



Contested Law: Slow Response to Demands for Reformulating Protected Area Legal Framework in Nepal

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Abstract: The paper identifies and highlights gaps in protected area (PA) legal provisions in Nepal and makes a case for timely reformulation of legal framework to suit the new socio-economic and political contexts. Laws concerning PAs are examined against the contexts of international agreements, conventions, and accepted standards as well as the local ground realities. The legal framework is critically analysed using seven analytical variables: the process of PA declaration, governance types, power sharing, management plan, tenure rights, benefit sharing, and compliance and law enforcement. Literature review, content analysis, interviews and participant observations were adopted in securing data. It is observed that the current legal framework either does not reflect the current contextual reality or stand only in paper or are not properly implemented as per the spirit of the law. It is argued that regulatory framework should reflect both the contemporary conservation discourses and should respond to the popular demands emerged in the post-conflict political context in Nepal.

Key words: protected areas, participation, regulatory framework, reformulation, governance

INTRODUCTION

Scholarly work on protected area (PA) usually favours the analysis of conservation policies – focusing on their development, implementation, and impacts. That is equally so in Nepal where a plethora of scientific works on policy analysis, particularly the participatory approaches to PA management have emerged. These include the documentation and analysis of the evolution of Nepal's conservation policies (Heinen and Kattel 1992b; Sharma 1998). Majority of the scholarly works are focused either on conservation areas (Bajracharya *et al.* 2007; Baral *et al.* 2007; Baral and Stern 2010) or on buffer zones (BZs) (Paudel *et al.* 2007; Budhathoki 2004; Sharma 1998; Nepal and Weber 1994). Most of these analysis are based on policy statements and dominant discourses and fail to look at the everyday practices. They miss the legal and regulatory framework that, as we argue in this paper, directly shapes the everyday practice of resource management.

Indeed, only a few studies have analysed the PA legal and regulatory framework (Heinen and Kattel 1992a; Heinen & Mehta 1999; Paudel 2007). But these analyses are more generic and give only a marginal treatment to the governance aspects of the PAs. However, governance issues have become increasingly contested internationally and nationally in recent years. "Niyam-Kanun" (rule-law) of PAs has become a common and popular lexicon beyond the domain of state institutions and bureaucracy. On one hand, the PA laws have often been an important means to legitimize state control over natural resources in the form of environmentalism (Agrawal 2005) or 'sovereign environmentalism' (Fletcher 2010). On the other hand, they have been contested and resisted by citizens covertly and overtly through collective action (Scott 1985).

In this paper, we draw on the schematics that have been used to analyse legal and regulatory frameworks of PAs in various countries. In



particular, this analysis is informed by a comprehensive concept of PA governance as comprising of the principles of legitimacy and voice, direction, performance, accountability and fairness (Borrini-Feyerabend *et al.* 2006; IUCN/CEESP 2008). Accordingly, we use seven major thematic variables – that are not mutually exclusive, though - corresponding to democratic governance of PAs. The variables include: 1) process of declaration, or establishment of PAs; 2) the governance types and institutional arrangement; 3) power sharing between PA authorities and local institutions; 4) the process of development and approval of management plans, their implementation, and local participation; 5) tenure rights and access to resources; 6) benefits sharing arrangements; and 7) compliance and enforcement. These variables will then be examined against the existing international provisions, norms and good practices, and situated against the national and grassroots scenario.

The article is divided into four sections. This introductory section is followed by a glimpse of current debate surrounding the civil society critique of the current legal scenario and then outlines key provisions in the international conventions and agreements that have direct implications to the national legal framework and PA discourse in Nepal. The fourth section brings the details of existing legal and regulatory provisions. The final section discusses and synthesises the key legal issues.

PROTECTED AREA LEGAL FRAMEWORK: CURRENT DEBATE

There has been a widespread demand to revise and reformulate the National Park and Wildlife Conservation (NPWC) Act 1973 (Act hereafter). The Act was conceived and formulated within the narrow domains of forest bureaucracy, experts and ecologists some four decades ago under the party-less political system ('Panchayat') and the absolute monarchy. In a changed socio-political context today, leaders and representatives from diverse constituencies - such as BZ institutions¹, Network of Indigenous Peoples and Community Conserved Areas (ICCAs)², Conservation Area Management Committees (CAMCs), Protected Area People's Rights Federation (PAPRF)³, Federation of Community Forest User Groups, Nepal (FECOFUN), civil society activists and organizations as well as politicians - have been raising their voices and concerns in various meetings and public deliberations.

