

# COMMUNITY LAND GOVERNANCE AND ITS CONFLICTING THEORIES

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## 1 BACKGROUND

Land is a scarce resources, that's why it is directly tied into economic, political and social power in an agrarian society cause of inequitable and skewed distribution of land, Land governance is complex part of land administration having different land governance challenges. There are 1.6 billion skimp people living in forested lands worldwide, nearly 80 percent of which is considered public/ state and common land (Franco, 2008). Access to land, right over it and ownership are key aspects for economic and social development. Community land governance is important issues to every national land administration.

We can review, Nepal's community land, the exact data on the extent of community land in Nepal is yet unknown. However, this land is categorized according to different names, including: Community Forest Users Groups (CFUGs), public land, pasture land, religious places, and others. Land statistics reveal that agricultural land, forest land, grazing land and water bodies occupy 26.8%, 39.6 %, 11.9%, and 18.5% of the total land respectively (Wily, 2008). By ownership, state land (including government land and public land) makes up 73% of the total area of Nepal, including forests, pastures, and riverbanks (approximately 10.5 million hectares). In contrast, private ownership accounts for 26.9% of the land in Nepal, including cultivated and uncultivated land (4.1 million hectares). Various studies show that much of the public land is centralized in the Terai region (Jamarkattel and Baral, 2008; Kunwar et al., 2008; Acharya, 2008; Deuja, 2007).

In Nepal, local communities use most of the rural land and natural resources according to customary practices. These communities not only use their local land and resources to meet their food and livelihoods needs, but also manage these lands in such a way as to best conserve, manage and protect these resources. Nepal's long history of community forestry (also known as participatory natural resource management) showcases the success of local communities both protecting and using forest resources sustainably for their livelihoods.

However, the property rights regime undergirding community forestry in Nepal is burdened by tenure insecurity, as government owns those forest lands: a given community's rights to its forest are only usufruct rights. There is thus constant contestation and confrontation between legal systems and in daily practices concerning who owns community lands and forest resources. Meanwhile, an unintended consequence of the success of community forestry efforts – supported by a heavy flow of foreign aid – has been afforestation on public (community) lands. Ad hoc and uncoordinated government interventions have led to a problem of tenure security and tree tenure security on this public land. This tenure insecurity has been exacerbated by the fact that the institutional arrangements, governing systems and state agencies in the land sector are not as strong and systematic as in the community forestry sector. Forest right activists and land right activists were thus demanding constitutional guarantees of community land tenure security during constitution making process. They are arguing that community land rights should be its own separate category of land classifications, alongside state (public) lands and private lands.

Public land has a high potential for livelihood improvement of poor and land-poor peoples in Nepal, despite higher risks associated with insecure tenure. The experiences of some Village Development Committees in Terai District demonstrate that effective management of underutilized public land provides an important asset for communities, not only to generate forest resources and supplement forest products but more importantly also to reduce vulnerability and generate livelihood opportunities for the landless and the land poor. (Kunwar et al., 2008 and Jamarkattel & Baral, 2008)

Most legal documents pertaining to land, such as the New Constitution 2007, the Lands Act of 1964, the Land Use Policy of 2012, the Agriculture Development Strategy (ADS) policy, and the Draft National Land Policy focus mostly on tenures and tenancy of agricultural land. These legal documents focus less

concerned about public land management, community land tenure security, and the allocation of public resources for the support of local peoples' livelihoods (especially the livelihoods of poor, marginalized and Indigenous Peoples). Despite various legal provisions that address these issues, these legal frameworks establish ambiguity and inconsistency concerning matters such as jurisdiction and enactment/initiation of implementation. Moreover, there are no explicit interventions in these legal instruments that secure community land rights.

