mosse, 1997; Petzelka and Bell, 2000).

The Constitution of Nepal 2015 is a historical moment, which converted Nepal from a unitary state to federal one. In line with the new constitution the government of Nepal and legislative bodies are in rush in crafting legal, institutional and operational frameworks in line with federalism. These frameworks are critical in defining power distribution across local, province and federal governments as well as their relationship with citizens and community groups such as (CFUGs). The CFUGs under the unitary state used to enjoy de jure autonomy as perpetual institutions bearing rights to manage and use forest territory handed over to them by the government. They could make decisions regarding management, use, setting price and selling forest resources.

Though government's high handedness in practice, and collusion with a selected yet powerful local leaders and timber mafias, are criticized by various researches, the CF's legal and institutional frameworks and resulting positive outcomes in terms of forest conservation and contribution to community development are acclaimed as exemplary for other sectors and to other countries as well. Many researchers claim that the collusion is originated from the vested interests of timber trade network comprising of some government employees, committee members, village elites, timber contractors and others at large.

The constitution of Nepal 2015, Local Government Operation Act, 2018 (2074 BS) and Forest Act 2019 are three defining legal instruments that essentially shape the future of community forestry. Bagmati Provincial Government has recently enacted its own Provincial Forest Act 2019. Similarly, the Local Government Planning Guidelines 2018 also

details out the possibility of institutional cooperation between local governments and other local institutions. The constitution adopts the principle of collaboration, coordination and co-existence across different levels of government. While constitutional supremacy persists, key to promoting community forestry depends on: i) whether the existing rights of CFUGs are further extended, or at least kept intact; ii) whether democratic virtues and deliberative credentials are improved; iii) whether inclusive and participatory processes are the key norms of CFUG governance; and iv) whether all these frameworks and processes ensure growth, equity and sustainability.

The allocation of power across local, provincial and federal governments also stipulates the authority, responsibility and accountability of these governments in managing natural resources including forests. Under the unitary state, governed largely by the Forest Act 1993, the role of local governments in forest governance was not existence. Now, the local governments are turning to be the key players in managing all kinds of local affairs including natural resources, they have little authority over forests. Introduction of new legitimate player in forest governance brings about the critical elements of opportunities and potential conflicts. Nepal has newly elected local government authorities, which has been place after about two decades of political vacuum at the local level.

Recent policy discourses and stakeholder perspectives show that the role of the state in forest governance in general cannot be underestimated but its role has to be transformed for enabling local participation and linking them to technology, resources and markets. The local governments can be instrumental to play the ‘linking role’.

This report offers a hands-on analysis of the likely scenarios for cooperation and conflicts between CFUGs and local governments under federalism. In the section below we discuss the emerging and existing issues and opportunities under federalism in Nepal in light of unprecedented authority and responsibilities of local governments entrusted to them amidst the sole authority enjoyed by forestry authorities under the previous unitary state.

3. Constitutional and legal provisions for CFUG-LG collaboration

One of the directive principles of the state as defined by the Constitution of Nepal 2015 is establishing an inclusive and just system; and key policy related to forest governance is to conserve, promote, and sustainably use forests, wildlife, birds, vegetation and bio-diversity, by mitigating possible risks to environment from industrial and physical development.

Forests fall under the federal, state and concurrent list of all three levels of governments. ‘National forests’ fall under the jurisdiction of state governments. There is no exclusive authority of local government over forest governance except protection of watersheds and wildlife. As forests are also kept under concurrent powers of federal, state and local governments, the local governments can exercise power as defined by the federal and state governments.

Table 1. Distribution of authority and responsibility between local, state and federal governments in relation to forest sector governance in Nepal

Schedule-5 Federal Power	Schedule-6 State Power	Concurrent Powers of Federation and State	Schedule-8 Local Level Power	Schedule-9 Concurrent Powers of Federation, State and Local Level
National and international environment management, national parks, wildlife reserves and wetlands, national forest policies, carbon services	Use of forests and waters and management of environment within the State	Utilization of forests, mountains, forest conservation areas	Protection of watersheds, wildlife, mines and minerals	Forests, wildlife, birds, water uses, environment, ecology and biodiversity

The federal parliament has constitutional rights and obligation to developing and amending the national forest policies and regulatory frameworks in general, setting standards and mechanisms for carbon services and ensuring international commitments regarding forestry and environment. The federal government also holds the authority to manage national parks, wildlife reserves, and Ramsar wetlands.

The management rights of 'National forests' are vested under state government. All forests under public ownership except protected areas (PAs) are defined as 'national forests', which also include all community-based forest management (CBFM) modalities outside of PAs. In other words, all the community-based forest management area except the private forests fall within category of 'National Forest'. The state government can formulate the laws for managing national forests under the purview of the national forestry policy and federal forestry legislations.