The civil society actors through public campaigns, written appeals and other forms of collective actions have also been articulating a need towards reforming the current legal framework. For instance, in a meeting organised by the BZ councils, the leaders highlighted how the current legal framework favours PA authority against local people's institutions: "The regulation has given enormous authority to

¹ Buffer Zone council leaders met in Kathmandu during 20-21 Oct, 2011. The discussion focused on the need for revising the NPWC Act 1973 and the BZ Regulation. At the end, the leaders formed a task force to create pressure for and to engage with authorities for the reformulation of the Act. Likewise the concerns for reform of the Act have also been articulated by buffer zone leaders in a forum hosted by DNPWC (DNPWC 2009).

² The Third National Gathering of Indigenous and Community Conserved Areas (ICCAs) of Nepal met in Kathmandu during 22-24 December 2011. The gathering demanded the reformulation of NPWC Act 1973 in order to appreciate and recognise the ICCAs in Nepal. Lobbying with political leaders and MOFSC officials for creating legal space for ICCAs is one of their priority activities.

³ Dissolve current ...Act, and other regulations under the Act and form new ones with active/direct participation of local communities and other stakeholders" was the very first demand during the national conference that marked a birth of the national organization of PA affected communities (Jana 27: 2008).



national park authorities. They can dissolve or form BZ management committees" (THT 2011b). The demand for change in legal framework also became particularly vocal during the recent contestation and negotiation around the governance structure of Gaurishankar Conservation Area (GCA)⁴.

There is some level of appreciation within the government that the Act needs to be revised. The PA authorities had initiated the process a couple of years back following the 2006 movement⁵. During a dialogue on BZ, the Director General of the Department of National Parks and Wildlife Conservation (DNPWC) acknowledged the shortcomings of the Act⁶ and reasoned delay in its timely amendment as the country is undergoing restructuring with a prolonged political transition (FA and CDO 2011). There has however been no momentum to achieve a revision in the Act.

INTERNATIONAL AGREEMENTS, NORMS AND GOOD PRACTICES ON PROTECTED AREAS

Nepal's domestic policy making around environment is largely influenced by the Multilateral Environmental Agreements (MEAs⁷), mainly due to the country's high

reliance on international aid. After their endorsement, the MEAs create obligations for compliance on the part of the government. For example, Nepal's fourth national report to United Nations (UN) Convention on Biological Diversity (CBD) states that "the treaties certainly have exerted some influence in the policy of Nepal" (MoFSC 2009:34). In his foreword to the Nepal Biodiversity Strategy (NBS), the then Prime Minister states: "this strategy (NBS) embodies a strong commitment to fulfil our international obligations as a signatory to the CBD." The orientation and content of the PA Act should therefore be understood in relation to aid and international agreements.

Aid assistance is the major route through which international agenda enter into Nepal's national policy and legal framework. For example, the PA Act itself was developed with the support of United Nations Development Programme (UNDP) and Food and Agriculture Organization (FAO)⁸. Similarly, the UNDP supported project, Park and People Programme, helped develop BZ Management Regulation 1996 and subsequent guidelines. However, international conventions, agreements and standards have been selectively used in Nepal so that many provisions related to democratic

⁴ The management roles and responsibility of GCA, declared in 2010, is handed over to National Trust for Nature Conservation (NTNC). Civil society and local communities are against this government's decision since the beginning.

⁵ DNPWC organized a stakeholder consultation on "Amendment of National Parks and Wildlife Conservation Act 2029" on 22 July 2007 in Kathmandu. Over 40 participants from Government and Non-Governmental Organizations participated. The participants provided suggestions on a range of issues including recognition of community based conservation, defining clear role and responsibilities of local people, incorporation of management and species conservation action plan (Source: www.dnpwc.gov.np accessed on 06 Apr 2012).

⁶ The current DNPWC director general during a multi-stakeholder interaction program organized on the occasion of wildlife week also stressed on the need to timely reform the act and informed "DNPWC is working on this aspect as one of the topmost priorities." Interestingly, he also emphasized the aspect of enhancing role and engagement of people in protected areas in the pretext of legal reform.

