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Advancing Human Rights through Community Forestry in Nepal

Shaunna Barnhart

Community forestry in Nepal is not new; its roots extend to late 1970s donor projects to promote *"panchayat* forests", which gave a limited number of local government bodies more control of forest resources. Nepal's community forestry as we now know it stems from the 1993 Forest Act and 1995 Forest Regulations, drafted under the new and fledgling democracy that flourished after a people's movement swept Nepal in the spring of 1990, seemingly sweeping away decades of authoritarian rule. Any analyst of Nepali politics will tell you that this is a naive and euphoric account, and the story is certainly not this simplistic; but it is necessary to place this government action in context, at a time when Nepalis were finding power in their collective voices.

Nepal is home to over 14,000 community forest user groups (CFUGs) controlling an estimated 23 percent of forestland. In this model, as outlined in the national forest legislation, an elected committee manages the forest resource and its benefits for communal good according to their own rules and action plan. This devolves previous government forest control to smaller localized scales of governance. But community forestry as practiced in Nepal is about more than managing resource access; it is a forum for advocating and advancing tangible human rights. The rights agenda in forestry finds its roots in social movements for redistribution of forest tenure, rights to self-determination, and human rights. These three discourses also converge in the emergence of

community forestry in Nepal and in the wider circle of rights that such groups now claim. Nepal's community forestry movement now represents and enacts a broader set of rights, leveraging community forestry as an effective strategy to realize broader rights claims. CFUGs can be both advocates and practitioners of a social justice that believes in equitable access to forest benefits while providing necessary support to live life with dignity by ensuring basic human rights services such as health, education, and livelihood. Such groups have the potential to ameliorate inequality and suffering through distribution of forest benefits – benefits that include a suite of services that the community forest group can provide, resulting from their collective rights to productive forestlands.

This chapter explores the experiences of five CFUGs in Nepal's Jhapa District, whose programs advance human rights. Recognizing that the community forest experience varies greatly across groups and across Nepal (indeed, with over 14,000 CFUGs, how can it not), this chapter argues that, based on these five groups' experiences, community forestry not only provides an avenue to securing forest rights, but once those rights are codified, can then become a primary agent in securing basic human rights – including social, political, and economic rights – and creating inclusive futures through social justice, both independently and in conjunction with partner organizations.

Applying Human Rights

Economic, social, cultural, civil, and political rights are cornerstones to the modern conceptualization of human rights, or those rights needed to live a life with dignity. In order to achieve this basic right of living a dignified life, "all basic necessities of life – work, food, housing, health care, education and culture" must be attainable for all (OHCHR, 1991). These rights have been codified by the United Nations (UN) in the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social, and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966), which focus on the role of states in guaranteeing and protecting citizens' human rights through state mechanisms. As Johnson and Forsyth (2002, p1592) summarize, rights are generally "understood as a claim to a benefit ... that states or other forms of authority have agreed to uphold", where rights are defined by a universal system "in which minimum standards of well-being are extended to the widest possible constituency".

The idea of "universal" human rights is contested. Human rights change and evolve over time, and relegating them to a static non-changing list drafted in specific historical junctures, under equally specific political and social conditions, can create a monolithic, inelastic, and non-dynamic structure in a dynamic, changing world. As Arzabe (2001, p31) argues:

> Individual and social needs change over time, as do the rights that
> ensure the possibility of being human with dignity. The human

rights system evolves, adding new rights that formerly were not considered necessary for the correct development of each one's personality in society.

Others argue that the human rights discourse stems from a Western-paternalistic worldview where universal rights, "as defined through largely Western experiences, limits the relevance of rights to local circumstances and thereby effects yet another form of Eurocentric epistemological violence which seeks to normalize a particular and self-servicing social vision" (Mohan and Holland, 2001, p193).