As such the Constitution has given very limited power to the local government in term of forest management. The local governments shall use power considering the federal forestry laws (Forest Act) and the state forestry law. The federal forestry law has already been passed and state forestry laws are under preparation. Forest Act 2019 has specific provisions regarding consultation by CFUGs with local governments while preparing or amending operational plan and preparing poverty reduction and woman empowerment related activities. In addition, the law also opens the door for CFUGs to collaborate with local governments and other actors in forest enterprise and eco-tourism related activities. So, local government can prepare their own forestry laws in line with the federal and state forestry laws and implement them. Nonetheless, as stated in the article 59 and 60 of the Constitution of Nepal and Inter-governmental Fiscal Management Act 2017, the local government will get 25% royalty generated from the forestry sector at the federal level.

Likewise, based on the LG Operation Act (LGOA) 2017, local government has right to collect local taxes from commercial mobilization of timber and NTFPs as per the decision made by the assembly of municipal council. The LGOA 2018 also gave authority to local government in registration and management of community forestry with technical support of forestry agencies. However, the Forest Act 2019 supersedes the LGOA and gives insignificant role and authority to local governments over community forestry governance. The Province National Forest Act 2019 (Bagmati Province) also endorses the provisions of the Federal law. Instead, the new legal arrangements emanated from federal as well as the provincial level retain the authority of government forestry offices, nonetheless, for the first time formally recognizes some role of local governments.

Planning Commission of Nepal issued the Local Government Planning Guidelines 2018 (2075), which describes the detailed steps to be followed while selecting annual programs and activities. Local governments should plan their programs and activities and cluster them into five themes, one of which is forest, environment and disaster management (5.5.3 pages 40-41). There is a provision of forming a thematic committee for each theme led by the council member nominated by the respective local government; other members constituted by two council members and respective section head working as member-secretary.

While developing ward1 level plans and setting priorities, the Ward requires to consult with each toles (Tol/Basti) (5.5.6). The priority should be given to those programs that contribute directly to attaining sustainable development goals. While selecting projects/programs at settlement or hamlet (tol/basti) level, the active community-based organisations (tol development committees, women groups, children's networks, youth clubs, local NGOS, citizen awareness centres, and other groups formed by different government agencies) should also be involved. This offers the space that local CFUGs and tol committees can actively participate in the planning process of the local government.

In following section below we describe the areas of potential collaboration between CFUGs and respective local governments followed by the potential areas of conflict between these two institutions.

4. Regulatory provisions for potential collaboration

As such the Constitution of Nepal has given very limited exclusive power to the local government in term of forest management. The local governments shall use power considering the federal forestry laws (Forest Act) and the state forestry law. The federal forestry law has already been passed and only the Bagmati province has passed its forest laws; forestry laws are under preparation in other states;. Forest Act 2019 has specific provisions regarding consultation by CFUGs with local governments while preparing or amending operational plan and preparing poverty reduction and woman empowerment related activities. In addition, the law also opens the door for CFUGs to collaborate with local governments and other actors in forest enterprise and eco-tourism related activities. Local government can prepare their own forestry laws in line with the federal and state forestry laws and implement them.

¹ The smallest political unit under federal governance system in Nepal.

3.1 Rights transfer and perpetuity

In case of community forestry, Article 18 of the federal Forest Act elaborates that DFO can transfer the forest rights to local communities, which is subject to approval of forest management plan (operational plan). However, State National Forest Act (PNFA) 2019 of State 3 add another condition that recommendation from local government shall require for a CF handover. OP preparation or revision requires CFUGs to consult with local governments. For the CFs that are smaller in size than 30 ha, OP revision has been more eased out by the PNFA as OP revision can be approved now by the Sub-division Office, and shall inform DFO once it is done. DFO has the ultimate authority to punish executive committee members in case of embezzlement.

DFO can take back a CF on the ground of illegal activities, non-compliance of OP or severe environmental damage from the respective CFUG. Federal Forest Act clearly mentions that after the CF is taken back, the DFO must re-handover the CF after completing the due process. However, the State National Forest Act 2019 (State 3) doesn't make it mandatory to re-handover the CF in case the decision of DFO to take back the CF is approved by the State Forest Director.

Collaborative Forest Management (CFM) is now recognized by the law as a separate category. CFM is a joint management modality comprising DFO, local government and CFM groups. CFMs can be handed over to the respective CFM groups by the State Forest Director. The State Forestry Ministry can terminate the CFM modality, which then will be automatically converted to usual national forest. There is no provision of re-handover of CFM to collaborative FUGs once it is taken back.

The DFO takes the key role in preparing an OP and handover of pro-poor leasehold forest to the identified and registered leasehold group. There is no provision of re handover the forest to the leasehold groups.

Community rights are compromised in protection forest, which were previously managed in part and parcel by CFUGs, as conservation supersedes livelihoods of local people. Use rights and other interventions within the protection forest areas are guided by the landscape level framework provided by the federal ministry prepared in consultation with the respective province level ministry.