⁷ The major MEAs include: Convention on Biological Diversity (CBD), 1992; Convention concerning the Protection of the World Cultural and Natural Heritage, 1972 (World Heritage Convention); Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) 1973; Ramsar Convention, 1987.

⁸ The involvement of UNDP/FAO in wildlife conservation began in 1968 in Nepal (Heinen and Kattel 1992 a). The deployment of FAO affiliated foreign advisors to the government under UN Technical Assistance however began in 1971, the year when the government of Nepal requested the FAO towards development of network of PAs in Nepal (Mishra 2010).



practice and participatory methods are ignored. Therefore, international norms and standards coded in the provisions of the MEAs provide a good basis against which domestic PA legal framework can be assessed. In this paper, we take World Park Congress(WPC), the CBD, International Union for Conservation of Nature (IUCN) resolutions, International Labour Organization (ILO) 169 and United Nations Declaration on Rights of Indigenous Peoples (UNDRIPs) as reference for the analysis of PA legislation in Nepal.

World Park Congress is the largest international gathering to deliberate on PA and is held once every 10 years. The WPCs capture new concepts and in retrospect reveal paradigm shifts in thinking, policy and action towards PAs (IUCN 2010: 5). The historical evolution of the WPC shows gradual shifts in paradigm and discourses that now fully acknowledge and emphasise the social, cultural and human aspects of conservation and has increasingly given higher priority to people-related aspects such as human development, partnerships, and indigenous groups and local communities (IUCN 2010). PAs were increasingly considered as places that would yield benefits to the local communities beyond their intrinsic conservation values. In this succession, the governance of PAs and issues of indigenous peoples⁹ and local communities found prominence during the 5th WPC in 2003 in the form of the Durban Accord. The Congress adopted the term "*new protected area paradigm*" that recognised the rights of indigenous and local communities in relation to the establishment, governance and management of PAs (Stevens 2010).

Likewise, the CBD, especially its Programme of Work on Protected Areas (POWPA), deals with the establishment, governance, enabling activities and standards and monitoring process of PAs globally (Stolton *et al.* 2008). Its programme element 2 on '*governance, participation, equity and benefit-sharing*' that provides avenues for democratising PA governance underpins the discussion in this paper. It recognizes the need to "establish effective processes for the full and effective participation of indigenous and local communities, in full respect of their rights and recognition of their responsibilities in the governance of PAs." The decision of the last 10th Conference of Parties (COP) of CBD at Nagoya¹⁰ has further acknowledged the importance of POWPA and provided further impetus with crucial decisions. The CDB New Strategic Plan 2011-2020 and Aichi Targets¹¹ provide powerful languages such as "... conserved through effectively and equitably managed.... other effective area-based conservation measures..." in course of targeted PA coverage as well as respect "the traditional knowledge, innovations and practices of indigenous and local communities relevant for the conservation and sustainable use of biodiversity and their customary use of biological resources...." and "...the full and effective participation of indigenous and local communities..." during implementation of CBD.

World Conservation Congress (WCC), perhaps the largest global conservation gathering hosted by IUCN, generates important resolutions by its members' assembly that includes some of the more pertinent issues with global significance, so far as rights and concerns of indigenous

⁹ Although the CBD text and decisions use the term 'indigenous and local communities', we use the term 'indigenous peoples' to recognize and respect the claims of collective identity by the international movement of indigenous peoples.

¹⁰ Decision (UNEP/CBD/COP/DEC/X/31); www.cbd.org

¹¹ Of a total of 20 set targets, target 14 and 18 are very important in terms of recognizing traditional knowledge, innovations and practices of indigenous people and local communities.



peoples and local communities are concerned. These endorsed resolutions also hold their significance nationally since the DNPWC represents the Government of Nepal as one of the state parties in IUCN. IUCN's resolutions (from 1975-2004) show a strong commitment of international community towards the rights of local and indigenous peoples, though the actual practice in many countries is not very encouraging (FPP 2011). Similarly, IUCN's PA guideline made public in 2008 has added further recognition and values of indigenous peoples and local communities in biodiversity conservation and formally lists the ICCAs as one of the four PA governance types¹².

