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Legal-sounding bureaucratic re-centralisation of community forestry in Nepal

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ABSTRACT

Exactly how do forest bureaucracies manoeuvre to regain power and maximise benefits in the bewildering legal, financial, and administrative field of forest decentralisation? Based on a review of thirty management plans, stakeholder consultations, intensive interactions with six forest user groups, forest officials, and donor project employees in Nepal, we document the mechanisms of legal-sounding re-centralisation. The central tenet is that bureaucratically established procedures, which are not required by law but treated as if they were, are used to impose regular revisions of community forest management plans. Meagre government or more generous donor budgets financed the revisions. Forest bureaucrats and/or consultants did the work and benefitted financially. None of the approaches, however, lived up to technical, scientific standards or followed stipulated participatory processes. The revised plans were almost identical to their previous versions and differences mostly a result of mere desk exercises to fulfil donor requirements and government orders, at least on paper. While legitimised by a perceived promotion of rational, technical sound, and equitable forest governance, the main function of plan revisions appears to be strengthening or re-establishing the forest bureaucracy's control over community forest resources which allows forest bureaucrats to tap into donor project and forest product value chains.

1. Introduction

Nepal's community forestry programme is renowned worldwide and regarded as progressive and highly successful (Pokharel et al., 2007; Acharya, 2002; Ojha, 2008; Mahanty et al., 2006). Based on the failure of centralised technocratic state managed forest regimes, community forestry was introduced in the late 1970s to address problems of deforestation and environmental degradation (Gautam et al., 2004; Ojha, 2014). Forest was handed over to local governments for protection through the Panchayat Forest Rules of 1978 and the Community Forestry programme of 1980 where benefits were shared between the central and local governments (Ribot et al., 2006). Later, the Master Plan for the Forestry Sector in 1989 reformulated the concept of community forestry and emphasised the handing over of forests to local communities (Devkota, 2010). This led to the promulgation of the Forest Act of 1993 and Forest Rules of 1995, which form the legal basis for forest user groups as perpetual autonomous local institutions holding proprietor rights to their community forests (GoN, 1993; GoN 1995). Forest user groups thus got the authority to independently manage and undertake decisions regarding forest protection, management, harvesting, and utilization as well as marketing forest

products within and outside the user groups as per decisions by their general assemblies within the boundaries of their constitutions and forest management plans (GoN, 1993). Forest user groups' forest rights are contingent on them preparing a forest management plan (called an operational plan) for their community forest (GoN, 1995). The district forest office, subject to scrutiny and possible field inspection by the regional forest office, must officially approve the plan before it takes legal effect (Bhattacharya and Basnyat, 2003; Pokharel et al., 2007). This legislation is still in force and forms a strong legal basis for community forestry in Nepal, which allows for and requires forest bureaucrats to hand over part of national forests to local communities in the form of community forests.

Over the years, the technical requirements to community forest management plans in Nepal have become increasingly complex, especially after the first amendment of the 1993 Forest Act in 1999. Although the Act gives authority to forest user groups, the involvement of forest bureaucrats in every step of the plan preparation process has expanded (Nightingale and Ojha, 2013; Rutt et al., 2015). Furthermore, the non-legally binding, yet authoritative, Community Forest Development Guidelines (2014) recommend that 'expiry-dates' are explicitly stated in the management plans such that they must be updated every

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five or ten years for communities to uphold their function (DoF, 2014). Legally speaking an expired plan equals no plan and, by extension, therefore extinguishes user groups' forest rights. Thus, under the legitimising silvicultural perception that technical forest management plans are necessary for sustainable day-to-day forest management, they became a precondition for the transfer of forest rights to user groups (Rutt et al., 2015; Faye, 2015). The technical elements of community forest management plans have, therefore, become issues of struggles between the bureaucracy's and other actors' interests. Such technical requirements are often considered a mechanism for the state to control decentralised forest resources and a way to block or attenuate the transfer of power (e.g. Gauld, 2000; Ribot, 2002a; Nightingale, 2005; Hull et al., 2010; Faye, 2015). The legal significance of community management plans creates a need for specific expertise related to the scientific and bureaucratic forest management, (Nightingale, 2005) which puts forests bureaucrats in a superior position (Nightingale, 2005; Nightingale and Ojha, 2013; Ojha, 2014). "Scientific" or technical-sounding arguments are among the means utilised by central governments to transfer less forest management rights to local people (Ribot, 2002a). Detailed, externally imposed, quantitative forestry science appears to serve hidden interests of technocrats and powerful elites to re-centralise decentralised forest resources (Ojha, 2006; Paudel and Ojha, 2008; Scheba and Mustalahti, 2015).