Private forests are registered within respective (village) municipalities with the recommendation from DFO.

3.2 Management rights: preparation, approval and implementation of management plans

The federal government can implement or ask a respective authority to enforce a specific land-use plan in certain forest areas (Article 10). Federal government, in consultation with the respective state(s), is also authorised to develop strategic plan of any national forest territory that is located within a state or extended in more than one state (Article 11). Wetland inside a national forest area falls under the jurisdiction of federal government (Article 13), where ecotourism can also be promoted.

One notable new provision in National Forest Act 2019 (the State No. 3) is that while developing strategic plan of a district the Divisional Forest Officer shall also involve CF representatives (Article 17). As mentioned above, in community forestry, CFUG prepares forest management plan (operational plan) in consultation with local government, DFO approves and CFUG implements. Whereas for CFM, the management plan is prepared by the DFO in consultation with LGs and Collaborative Forest User Groups, which then is approved by the State Forest Director. In case of pro-poor leasehold forestry, DFO prepares operational plan and respective leasehold forestry group implements the plan. For public land management, respective local governments hold full management rights.

For private forestry, management plan is not required for registration. The owner of a private forest can develop, protect and manage forest as well as use and sell forest products in the market by setting the price of the products.

3.3 Transaction with market

Two of the key features of the recent federal forestry law are its emphasis on ecotourism promotion and forest-based enterprise development. In both the cases, the CFUGs can collaborate with LGs and other organizations. Against these noble provisions, taxes and service charges together with restrictive procedures for extraction and sell makes market interface constraining to the commercial exploitation of forest resources. Additional restrictions apply when forest products from community-based forestry are exported to the market. For community forestry, approval of LG is required when the forest products are transported within a local government. However, DFO's permit for transportation is required for trans-LG transportation or exporting forest products outside of the district.

National Forest Act (the State No. 3) states that the State government can allow local governments to use part of national forest for ecotourism development, and CFUG's permission is required if the area is a community forest (Article 23). CFUGs can also allocate up to 5 ha of its area for ecotourism development (Article 39).

Local governments can protect, develop, manage, set price, distribute and sell forest products in public lands [Article 37(1)]. They can also develop urban forestry and make decision regarding the utilization of the forest products produced there in (Article 38).

Private forest owners can use the forest products independently. However, permission required from the local government, where the private forest is situated, to transport the forest products to another local government for household use. The permission of DFO is required if the forest products are transported to another district [Article 36(5)]. Likewise, the permission from the local government is required to extract and sell forest products for commercial purpose within the local government. A permission from DFO is required when transported the forest products from one local government to another if this is for commercial use. New provision added in Forest Act 2076 is that the individuals, registered organizations and communities can practice agroforestry, cultivation of medicinal plants and wildlife farming [Article 36(7)].

3.4 Revenue sharing and fund mobilization

As stated in the article 59 and 60 of the Constitution of Nepal and Inter-governmental Fiscal Management Act 2017, a local government gets 25% royalty generated from the forestry sector at the federal level. Likewise, based on the LG Operation Act 2017, a local government has right to collect local taxes from commercial mobilization of timber and NTFPs as per the decision made by the assembly of municipal council.

In case of collaborative forestry, benefit distribution across federal, state and local governments, as well as with collaborative FUGs has not been specified in the federal Forest Act. Understandably, forest regulation will specify the revenue sharing.

Whatever fund is generated by CF or CFM groups, they need to spend minimum 25% for forest development; 50% of remaining fund to be mobilised in coordination with local government. Payment for environmental services other than carbon stock and carbon emission reduction shall be as per the provisions of respective forest management plans (Article 44(1.b)). Private forest owners are also eligible to receive the subsidy or payment for managing environmental services [Article 44(2)].

3.5 Tax and service charges

In community forestry, tax remains a key bottleneck, which might create disincentives to forest user groups. Most of the CFs have forests with low productivity, which demands high labour and capital inputs with low return. The heavy tax from federal, state and local governments might over burden community forestry, which apparently will discourage people to invest their time and resources in forest management. If tax and service charge is paid to the different levels of government as is provisioned now about half of the forest revenue will be siphoned out of the local settings. Communities are now paying 15% tax to the national government if timber of certain species (e.g. Sal and Khair) is exported outside of the CFUGs. Under federalism, the communities need to pay additional 20-25% tax: at least 10 percent service tax to the state government's treasury and another 10% to local governments. In case of the State No. 3, CFUGs need to pay 10% service charge for external sell and 0.5% for internal sell. The CFUGs also need to pay 10 % of ecotourism revenue to the state government.

3.6 Changes in forest management modalities

Irrespective of whether a forest is managed as CF or other modalities, the federal government can declare certain forest territories as forest protection areas. While existing CFs inside the protection forest areas can operate as per the ongoing institutional modality, they must comply with the broader framework provided by the strategic plan developed by the federal government.