Issues of inclusion and participation in community forest management in Nepal are usually determined by the rules, norms and perceptions of the communities with management responsibility. These factors tend to impact the inclusion of disadvantaged social groups, women, and poor households, who often do not benefit from community forest management as much as more prosperous households do. (Agrawal, 2001). For example, in many regions of Nepal, community forest user groups are usually led by men and so called "high caste" people, with women and Dalit are in subordinate positions. Similarly, the Local Self Governance Act of 1999 has recognized public land encroachment and inequitable distribution of community forest resources as probable causes of community land conflict. Multi-national companies' recent acquisition by of land held by indigenous communities has also resulted in land conflicts at community level.

In a given context, this article attempts to understand the community land governance with respect to conflicting theories to suggest an informed and pragmatic community land governance.

## **2 LAND GOVERNANCE**

Land governance means implementation of laws, policies to manage land, property and natural resources. Land governance is the process by which decisions are made regarding the access to and use of land, the manner in which those decisions are implemented and the way that conflicting interests in land are reconciled (GLTN).

Weak governance in managing common property assets shows massive significances on all sectors i.e. economic change, poverty mitigation, the environment, political legitimacy, peace and security, and development cooperation. Public land or management of common property is a critical factor for safeguarding

good governance in the land administration of a country. Public property assets are frequently misused, and nearly all countries underutilize these assets (Zimmermann, 2008).

## **3 COMMUNITY LAND RIGHTS**

Community land refers to land that has long been owned, managed, held, and/or used by local people. Community land may be divided into parcels for individual or family use, but it remains in the 'ownership' of the larger community. Other community land is held in common for shared use. Community land and resources may include farm land, forests, range lands, fishing areas, watering points, wildlife habitats, and sacred areas.

The lack of clarity and recognition of community land and resource rights across the developing world has become a global crisis undermining progress on social and economic development, human rights, peace, food security, environmental conservation, and our ability to confront and adapt to climate change. Ownership of roughly one-half of rural, forest and dry land areas of the developing world is contested, directly affecting the lives and livelihoods of over two billion people. These lands, which contain the soil, water, carbon, and mineral resources that the future of all humanity depends upon, are the primary targets of rapidly expanding investments in industrial agribusiness, mining, oil and gas, and hydro-electric production.

## **4 CUSTOMARY LAW AND COMMUNITY LAND**

Customary tenure refers to the traditional institutions and rules that communities around the world have created to administer land and natural resources. These practices are interwoven with traditional community governance and social systems, which give them great resilience and flexibility. In most African countries, the majority of the population lives in rural areas, and holds land based on undocumented customary arrangements. Customary systems can also hold sway in the rapidly growing peri-urban areas that fringe Africa's cities and towns. They often provide the only means for local people to assert their rights.

But customary practices over land are not perfect. In some cases, they sustain inequitable or discriminatory practices. Conflicting statutory law or corrupt customary leaders can weaken customary systems. Customary practices often favor men, and thus

reinforce women’s inequality and poverty. Such shortcomings can and must be addressed if customary systems are to effectively promote local people’s rights to land and resources. In agrarian cultures, the social owner of common land is consistently a community. It is a fact that, generally, the larger a river, the less localized the claim upon it. As a rule, forest, pasture, marshland, and rangeland falling within the area of a particular group, village, or village group, are considered the assets of that community (Alden, 2011). In agrarian societies, the social owner of common land is evenly a community. What institutes this community is much more various: it may alter by country, status quo, and the nature of resources involved.

**5 CONFLICTING THEORIES ON COMMON**

The management of community land is commonly problematic, with, for example, considered, rational, equitable and transparently implemented policies lacking, frequent corruption in the administration of such assets and lack of adequate capacities to manage such lands effectively. These problems are globally widespread and are present in both developing economies and more developed economies (Törhönen, 2009). There is typically ambiguity in authoritative roles and responsibilities, a lack of accountability or methodology in the systems of allocation, appropriation, disposal or use of public/common land, and a lack of information on state assets (Zimmermann, 2008). There are different concept existed regarding management of common land property i.e. Tragedy of commons, HRS, Marxism theory and Governing the commons.