Interested actors often use a combination of mechanisms or strategies to undermine decentralisation reforms (Ribot et al., 2006; Schusser et al., 2015). They often devise specific mechanisms to limit the scope of reforms and to ensure that the outcomes of reforms will not threaten existing political authority (Ribot et al., 2006; Rutt et al., 2015). Professionalisation and the privileged role of 'expert' knowledge have often hampered forest decentralisation (Scheba and Mustalahti, 2015; Toft et al., 2015). A multi-country study by Ribot et al., 2006 observed that local powers over forest resources are circumscribed by supervision or pre-determined through management planning requirements. Similarly, Sunam et al. (2013), explained the government's attempt to monopolise power over forests by magnifying minor weaknesses in community forestry in Nepal to reverse decentralisation while failing to address own governance deficits. In Indonesia, Sahide et al. (2016) explained the trend of re-centralisation where the forest administration had reclaimed authority by redefining and employing the concept of Forest Management. Ribot (2002a, 2002b) argues that "Technical domination can become indistinguishable from re-centralisation since it helps to return the power over forests to the Forestry Department while delegitimising local governments (forest user groups) (Faye, 2015). Accordingly, several scholars have already explained efforts of controlling the forest decentralisation in Nepal and elsewhere. Exactly how management plans are used by central government representatives (the forest bureaucracy) to regain power and maximise benefits in the bewildering legal, financial, and administrative field of forest decentralisation is, however, rather unexplored.

Drawing on the concept of bureaucratic politics and actor-oriented power, we demonstrate how forest bureaucrats¹ in Nepal use bureaucratically imposed revisions of community forest management plans that are not required by law but treated and communicated as if they were to enhance their power and economic benefits. We term this approach legal-sounding practices of bureaucratic re-centralization. The paper contributes to the debate on forest re-centralisation by offering new insights into how local/district level forest bureaucrats assert control over community forestry through forest management plan revisions.

¹ Local level forest bureaucrats include the forest officials (District Forest Officer, Rangers/Assistant Forest Officers, and Forest Guards) working at the district or sub-district (Ilaka) level. These are the frontline officials responsible for preparing, reviewing and approving management plan.

2. Theoretical framework: bureaucratic power

In the context of revising community forest management plans, the forest bureaucracy² constitutes influential actors as section 29 of the 1995 Forest Rule, delegates authority to District Forest Officers to approve community forest management plans and on this basis legally hand-over forest authority from the central government to the concerned communities, c.f. above (GoN, 1995). Likewise, district forest officers can conduct investigations and can make changes in the plans, subject to the consent of users. They are also required to provide necessary support during preparation and implementation. However, forest bureaucracies do not merely implement political decisions in technical and neutral ways but pursue their formal and informal goals (Sadath et al., 2013; Rosati, 1981). According to Giessen et al. (2014), the bureaucracy formally strives for problem-oriented delivery of public service, as stated in their official mandates while informally pursuing organisational interests of survival and expansion. Informal interests also include maximising their power, enlarging authority, maximising budgets, and enlarging staff numbers (Krott et al., 2014). Moreover, interest in remaining in the game and advancing towards the top of bureaucratic hierarchies frequently dominates their stand on most issues (Dawisha, 1980).

Considering this, we drew on "Bureaucratic Politics" and "Actor-Oriented Power" theories to establish an analytical lens to investigate the purposes of recurrent management plan revisions in community forestry in Nepal. The bureaucratic politics theory helps to identify how decisions are taken and implemented on the ground to maximise power and enlarging authority (Brukas and Hjortso, 2004) while the actor-centered power theory helps to explain elements of power used to achieve political interests and reconfigure power (Krott et al., 2014).

Bureaucratic politics theory has gained wide popularity in the analyses of public policy decision-making processes (Allison, 1969; Rosati, 1981; Michaud, 2002; Krott et al., 2014; Giessen et al., 2014; Sahide et al., 2016). The theory proposes that decisions are made not to solve a problem but rather results from compromises, conflicts, and confusion among participants with diverse interests and different degrees of influence (Allison, 1969; Rosati, 1981). Decisions are not only the result of "pulling and hauling" between "members" motivated by individual preference but are also made to enhance the power base of individuals and organisations (Dawisha, 1980; Rosati, 1981). The dominant feature of bureaucratic politics is continuous "struggle for power" and bargaining to produce an outcome favourable to the organisation whose interests they represent (Dawisha, 1980; Sahide et al., 2016). According to Rosati (1981) and Allison (1969), this comprises four essential elements:

- For any single issue, any single organisation has numerous officials/individuals with differences in interests, goals and objectives. Groups of these players constitute the agent for particular government decisions and actions. Each player focuses not on the total strategic problem but rather on the decision that must be made now.
- Positions define what players both may and must do. The preponderant individual exists; the President, if involved, is merely one participant, although his influence may be the most powerful.
- The final decision is a "political resultant", the outcome of bargaining and compromise among the various participants. Activity from which the outcomes emerged is an elusive blend of at least three elements: bargaining advantages (drawn from formal authority and obligations, institutional backing, constituents, expertise, and status), skill, and will in using bargaining advantages, and other participants' perceptions of the first two ingredients.

² The forest bureaucracy includes government forest officials working at the national and sub-national level who are primarily the custodians of the national forest estate and responsible for protecting and managing national forest resources within their jurisdiction.

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