The National Forest Act 2019 (the State No. 3) have the provision of converting national forest as 'Protection Forest' for a forest territory deemed special from biodiversity, ecological, scientific or cultural point of view.

National Forest Act (the State No. 3) gives the State government authority to convert one management modality to another if felt necessary (Article 17 (3)).

The state government can also allocate part of national forest to research institutions, educational institutions and universities for study, research and educational demonstration [National Forest Act (the State No. 3) Article 19].

The Forest Act 2019 ensures that the private forests shall not be nationalised [Article 35 (4)], which is instrumental for tenure security.

3.7 Implications of forest tenure reform on communities and individuals

Community Forest

Authority of the local governments is very minimal in forest governance, except that the CFUGs required to consult or coordinate with them during plan preparation or spending fund allocated for poverty reduction and woman empowerment. One remarkable change in forest regulations is that the new laws offer an extended legal space for promoting commercial activities: enterprise development and promotion of ecotourism in CF. Similarly, new laws give additional authority to the state and local governments to impose tax in CF products. The tax imposition by all levels of governments is very critical and contested.

Collaborative Forest Management

Now State Forest Director can approve CFM OPs, which earlier used to be approved by the Department of Forests at national level. This will eventually reduce the transaction cost and perhaps increase the access of CFM groups with the State Forest Director.

Protection forest areas

Federal government in consultation with the respective state government(s) can declare a landscape including a part of a national forest as protection forest area (Articles 15-17). The declaration of protection forest areas is done to an area which is deemed significant from the aspects of environment, ecosystem and culture, is susceptible from the point of watershed conservation, biodiversity conservation, or has potential for ecotourism promotion. As the primary focus of the protection forest areas is forest and landscape conservation, the federal government can impose certain management and use conditions in the area. Therefore, it is most likely that the existing rights of local communities will be compromised when there are already operating community forests.

Forests in Public Land

Public lands are owned by local governments; hence management of natural resource therein is under the jurisdiction of the respective local governments. Local governments then can provide the public land to communities for management. The extraction and transportation of forest products within a local government is under the authority of the respective local government.

Private forests

Private forests now can be registered with the local governments; recommendation from the respective DFO is mandatory for the registration purpose. However, the private forest owner doesn't need to produce an operational or business plan for the same.

While stakeholders commonly agree on retaining the existing community rights while formulating new forest laws and regulations by federal, provincial and local governments, they hold contesting views on who should hold what authority and responsibility in community and private forest governance. Main contestations are observed in the authority of local government, discretionary powers of forest authorities, technical service provisioning, forest products extractions and revenue sharing. While community forestry networks were in favour of bringing community-based forestry under local government and redefining role of forestry agencies as facilitators, government forest authorities were in extending their grip in forest governance. Regulatory frameworks are arguably offer new legal spaces that would ultimately promote commercialisation of forestry and entrepreneurship. However, conditions stipulated constrain promotion of forestry enterprises. Sub-sequent regulations and implementation directives are closely sought by forestry stakeholders as they would unfold the policy substance and intent on the ground. Wary also remains whether community rights remain intact in the burgeoning tensions between different levels of government.

5. Potential areas of collaboration

The federal Forest Act 2019 and Province National Forest Act 2019 (Bagmati Province where our study sites are located) mandate CFUGs to 'consult' LGs for preparing or reviewing their operational plan, and disbursement of budget in mandatory activities related to poverty reduction and woman's empowerment. These Acts also open the door for securing partnerships with LGs in infrastructure development and promoting eco-tourism in the territory. Forest Act has adhered provisions of its previous version on status of CFUGs as an independent institution. As CFUGs are independent institutions legally recognized as entities having rights to manage assets and other capitals, they can collaborate with LGs in a range of other activities including enterprise development, physical infrastructure development, environment conservation programs, technical services, complaints handling and conflict resolution, monitoring and evaluation, forest conservation, forest fire control, promoting urban greenery and mobilizing revolving funds. These and other areas of collaboration are elaborated below:

Synergy in ecotourism: The Forest Act 2019 is one step ahead of the Forest Act 1993 in promoting ecotourism in CF territories. As local governments are also promoting tourism activities, coordination between CFUGs and LGs could have a synergetic effect, or least minimise the duplication of similar activities. The CFUGs can seek collaboration beyond local governments. CFUG as an entity can coordinate with Federal Department of Tourism (Kathmandu), Nepal Tourism Board (Kathmandu) and Bagmati Tourism Project (for Bagmati Province) to seek funds and provide their programs to be included. CFUG members can participate in the Tourist Guide training, Nature Based Tourism Trainings and many other capacity development programs run by above organizations with some sort of funding and technology transfer.