The convention for the rights of indigenous and tribal peoples, known as ILO 169 declared in 1989¹³ and UNDRIP¹⁴ declared in 2007 are considered the most important international legal instruments in safeguarding the rights of indigenous people and local communities. These conventions have legally recognized the rights to utilize and manage traditionally owned and controlled land territories and natural resources. Moreover, these conventions have recognized the traditional and customary laws and practices including the rights of free, prior and informed consent related with land and natural resources management. For example, ILO Convention No. 169, article 15 (1) reads: "The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the

use, management and conservation of these resources. Similarly, the UNDRIP, article 26 (1) reads: "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. The essential novelty of this instrument (UNDRIP) is its recognition of "indispensable" collective rights (Wiessner 2009).

PROTECTED AREA LEGAL AND REGULATORY PROVISIONS IN NEPAL

We examine the legal and regulatory framework of Nepal based on the seven important governance elements and these elements against the internationally agreed principles, norms and rules in relation to PA governance and management.

Protected Area Declaration

The authority to declare a new PA or expand the existing one is an important legal right, which is usually exercised solely by the state. Nepal's current legal framework provides sole authority of declaration of PA to the government. The NPWC Act 1973 (Article 3.1) reads:

The Government of Nepal may, if it deems necessary, declare an area as a National Park or reserve or conservation area by notification in the Nepal Gazette and indicating the boundaries thereof.

Similar provision exists for the declaration of the BZs (HMG/N 1973: Article 3a.1)

¹² According to this guideline, governance by government; shared governance; private governance; and governance by indigenous people and local communities are four PA governance types.

¹³ The articles 14 and 15 have clearly mentioned about the recognition of the traditional rights (participate in use, management and conservation) of access to and control over traditional land territory and natural resources. Similarly, the provision about free prior and informed consent rights, and 'fair compensation' for any 'damages' are also clearly mentioned in these articles.

¹⁴ Provisioned the rights of traditional subsistence practices (Article 20) and rights over lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired by indigenous peoples (Article 26).



The Government of Nepal may declare any peripheral area of a National Park or reserve as a buffer zone by notification in the Nepal Gazette and indicating the boundaries thereof.

These provisions convey two important messages: i) the government is the only legitimate authority that can declare and enact PAs and the BZs; ii) the government whenever it sees necessary can declare any site as a PA and no procedural conditions are attached to it. There is no space for free, prior and informed consent of the local communities and indigenous people as stipulated in ILO 169, UNDRIP or CBD (POWPA). The law particularly restricts any possibility of voluntary declaration of a PA particularly by the indigenous and local communities. While hundreds of such sites exist in the country, they are suffering from lack of legal recognition and government support (Jana and Paudel 2010; Rai 2011). There is no fundamental change in the way PAs are established, whether it was in the 1970s or in 2010¹⁵. Though some level of consultation has been introduced in the process of PA establishment, the consultation is too technocratic, manipulative and instrumental in the absence of mandatory obligation.

Unfortunately, no major changes in transforming the governance structure have been made since the NPWC Act was first issued in 1973. There have been four amendments since then, mainly for a gradual relaxation of the original restrictions. For example, the first amendment allowed the local people to extract thatch grass in some Terai PAs. In fact, restricting the collection of thatch grass created a major park-people conflict in Chitwan as it was the key material used to thatch the roofs used by local communities. The second amendment (1982) relaxed provisions related to tourism

management and managing wildlife, including how to deal with attacks from wildlife. This amendment opened the concept of conservation areas as IUCN category VI and allowed it to be managed by National Trust for Nature Conservation (NTNC)¹⁶. The fourth amendment (1993) introduced the idea of BZ with redistribution of conservation benefits which also imposed protection-oriented regime in the BZs.

Governance Types/Institutional Governance

The global experiences of conservation inform us about the existence of a diversity of modalities in the governance of PAs. This diversity ranges from conventional governance by government to shared governance (collaborative), private governance and innovative ones such as governance by indigenous and local communities. These are also envisaged by emerging international conservation discourse and reflected in POWPA and new CBD targets.

The recent international debate is moving towards accepting the possibility that the voluntary conserved areas may become part of the formal PA system. Such areas may have either been managed by the local and indigenous communities or have high conservation value but currently lack any recognised conservation regime. If the communities want such areas to be managed as PA, they can negotiate with the authorities, reach to an understanding, and can take responsibility of managing such sites as ICCAs (Lausche 2011:150).