**6 TRAGEDY OF COMMONS**

The Hardin’s concept about ‘Tragedy of Commons’ is more relevant with community land management. “There appears, then, to be some truth in the conservative dictum that everybody’s property is nobody’s property. Wealth that is free for all is valued by none because he who is foolhardy enough to wait for its proper time of us will only find that it has been taken by another. The blade of grass that the manorial cowherd leaves behind is valueless to him, for tomorrow it may be eaten by another’s animal; the oil left under the earth is valueless to the driller, for another may legally take it; the fish in the sea are valueless to the fisherman, because there is no assurance that they will be there for him tomorrow if they are left behind today” (Gordon, 1954). Table 2 shows about Tuna catches yearly by Million Ton-MT,

which shows yearly increments from 1985 to 2005. Common property or natural resources are free goods for the individual and scarce goods for society. Under unregulated private exploitation, they can yield no rent; that can be accomplished only by methods which make them private property or public (government) property, in either case subject to a unified directing power. Ten Real-Life Examples of the Tragedy of the Commons that Alecia M. Spooner mentioned in study Environmental Science for Dummies are Grand Banks fisheries, Bluefin Tuna, Passenger pigeons, Ocean garbage gyres, Earth’s atmosphere, Gulf of Mexico dead zone, Traffic congestion, Groundwater in Los Angeles, Unregulated logging and Population growth

**7 CHINA’S HOUSE-HOLD RESPONSIBILITY SYSTEM-HRS**

China’s land reform since the 1970s as three major stages as first; emphasis on ‘land to the tiller’, second as land reform launched in the 1950s, was aimed to avert land amalgamation derived from enlarged inequality in order to ensure the sustainability of the ‘land to the tiller’ principle and practice and third stage as land reform, characterized by the introduction of the Household Responsibility System-HRS, in the late 1970s, was a tactical move towards more incentive based land management structures (Zhao, 2013).

Land tenure is about more than simple property rights. The broader dynamics of governance and politics in which struggles over land control are embedded. The recent land reform policies, with collective ownership and individual use rights, have caused social fragmentation and a weakening collective power of the poor, and have led to unsustainable natural resource use and farming practices. The current policies have paradoxical results. HRS has put increasing emphasis

Tuna catches by species (1000MT)

Year/Type	1985	1990	1995	2000	2005
Skipjack	914	1290	1645	1957	2305
Yellowfin	725	1027	1072	1185	1296
Bigeeye	258	306	386	437	404
Albcore	193	232	195	215	236
Bluefin	73	49	70	68	43
Total	2163	2904	3368	3862	4284

Table 2:Review of Global Tuna Trade and Major Markets Source: David James Consultant FAO and Helga Josupeit, Fish Utilization and Marketing Service FAO, 2007

on individual property rights to land, limiting people's ability. The HRS reform, as well as the other reforms that accompanied it, has had a profound positive influence on China's growth and the livelihoods of its people (Li, 2010).

It demonstrates the linkages between land tenure and wider concerns over poverty, inequality, environmental degradation, political stability, and social cohesion and develops a holistic understanding of land tenure systems in China today, their history, problems, and potential to contribute to poverty alleviation. It also provides a lens into a multi-layered crisis faced by China's peasant households. Zhao shows how the confluence of policy, growing markets, and lack of representation, illegal expropriations and distant opportunities shape peasant attachment to and departures from the land.

## 8 MARXISM AND LAND GOVERNANCE CONCEPT

Marx shows the relation of property ownership with the social power. He debates on the equitable access of land on social status and production level. In the world of capitalism, for example, the nuclear cell of the capitalist system, the factory, is the prime locus of antagonism between classes--between exploiters and exploited, between buyers and sellers of labor power rather than of functional collaboration. The Marx class theory debates on ownership of land on a society as perspective of access on property, with regarding the productivity factor (Duggett, 2008). Access on land and the tenure security is major factor for productivity and social sustainability. Society grants the holders of social positions power to exercise coercive control over others. And property ownership, the legitimate right to coercively exclude others from one's property, is such power.