Sharing and monitoring: LGs may realistically expect some level of transparency and fairness in CFUG governance and other activities. LGs can coordinate monitoring activities, and CFUGs can regularly share their plans, budget, performances and other information to LGs. Local Government Operation Act (LGOA, 2017) has provided local governments the authority to monitor any project within its jurisdiction and submit report to District Coordination Committee (DCC). DCC can itself monitor the district level projects and its outcome and report to the province and federal ministry if anything found objectionable. This avail the opportunity to LGs to observe any kind of embezzlements in timber and forest product sales.

Collaboration in conservation: Migration of youths from the villages have extraordinarily made shortage of labour in the rural areas. So, there is an acute problem of manpower in forest conservation and development. Likewise, dependency of local people over forest products has also sharply decreased (Paudel et al. 2018). The increased opportunity costs, and limited incentives for local people in forest management related activities has also triggered for decreasing forest conservation initiatives in CFUGs. Individual members also emphasize direct benefits from CF rather than environmental services. Local governments, on the other hand, might put some emphasis on enhancing clean environment. Therefore, CFUGs and LGs can collaborated in forest conservation. Furthermore, wildlife/ biodiversity loss has always been a challenge and a difficult task outside the protected area for the federal forest administration. Local Governments can create an array of working plan/activities that help in protecting wildlife within their territories.

Protecting forests from fire: Recent migration trends of Nepal show unprecedented shortage of labour in the villages. Many youths have either migrated overseas or in the cities. This has added an extra burden on CFUGs to conduct its major tasks such as forest operation, conservation, development activities, fire control and so forth because of minimum participation. While overseas migration is largely temporary, people have migrated to city areas either permanently or temporarily. If in case, fire breaks out in the forest, people may not be available to go to the forest and extinguish the fire. Thus, for preventing fire hazards, CFUGs and LGs should collaborate; LGs can share the cost of hiring a forest watcher during fire-prone season and areas, and when needed help by providing fire brigade. In addition, technology has been advanced since 2010's on fire monitoring in Nepal's forests. International Centre for Integrated Mountain Development (ICIMOD) and Department of Forest and Soil Conservation has set a software-based satellite fire data monitoring and on time dissemination. At this point CFUGs and Local Governments have opportunity to form a fire hazard prevention and control group at the local level. Division Forest Office/Forest Directorates are distributing improved fire-resistant firefighting equipment to local CFUGs. This distribution should be provided to the newly formed groups. Even security offices/personnel at the local level should join the mission to avoid and control fire in the community, public and private property.

Promotion of urban forestry: CFUGs can help the respective local governments in promoting urban forestry. For the purpose, they can provide seedlings and technical manpower to LGs. Similarly, most of the municipalities have environmental officer or environmental section in their structure, and they annually allocate some budget on environmental conservation. CFUGs on the other hand has a long history of seeds and seedlings production and plantation management. Therefore, if CFUGs and LGs arrive at a collaborative venture for afforestation of city areas, there will certainly be better outcomes.

Infrastructure development: Studies shows that between 1990 to 2010, at least 29% of the CF funds were incurred in social infrastructure development such as trails, roads, schools and others. There are several evidences where LGs and CFUGs are investing in constructing the same infrastructure (e.g., in Hilejaljale Ka CFUG of Banepa 2 recharge ponds were constructed lately: one by municipality and another by the CFUG in collaboration with DFO). The lack of coordination often leads to the duplication of works and reduces the opportunity of efficient allocation of resources. Also, LGs have not gained so much experiences as CFUGs have gained in case of Environmental Evaluation as directed by

Environmental Protection Law 2019. CFUGs can be instrumental in sharing the knowledge and information regarding environmental hazards of infrastructure development and potential safeguards in ensuring sustainable development imperatives while developing any infrastructure.

Resource utilization: Community Forestry Guidelines of Government of Nepal has made it mandatory for CFUGs to spend a fixed percentage of its fund in poverty alleviation and forestry activities. LGOA also gives mandates to LGs in allocating funds for the marginalized community. To avoid the duplicity, both the institution must come together at the time of pre planning, and prioritize their resources at most needed area. Municipality can allocate revolving funds in those CFUGs which do not have much fund so that they could be benefitted.

6. Potential areas of Conflicts

The Forest Act 1993 is considered a significant milestone in ensuring strong tenure security to local people managing the forests. During the law making process, the local government was just set up and didn't seek for its role. Local Self-governance Act 1998 envisioned for the stronger role of local governments in forest governance but it got stagnated and regulations was not promulgated by the government. So, local governments had no legal role over forest. During the decade long Maoist insurgency (1996-2006), elected local representatives had little say on forest and other local affairs. Transition was long (over a decade) after the peace process mainstreamed the Maoist insurgency and constitution institutionalized federalism. Local governments are constitutionally made powerful and newly elected local leaders have a pressure of collecting huge amount of tax to meet the burgeoning local development ambitions.

The new Federal Forest Act 2019 doesn't offer much authority to local governments. However, during the workshops with local government authorities, they invariably and explicitly expressed that they would like to closely monitor the CFUG activities and take necessary actions if they found the CFUGs not operating properly. As discussed below the conflicts between the CFUGs and local governments are likely in the areas of rights claim, use of forest territories for infrastructure development, use of water resources, providing service to local CFUGs, leadership roles (power exercise) and tax collection by LGs.