Nepal also has a diversity of management and governance modalities of PAs. The modalities include the PAs governed by DNPWC- a forest

¹⁵ Nepal government declared three new PAs (GCA, Aapinampa and Bake national park) in 2010 without consultation with local communities and other stakeholders.

¹⁶ NTNC was formerly known as King Mahendra Trust for Nature Conservation (KMTNC).



bureaucracy, community based Conservation Areas (CAs)¹⁷, collaboratively governed BZs; government controlled CAs¹⁸ as well as Kanchenjunga CA (KCA) governed by local communities. However, if seen against the totality of the PA system, majority of PAs are governed and controlled by the government. Possibility of co-existence of diverse governance types in any landscape is not enshrined in current legislation.

A critical review of regulation and guideline of BZ area indicates that there is absolute authority of the Park Warden in affairs such as the division of BZ areas into several units for the purpose of management and formation of local people's user committees (UCs). Moreover, the Warden - who also acts as a member secretary of the BZ management committee, has the authority to dissolve the people's institution¹⁹, a provision that has been highly criticized by the representatives of BZ institutions and civil society organizations lately (THTa 2011). Collective resolutions for timely reform of the national legislation among others towards clarity of roles, rights and responsibilities of BZ people's institutions have also been articulated during meetings of the network of BZ leaders (DNPWC 2009).

Inclusion of CA after the third amendment of the NPWC Act is often viewed as one of the milestones in community based participatory conservation in Nepal. Management of CAs²⁰ can be entrusted to "any institution established with the objective of conserving nature and natural resources for the period prescribed in such notification". This provides a legal framework to authorize NTNC – a national conservation agency, under shared governance arrangement with local communities. However,

the lack of an apex body of local communities around the CAs – with an exception of KCA – weakens any mechanism to influence and negotiate decision-making and policy affairs.

Arguably, the dismissal of the elected local community-based institutions by the bureaucrats is at the heart of the problem across governance types. As long as the DNPWC has the sole authority to dismiss the elected local institutions, these bodies cannot enjoy full autonomy. Even in the case of KCA, which is a locally managed PA, the DNPWC can dissolve the council on the grounds that it fails to perform its duty properly (KCA Regulation, article 25:1). It appears that the handover to local community is more of glamour of radical participatory discourse and less of a genuine devolution of power to the local community. The BZ programme is often claimed to be a co-management, but in practice it is largely a satellite programme of DNPWC. Broadly speaking, Nepal's legal system remains conservative in terms of diversifying governance types by recognising, supporting and encouraging diverse types of PAs.

Power Sharing Between Protected Area Authority and Local Institutions

Power sharing between the PA authority and local institutions varies with specific types of PAs. In case of CAs, the CAMCs can plan and implement diverse conservation and development activities within their territories. In case of BZ, the user groups and user committees can manage local resource and development activities. In case of KCA, the Council enjoys full rights in generating its own revenue and spend as per their own priority. While the Councils function as apex bodies

¹⁷ Such as Annapurna Conservation Area; Manasalu Conservation Area; Gauriskhanar Conservation Area

¹⁸ Api Nampa Conservation Area and Krishnasar Conservation Area

¹⁹ Article 14.1 of Buffer Zone Management Regulations 1996.

²⁰ Article 16.b of NPWC Act.



representing local voices in BZ and KCA, there is no apex body or collective council in NTNC managed CAs. The conservation authority, through its conservation officer, controls the formation and composition of CAMC. The conservation officer plays the role of CAMC secretary and inspects the financial documents. It is surprising that all the property of the CAMC is automatically the property of the NTNC.

In all cases, the PA authority has an influential role in the formation and operation of the local institutions, setting their terms of reference. The PA authority can take action against the local institutions and dissolve them on the grounds of them not being properly following their management plan or not showing good performance (Article 25.1). It appears that the local institutions are very weak in front of the government's bureaucratic institutions or any designated institution (e.g. NTNC). It seems that the local institutions are designed to serve the authorities in carrying out their conservation functions. These have little autonomy to constitute themselves, to raise and mobilise their revenue, and to enjoy the security of tenure (of resources, or of their own positions).