Marx's analysis continually centres on how the relationships between men are shaped by their relative positions in regard to the means of production, that is, by their differential access to scarce resources and scarce power. He notes that unequal access need not at all times and under all conditions lead to active class struggle. But he considered it axiomatic that the potential for class conflict is inherent in every

differentiated society, since such a society systematically generates conflicts of interest between persons and groups differentially located within the social structure, and, more particularly, in relation to the means of production. Marx was concerned with the ways in which specific positions in the social structure tended to shape the social experiences of their incumbents and to predispose them to actions oriented to improve their collective fate. Figure 1 shows the dependency and use of common grazing land in Ugandan experience, which clearly proofs that the community are using as fuel, water, materials, hunting

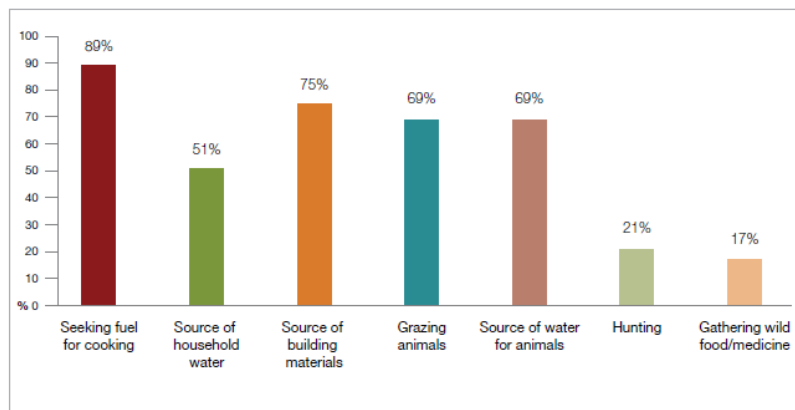


Figure 1: Ugandan respondents' use of common grazing lands (Rachael Knight J. A., 2013)

and different use of grazing land.

## 9 GOVERNING THE COMMONS

Ostrom's Governing the commons- concept is the evolution of institutions for collective action, try to answer popular theory about the "Tragedy of the Commons", which has been interpreted to mean that private property is the only means of protecting finite resources from ruin or depletion. She has documented in many places around the world how communities devise ways to govern the commons to assure its survival for their needs and future generations. Box-1 shows the successful example of forest management of West Bengal, India, which is hold by about 618 families with common tenure. This experience shows that, they shares different uses and generation of income from specified common resource.

A classic example of Ostrom, this was her field research in a Swiss village where farmers tend private plots for crops but share a communal meadow to graze their cows. While this would appear a perfect model to prove the tragedy-of-the-commons theory, Ostrom discovered that in reality there were no problems with overgrazing. That is because of a common agreement

Box-1: The Joint Forest Management-JFM in West Bengal has its origin in the success achieved in rejuvenating a patch of 17 hectares of degraded forests under a pilot project implemented during 1972 near Arabari in Midnapore district. About 618 families living in 11 villages lying in the fringe voluntarily protected these forests when in return they were assured provision of fuelwood and fodder from the regenerated forest and employment in forestry activities. In 1987 these villagers were also declared as beneficiaries for these rejuvenated forests and granted 25 per cent share from the revenue earned from final harvest. (Sarker, 2006)

Box-1: Joint Forest Management in West Bengal

among villagers that one is allowed to graze more cows on the meadow than they can care for over the winter. Ostrom has documented similar effective examples of “governing the commons” in her research in Kenya, Guatemala, Nepal, Turkey, and Los Angeles. A large study conducted by the World Wildlife Fund- WWF included over 200 protected areas in 27 countries. The WWF found that many protected areas lacked key financial and human resources, a sound legal basis, and did not have effective control over their boundaries (Ostrom, 2010). Box-2 shows Liberian experience on forest management and conservation with different laws, rules and restrictions. It aims to show different land patterns and use categories.