6.1 Tenure insecurity

There are evidences when CFUGs experienced various levels of tenure insecurity from the government forestry officials in the past largely in their attempt to co-opting CFUG institutions, imposing additional constraints on forest product extraction and sell, and adding technical and documentary burdens to the CFUGs. CFUGs also fear the similar situation and likely conflict with LGs, if authorities and responsibilities are not made clear from the onset while defining CFUG-LG relationships.

6.2 Infrastructure development inside forest territories

People and their representatives have high aspirations for local infrastructure development, mainly developing motorable roads. Local governments are also perceived as Singhdurbar² at doorsteps; and hence perceive to hold all the authority in making decisions on any local infrastructure development. Many LG leaders are not aware of the international agreements related to forests and environment, nor are they cognizant of the environmental consequences of their interventions. Whereas in community forestry people have sacrificed/compromised their short-term forest needs (banned grazing, regulating/restricting forest product use, etc) or actively contributed in forest protection, plantation and undertaking other forest management activity. Without consideration of the implication on soil erosion and land-slide, or the conservation of forest, local government's attempts to overriding forest users' right to prior consent, or recognition of their previous efforts and current interests, the conflict is likely to escalate in many places. One of the FECOFUN leaders said in a meeting in Kavre:

“We are not against infrastructural development but such interventions must undertake less environmental damage and local government should inform and take consents from CFUGs prior to constructing any infrastructures inside the forest area.”

6.3 Conflict in utilisation of water resources

In many places that can potentially supply water to the nearby towns also face conflict over who holds the rights to allocate and use water. Decreasing water availability and increasing population in towns have made water as a very scarce resources, and upstream-downstream

² The place that hosts the headquarters of the Government of Nepal.

conflict escalate in many places in Nepal (Devkota et al. 2018, Paudel et al. 2014). In CF areas, CFUGs might claim the rights over water, whereas LGs might find it offensive for constricting the constitutional rights of managing natural resources under their territory. CFUGs normally do not want to give water originating from their forests or may like to claim payments for their contribution to conserve water resources. Interestingly, Nepal's regulatory framework vests the ownership of water resources under the state (Shrestha, 2009).

6.4 Service provisioning

One of the contested domains in CF in the past was that the government forest authorities retained de facto authority of providing technical services required to the CFUGs. Whether LGs offer such services and whether the CFUGs receive such services when and if they wanted is a great concern. CFUGs are mainly governed through Division Forest Offices which are under the Provincial Governments. However, the forests also are put under concurrent rights of federal, provincial and local government, some role for LGs in the CF is inevitable. This may lead to a new areas of contestation in the long run, and can only be settled through local level forest laws without conflicting with the provincial/ national forest laws.

6.5 Tax collection by LGs

Under federalism, the federal, provincial and local governments have the rights to impose tax on natural resources. They have already started levying tax on CF products. FECOFUN³ is leading the protests against these impositions. If the proposed tax by all three levels of government is kept, CFUGs may need to pay over 40% tax on their forest products. If tax system is not revised, there won't be minimum incentive for CFUGs to manage CFs. Multiple taxation on the CFUGs may have negative consequence on institutional sustainability, which may lead to resource depletion. On the other hand, LGs are resource less in this beginning phase and seek some support from CFUGs. This contradiction may bring up a conflicting situation in the future.

³ Federation of Community Forest Users, Nepal or FECOFUN is probably the largest civil society organizations in Nepal that advocates for community rights over forests.

6.6 Political interests:

Though not visibly exhibited yet, conflict between CFUG leaders and LG elected representatives is very likely. The local government representatives, particularly the mayors/chairpersons, deputy-mayors/vice chairpersons and ward chairs consider themselves mandated to oversee all local affairs, and might expect to be recognized and respected by the CFUG authorities. They may feel insulted if CFUGs become more resourceful and powerful than them. Due to likely better political connections and larger political legitimacy, the elected leaders of local governments might hold greater social authority and legitimacy, thereby hold greater power. In this situation, the local government authorities may start dictating CFUG's decisions and plans. As CFUGs are autonomous institutions, they certainly might resist resulting into enduring conflict between these two institutions.

7. Fostering partnership: Working model for establishing collection between CFUG and LG leadership

Given the unfolding relationship between CFUG and LG, it is a vital time to identify areas for collaboration and develop / trial a functioning model of collaboration. Below we have identified five elements of a potential model to establish and foster a model for collaboration between CFUG and LG.