Management Plan Development, Approval and Implementation

Management plans are mandatory for any PA. A number of MEAs suggest that every PA should be based on management plans or any documented management system. For example, the CBD POWPA has explicitly demanded parties to develop management plans for all PAs.

All PAs to have effective management in existence by 2012, using participatory and science based site planning processes that incorporate clear biodiversity objectives, targets, management strategies and monitoring programmes... with active stakeholder involvement (CBD COP 2004 VII/28, goal 1.4).

As a general rule, management plans should be backed by the legal provisions with sufficient elaboration of the contents, process of drafting and approval, and clear authority for their implementation. Despite such an importance put in the management plan, the NPWC Act 1973 does not contain the term *management plan* as such. This is an indication of protection orientation in Nepal's PAs. However, the term is more frequently used in later documents such as BZ Regulation 1996 and CA Management Regulation 1996.

The BZ programme generally acknowledges the need for a decentralised and participatory management. However, the process of developing a management plan and getting its approval entails that the BZ is simply the extension of the Warden's authority outside the PA. According to the BZ Management Regulation 1996, the PA warden develops the management plan and submits it to the Ministry through the DNPWC for approval. Article 3(b) of the NPWC Act 1973 reads: "The Warden shall carry out works relating to the management and conservation of the BZ". This is further reinforced in the BZ regulation (Article 5:1), which reads: "The Warden shall prepare and submit BZ management work plan to the Department [DNPWC]". These provisions tend to contradict the commitment of the BZ programme for the decentralized governance.

In BZ, there are provisions that the UCs develop a work plan for their constituency and get it passed by the users (BZ regulation 1996: Article 13:1). However, these plans are only raw materials for the Park Warden to prepare the PA level management plans. The BZ Guidelines 1999 explicitly mentions it: "While preparing the BZ Management Work Plan, the Warden should consider the work plans prepared by the [user] committees" (BZ Guidelines: article 6:1). Here the word '*consider*' is important as it shows that the management plan developed by the UCs are not the final plan but will provide a basis for the Warden for developing his/her own plans.



Similar situation prevails in CAs of Nepal. The designated conservation agency finally approves the management plan endorsed and submitted by the executive or head of given CA after consultation with "conservation officers" heading several sectoral offices (Article 15 of CA regulation). The role of CAMC is limited to the preparation of the village level management plan, which is then submitted via conservation officers to the head of the CA for final endorsement. Likewise, in the case of KCA, the management plan developed and passed by the Council has to be submitted to the Ministry of Forest and Soil Conservation (MoFSC) through the DNPWC. The MoFSC can approve the management plan as it is, or it can revise and provide approval without asking the council (KCA regulations: article 6:8). It is therefore that the final content of the management plan is not a mutually negotiated document; instead, it is the version that is approved or amended by the MoFSC.

Tenure Rights and Access to Resources

The new 2020 target of the CBD has stipulated traditional practices of indigenous and local communities that are pertinent to conservation and sustainable use of biodiversity conservation and respected customary use of biological resources. Local people's right or access to resources (land, forest, and aquatic resources) is perhaps most prominently reflected in the Element 2 of POWPA. Of equal significance is the language of CBD COP 10 in the context of governance of PAs, which refers to the indigenous and local communities in such terms as- "..... in full respect of their rights and recognition of their responsibilities....". IUCN's resolution (resolution 4:127) on 'rights based approach to conservation' with strong human rights dimension also recognizes that conservation can affect human wellbeing and affect human rights among others (WCC 2008). It calls on IUCN to work towards '... where possible further fulfilment of human rights,

tenure and resource access rights, and/or customary rights' in the context of conservation. The ILO 169 and UNDRIP explicitly recognizes their traditional and customary use, management and control over their territory and resources.

While tenure security of local and indigenous groups is unambiguously highlighted in the international legal regime and commitments, the diverse categories and types of PAs in Nepal differ on the tenure rights of local communities. The provisions vary in access to forest and aquatic resources such as fish, collective forest tenure, extraction of sand and boulder, and so on. Broadly, access to resources is more favourable in the BZs, CAs and in the mountain PAs. However, stricter regulations are in place in lowland PAs although few concessions to local communities in general (thatch grass collection) and some specific rights to identified groups (controlled fishing and collection of wild vegetables) exist. As these rights are less of a legal guarantee and left with the discretion of the PA warden, the condition of exercising these rights largely depends upon the particular Warden or conservation officer.