10 LEGAL PLURALISM AND COMMON

Legal pluralism is everywhere. There is, in every social arena one examines, a seeming multiplicity of

Box-2: Examples of by-laws and rules agreed in natural resource management plans in Liberia in case of Forest conservation

- “No one is allowed to cut down the community hard forest for farming: no farming in the community reserve forest, so as to avoid deforestation, farming is allowed in the secondary forest, low land, or swamp. Anyone caught in such practices will pay that amount of ten thousand Liberian dollars (LD\$10,000).”
- “No one is allowed to make farm from Camp One to Zuah Mountain – that is the reserve forest for Bar clan. Violators’ farms will be taken from them.”

Reserve Areas

- “The community shall have reserve areas, such as creeks, rivers, Zoe Bush and forest. Some of the reserves areas identif[ied] are; the Wrunee creek located in Blatoe – no one should set net, fishing and set basket on it. The reserve forest is located between Blatoe and Normah
- no hunting, farming, logging and pit sawing is allowed. The mountain is reserve[d] for minerals and a place near sand beach.”

Box-2: Examples of by-laws and rules agreed in natural resource management plans in Liberia (Rachael Knight, 2013 )

legal orders, from the lowest local level to the most expansive global level. There are village, to town, or municipal laws of various types; there are state, district or regional laws of various types; there are national, transnational and international laws of various types. In addition to these familiar bodies of law, in many societies there are more exotic forms of law, like

customary law, indigenous law, religious law, or law connected to distinct ethnic or cultural groups within a society

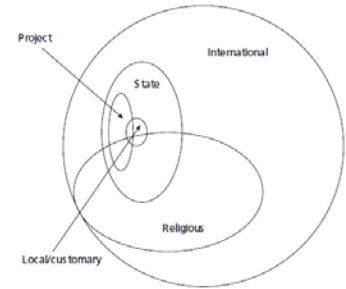


Figure 2: Legal Pluralism and Dynamic Property Rights (Pradhan, 2002)

(TAMANAH, 2008). Most of common land are underutilized due to unclear policy and legal way-out. Figure 2 shows the complexity in property rights in different national and social attachments. Majorly there exists property right dynamics in common land with cause of legal pluralism.

11 CONCLUSION

The existence of common property regimes in many parts of the world reflects the importance of social relations as complex dimensions of land tenure. The equitable access on land for all social group is crucial for social agreement, which can fulfil by management of common land. So, the theoretical approach are more conflicting to use and management of common property and resource. Some of theories criticizes of common property tenure, which supports to resource degradation and depletion. In other hand some theories advocates that common property tenure will be the

better way of optimal use of common resource. So, the important part to making decision about management of common property is to identifying social structure, tenure conception which can directly move individual and social groups toward mass development. For better management of common land, it should be focussed on suitable use, right and ownership of common land, which can lead to common access, security of ownership for social users. Conceptual theoretical analysis, empirical international evidences and country context study about social pattern and tenure structure is more important factors to manage community resource. Surely, it will support to social, economic and environmental development of country when there is taken following considerations also.

Landscape of stakeholder is dynamic and diverse. So, following state-society analytic perspective, strengths of state and societal actors can complement and contribute each other to precede common land reform processes.

Land issue is not only technical, but also political issue i.e. political engagement (leadership, support etc.) in land issue. But, it is missing in current land and agricultural related affairs.

Land research and land reform should have mutual and symbiotic relationship. Importantly, conceptual research is needed to guide the land right movement in track.

## 12 KEY POLICY MESSAGE AND RECOMMENDATION

Special precautions measures during community land distribution reform should be taken into consideration to avoid the inconsistencies, irregularities, and lapses for benefit of all sections of land reform beneficiaries. (Tactical politics: Rewarding the supporter and punishing the opponents)

Differentiated land policies should be in place to understand and address the substantive issues of all sections of subaltern groups ('One size fits for all' does not work' for existing social diversity).

Enhancing access to land and land based natural resources (public land, forest, water etc.) is an alternative way to secure the livelihood of poor people (pro-poor livelihood intervention).

Land research should be institutionalized in state's machinery and university system to shape land right movement (for informed choice) as well as for informed policy reform in Nepal.

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