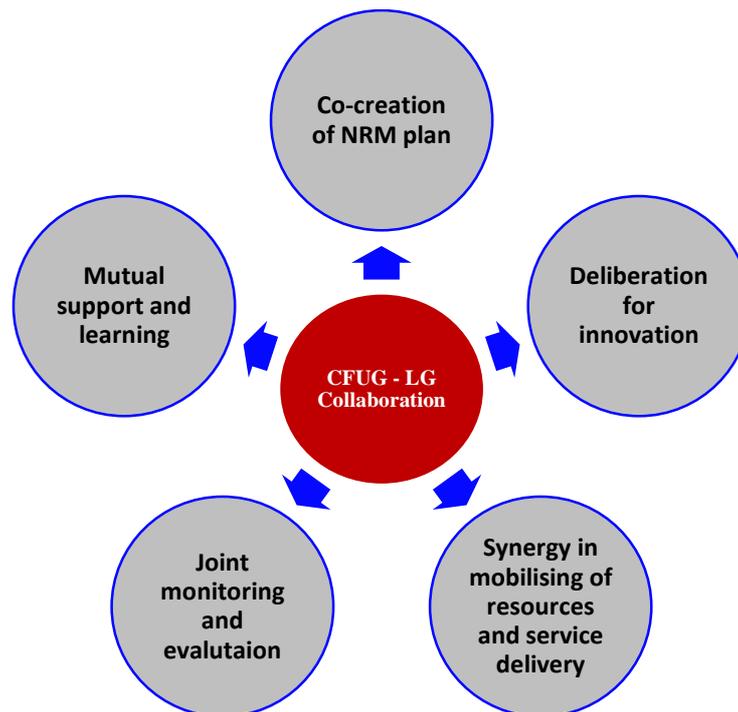


Figure: Collaborative Model for CFUG and LG

1. **Co-creation of NRM plan:** Local governments are mandated to collect the project demands from local people from each hamlets or settlements. They required to identifying program and plans and prioritising them in consultation with local community groups. So, CFUGs are in perfect position in co-creating plan and providing valuable inputs in local project identification including needs assessment and prioritising plans as projects that become the projects of the local government. Similarly, each CFUG can invite ward office to support in CFUG planning process. Forest Act 2019 also mandates CFUGs to coordinate with local governments while planning poverty reduction related activities. Moreover, CFUGs also requires to get recommendation from the respective local government while sending the revised operational plan of the CFUG. Palikas (LGs) can also help in identifying, establishing and sustaining forest-based enterprises by individual CFUGs, multiple CFUGs or individuals. In the making of plan for PES, CFs providing other environmental services such as carbon sequestration and watershed conservation, the Palikas can also facilitate in establishing upstream-downstream linkages by examining the contribution of CFs in water source conservation and supply, thereby setting up royalties channeled to the respective CFUGs from the downstream communities, who receive the services.

CFUG and LG as local institutions can promote the cocreation of initiatives (‘doing it together’), by making use of their collective intelligence at the local level. This can involve processes of collaborative envisioning, analysing scenarios, and setting pathways through strategic deliberation. Discussing and agreeing on a shared understanding and analyses of the problem, as well as long-term commitments, are critical in co-creation of NRM plan. It is important to clearly defining complementary roles and taking joint decisions are also factors present in effective joint implementation of the NRM plan. These efforts would reinforce legitimacy and democratisation, especially if aspects of equity, representativeness, transparency, and accountability are considered.

2. **Deliberation for innovation:** Monthly strategic deliberative forums can be established between CFUGs, LGs and other stakeholders: Local governments are mandated to form a thematic committee (bishayagat samiti) to oversee forest, environment, and disaster management. The committee is responsible for facilitating planning process which starts with identifying local community groups and NGOs and organize meeting with them as part of local government's annual planning process. Local governments have also started to engage with palika-level FECOFUN, and have been organizing coordination meeting with CFUGs at ward level. To increase the relevance and effectiveness of these initiatives, deliberative forums at ward and palika levels. At ward level, a deliberative forum comprised of all the CFUG representatives from the ward, representatives of women's groups and other interest groups and the ward representatives. At the palika level, the deliberative forum headed by the thematic head of the Forest, Environment and Disaster Management should be formed, which should also include representatives from Sub-division Forest Office, FECOFUN, FENFIT, representatives from other forest based industries from the area, and NGOs. The forum would reflect on the progress of ongoing initiative in the area, help attain the economies of scale by bringing resources and technologies, and promote entrepreneurship in the area. The forum can also lead the process of developing landscape level programs and plans and provide necessary technical and other services to the respective CFUGs, as and when demanded. CFUGs and LG can engage in open innovation, through the initiative of 'deliberate disruption' to tackle the urgency of tackling equity and sustainability issues and the need for radical change at the local level. Open innovation is about highlighting the importance of using internal and external ideas in these collaborations.