Equity and Benefit Sharing

Equitable benefit sharing is one of the three pillars of CBD stated in its preamble and the Article 8(j). Of utmost significance is the language of the new CBD Target 11 "... effectively and equitably managed..." in the context of systems of PA and their coverage. The COP 7 decision on POWPA (goal 2.1 to promote equity and benefit sharing) suggests a mechanism for "equitable sharing of costs and benefits arising from the establishment and management of PAs". In the same line, the COP 10 decision invites parties to "establish clear mechanisms and processes for equitable cost and benefit-sharing [in] PAs."

The provision of sharing 30 to 50 per cent of the PA revenue in the BZs is a progressive legal



aspect as it allows accruing conservation benefits to local citizens. This provision emerged in the face of increased conflicts between local people and PA authorities. The equity and distributive justice of benefits to the poor and marginalized social groups that have differential needs and dependence on natural environment have been important agenda in PA governance. Everyday experiences of local people's grievances (see Jana 2007 and Rai 2011b) suggest that the existing flow of economic incentives and funds to BZ user committees has not been duly accounted for the disproportionate burden or costs borne by local people and indigenous groups. Furthermore, in recent years, the smooth flow of revenues to the BZ's institutions has been constrained since the disbursement has been centralized by the state.

In case of CA, designated conservation agency collects the revenues made from tourism and other sources (Article 26.1). These revenues would be channelled back to the local people for conservation and development. In KCA, the Management Council collects the revenue. The Council (in KCA), the CAMCs (in ACA and Manaslu CA) and user committees (in all BZs) can then mobilise the resources available to them into various development and conservation activities under the management plan. Similarly, Section 16(c) of the NPWC Act 1973 has a provision of reasonable compensation for the loss of house or land of a local resident in the BZ if their lands fall within the "existing natural boundary of a national park or reserve as a result of flood or landslide". However, there are complaints of cumbersome administrative and bureaucratic process that results in delayed delivery of such compensation. In several cases, the lately issued Wildlife Damage Relief Guideline 2009, has not been implemented. In most of the cases, the PAs, particularly those that have very little internal revenue have no money for the compensation scheme.

Compliance and Enforcement

Effective enforcement of the laws and rules in PAs depends largely on voluntary compliance, self-regulation and incentives for cooperation. A higher level of compliance automatically ensures effective enforcement of any PA rule and substantially reduces the cost of enforcement. Stakeholders' participation and involvement of local communities help increase compliance and cooperation with the PA authority (Lausche 2011:186). Similarly, strong collective action at the community level induces self-regulation (Ostrom 1990), which in many cases complements external enforcement. Similarly, policy incentives linked with high level of compliance also decreases enforcement cost. Therefore, the threats of prosecution and punishment are not the only strategies to achieve a higher level of compliance.

In situations where there is already a strong local collective action, simply promoting such practice can substantially reduce the cost of enforcement. Moreover, where there is direct incentive for biodiversity conservation or sustainable resources management, the level of compliance can be increased simply by making the incentive more explicit. In many cases, engaging local people in consultation, negotiation and education can increase compliance level. Promoting compliance through these measures may be more preferred as compared to pursuing enforcement actions. This approach is particularly important in situations where the authorities do not have adequate resources for effective enforcement.

In case of voluntary conserved areas (e.g. ICCAs), the legal provisions should recognize that community surveillance and enforcement mechanisms developed by democratic means might be used. It is also important that the local communities should be authorized in making further rules or change existing rules in response to the changing situations (Lausche 2011:187).



However, the current PA legislations in Nepal vest immense authority over to the PA Warden to enforce the policies and laws. NPWC Act (Article 25.5) states, "The prescribed court or official shall have the power to hear and dispose of cases under this Act." In case of BZ, "The Warden shall have the power to hear and make decisions on the cases of crime related to the management and conservation of BZ (BZM Regulation, Article 40:1). The judicial authority of PA Warden on matters of wildlife related offences (such as poaching) has been contested and criticized because all three types of powers related to adjudication of cases are vested on a single authority. The Warden is empowered to make arrests and investigate the case, file a legal charge against the accused, and give a verdict on the case.

Synthesis and Conclusion

The paper has drawn analysis from key laws, regulations and guidelines related to Nepal's PA that have significant role in shaping their governance and management. It is observed that several amendments in the NPWC Act 1973 and formulation of subsidiary regulatory instruments have attempted to respond to the changing international conservation discourses and growing domestic pressure to address local livelihoods and rights concerns. The evolution of PA law indicates a paradigm shift towards participatory approaches and accruing local incentives and concessions. In general, diverse types of PAs are promoted to fit to the different socio-ecological contexts of the mountains and lowlands. Different approaches have been promoted to garner local support and get local people's active participation in the conservation activities and to link conservation with development and increase livelihood opportunities. The redistribution of benefits of tourism through CAs and BZ programme appears to have addressed some economic concerns as well. The case of KCA represents even a further step to transfer more rights and

responsibilities to the institutions of local people, perhaps the most progressive arrangement of community governance of PAs in Nepal and South Asia.

But the analyses show that the Government of Nepal has monopolised the authority over deciding and declaring PAs with no mandatory procedural obligations. Despite the variety of governance types of PAs, the government manages and governs most of the PAs with an exception of KCA. Other CAs are entrusted to NTNC under a "so called" shared-governance arrangements, where local community institutions have to operate under the designated agency's administrative arrangement. There are no legal spaces for voluntary PAs, neither ICCAs nor private ones. The law appears blind to indigenous and traditional institutions and practices and is indifferent to the contribution of these groups to resource conservation.

The analysis of power sharing between the government conservation authority or NTNC and local citizens under collaborative governance arrangements (BZ and CA) revealed that locally elected institutions are too weak to exercise legitimate citizenry rights in negotiating management priorities and benefit sharing. However, under participatory schemes, the relations between actors are shaped with techno-bureaucratic strategies operating under the developmental framework. The management plan, operational plan, audit and other financial documents have often functioned as the new instruments to control the local practice since the regulatory provisions often demands exhaustive paper work and mandatory approval from bureaucratic authorities. Such provisions are deeply disempowering to the local communities and their institutions. Moreover, the legal provisions neither recognize nor respect local people's conservation aspirations, rather they are discouraged.



Management plan as a term appears only recently in the regulatory documents and now has been widely adopted in all types of PAs. It has been used as an influential tool to define bureaucracy-community relation and to shape local practices in resource conservation. In most of the cases, there is little room for negotiation and innovation in the management plans as they require approval at the highest level of the authorities such as the ministry or departmental level. In addition, there is a diversity of regulatory provisions shaping access to resources and tenure rights. In general, the mountain PAs, the CAs and BZ provide relatively easy access while the lowland PAs prohibit access to forest products, particularly in their core zones. However, the park wardens in some cases have provided restricted access to thatch grass and wild vegetables collection, and fishing to specified groups not as legal mandates but as personal decisions.

Policy and legal frameworks have instituted diverse forms of benefit sharing arrangements. Distribution of benefit from PA is made through investment in local development, resource conservation and compensation schemes. However, these arrangements are not sensitive to differentiated costs and benefits, needs and demands and structural inequities of Nepali society. There is no provision of social impact assessment and current schemes are not based on the principles of equitable benefit sharing. In some cases, the benefit distribution arrangements are not adequately transparent.

In conclusion, the legal and regulatory system surrounding Nepal's PAs is far behind the post conflict political discourses of democratic society, inclusive governance and state restructuring. The legal provisions have not fully respected the international norms, principles and good practices concerning governance and human rights. The legal system also fails to recognise many of the international conventions such as CBD POWPA, ILO-169 and UNDRIP.

Consequently, there are huge gaps between the policy rhetoric and everyday practices of resources governance and management. Therefore, PA reform remains a pressing challenge ahead, yet with potentials given the current historical opportunity offered by changed and emerging socio-political contexts of Nepal. We conclude that there is no fundamental change in the way PAs are established and governed since the promulgation of PA legislation four decades ago, and continues to breach the free, prior and informed consent of local and indigenous communities. We therefore propose democratic multi-stakeholder arrangements to advance public debates and deliberations and steer the PA legal reform processes in coming days.

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