3. **Synergy in mobilisation of resources and service delivery:** When both the institutions would like to promote forest management and make best use of forest resources and benefits derived from them, collaboration between these institutions can also help in synergising financial, leadership, human, physical, institutional resources available to them. Local government can collaborate with CFUGs in forest conservation, fighting forest fires, developing ecotourism infrastructure and supporting livelihoods improvement programs. Similarly, CFUGs can help local governments in promoting greenery in cities, distributing seeds, seedlings and other

forestry technologies to local government, and helping local governments in local infrastructure development. Collaboration between CFUG and LG can be a useful platform for the joint delivery of goods and services aiming at caring for people and the environment. The coproduction of public services can be important in a collaboration between local governments and CFUGs.

4. **Joint Monitoring and Evaluation:** Local governments should also be involved in collaborative monitoring and evaluation of CFUG's activities. Palikas can also encourage CFUGs to adopt public auditing system. Moreover, Palikas can develop a database of all the CFUGs and develop a mechanism for updating information; the information is then analysed and shared at the deliberative forums for making informed decisions.

5. Mutual support and learning:

CFUG and LG are well positioned to offer mutual support and learning, especially in the context of issues and challenges presented by changing political, economic and environmental conditions at the local level. The need for mutual support with reciprocity can lead to cross-fertilization, and empowerment. For this to happen, both parties commit to work together and the development of trust. In general, sharing goods and services or information and knowledge (e.g., two-way training), and also cross marketing (promoting and participating in each other's activities), are factors that can contribute positively.

8. Conclusions

This report has reviewed literature on Nepal's policy and legislation to identify areas of collaboration and conflicts for CFUG and LG to forge partnership in NRM planning and governance. With the recent state restructuring and the rise of elected local government as a democratic institution at the local level, many environmental responsibilities and authorities of local government are overlapping, and at times, competing with those of CFUGs, while there is a unique opportunity for local governments to partner with CFUGs to maximise local benefits and sustain the local environment. However, there is no clarity on policy, or institutional arrangement that enables a robust partnership to emerge and function. The report demonstrates that a significant gap in knowledge and policy exists as to how, when

and why an effective partnership between local governments and CFUGs can be developed and nurtured. This report has analysed some key opportunities to develop a partnership model between local governments and CFUGs with a view to advance SDGs at the local level. By reviewing legal texts, interview with LG representatives, leaders of FECOFUN, Divisional Forestry Staff, leaders of CFUGs and workshops of CF stakeholders on CF - Local government partnership options, we have offered an experimental model for CFUGs and LGs to work together under federalism in Nepal.

While stakeholders commonly agree on retaining the existing community rights while formulating new forest laws and regulations by federal, provincial and local governments, they hold contesting views on who should hold what authority and responsibility in community and private forest governance. Main contestations are observed in the authority of local government, discretionary powers of forest authorities, technical service provisioning, forest products extractions and revenue sharing. While community forestry networks were in favour of bringing community-based forestry under local government and redefining role of forestry agencies as facilitators, government forest authorities were in extending their grip in forest governance. Regulatory frameworks are arguably offer new legal spaces that would ultimately promote commercialisation of forestry and entrepreneurship. However, conditions stipulated constrain promotion of forestry enterprises. Sub-sequent regulations and implementation directives are closely sought by forestry stakeholders as they would unfold the policy substance and intent on the ground. Wary also remains whether community rights remain intact in the burgeoning tensions between different levels of government.

9. References

- Ahmad, J. Devarajan, S., Khemani, S, and Shekhar., 2005. Decentralization and Service Delivery. Policy Research Working Paper; No. 3603. World Bank, Washington, DC.
- Arts, B., 2014 Assessing forest governance from a ‘Triple G’ perspective: Government, governance, governmentality, Forest Policy and Economics, <http://dx.doi.org/10.1016/j.forpol.2014.05.008>
- Gilmore, D. A and Fisher, R. J. (1989) Villagers, forest and forester: The philosophy process and practice of community forestry in Nepal. Shahayogi Press. Kathmandu, Nepal, 212
- Gutman, J. (1997). Representing crisis: The theory of Himalayan environmental degradation and the project of development in Post-Rana Nepal. *Development and Change*, 28(1): 45-69.
- Malla, Y. B. (2001). Changing policies and the persistence of patron-client relations in Nepal: Stakeholders' responses to changes in forest policies. *Environmental History*, 6(2): 287-307.
- Ojha, H., Persha, L., and Chhatre, A. (2009). Community forestry in Nepal: A policy innovation for local livelihoods. Washington, DC: International Food Policy Research Institute.
- Poudel, M., Kafle, G., Khanal, K., Dhungana, S., Oli, B., Dhakal, A., et al. (2018). Linking land use and forestry transition with depopulation in rural Nepal. *Banko Janakari*, 27(3): 130-143.
- Poudel, M., Thwaites, R., Digby, R., and Dahal, G. (2014). REDD+ and community forestry: Implications for local communities and forest management. *International Forestry Review*, 16(1), 39-54.
- Shrestha, N. K. 2009. Water Rights: A key to sustainable development in Nepal, *Journal of Hydrology and Meteorology*, 6(1): 37-43.