Sen (2000) argues that "universal" human rights are justifiable because values termed "human rights" have a long history and documentation in non-Western cultures. The difficulty is in actually providing all with equal access to those rights and protection from their abuses. To do so requires multiple scales of governance, rendering human rights an ideal rather than a practice (Sen, 2000). This does not mean that we should abandon human rights as ineffectual and unobtainable. Instead, it becomes an issue of scale; localized efforts can be more effective in securing basic human rights than international bodies and agreements (Mertus, 2009).

Scale must be considered in understanding how human rights move from idealized discourse to everyday practice. Human rights are (largely) enshrined in international bodies, (supposedly) protected by national governments, and (often) brought into practice by organizations and groups acting in communities (Mertus, 2009). Conflict, cultural norms, social exclusions, political uncertainty, and poverty separate individuals from those rights and create barriers to accessing those rights which allow one to fulfill his/her potential and live a dignified life. In such situations, how do communities advance equity in access to basic human rights?

A rights-based approach to development is one strategy to ensure basic human rights for a wider constituency (Mohan and Holland, 2001; Sengupta et al, 2005; Aaronson and Zimmerman, 2006), as is a rights-based approach to natural resources. As Campese and Borrini-Feyerabend argue in Chapter 4, human rights are protected and advanced through sustainable forest use and preservation of natural resources. Yet, development initiatives are generally spearheaded by international aid organizations that can ultimately serve to limit the efficacy of the rights-based agenda itself (Mohan and Holland, 2001). The case presented here does not fit smoothly into this paradigm. Rather, the advancing of a broader suite of rights through established forest rights groups is based upon a grassroots demand; forest users are identifying their own varied needs (unfulfilled rights) and expect their CFUG to deliver – an expectation arising from CFUGs' success in managing forest use rights.

This argument is based upon the concept of communal access to forest resources as a *right* rather than a *policy*. Policies can change with political winds and revolving parliaments. A *right*, however, is more difficult to retract;

"once a benefit stream to the poor has been established as a right, it is difficult to reverse, and considerably easier to defend against corruption or political capture" (Conway et al, 2002, p3). If forest access is a *right*, a right to livelihoods and improved quality of life, this provides not only the needed security to maintain that stream to resource benefits, but also creates the space to demand an ever-widening circle of rights.

Placing Community Forestry

People do not love the government. The government took the forest from them and left nothing for the people, so the people didn't love the forest. (Jureli CFUG member and FECOFUN district chapter chairperson, 5 October 2007)

Community forestry in Nepal began, in part, as a way to correct the negative impacts of previous government nationalization of forestlands. The 1993 Forest Act and the 1995 Forest Regulations created community forest user groups and began to devolve forest control on a larger scale, although such groups were "largely promoted by international development organizations" (Nightingale, 2003, p527). The experience of community forestry in Nepal is largely deemed a success – one that has improved forests and benefited communities on multiple fronts, including governance, and social and economic justice (e.g. Shrestha, 2001; Timsina, 2003; Kanel et al, 2004). However, even CFUGs that are successful on some measures fall short on others. Studies have documented shortcomings of the CFUG experience, including reinforcing traditional elites and inequities (Timsina, 2003; Nightingale, 2005), and succumbing to political struggles both across scale (Shrestha, 2001) and within groups (Varughese, 2000).

This chapter presents a dimension of community forestry in Nepal's Tarai that has received little attention – securing tenure rights may lead to claiming and realizing a wider set of human rights. Much community forestry literature is based in Nepal's hill regions; this is not unexpected, as about 90 percent of all CFUGs are in hill and mountain districts (ISRC, 2010). The Tarai plains are home to the remaining 10 percent (ISRC, 2010), along with around half of Nepal's population, and yet receive comparatively less academic attention. That attention tends to focus on national parks and buffer zones (e.g. McLean and Straede, 2003; Nagendra et al, 2007) or governance structures, which are highly contested (e.g. Nagendra, 2002; Ojha, 2008). After eradication of malaria sparked a forest clearing and homesteading boom during the 1960s, the Tarai's highly degraded and isolated forests were transferred to CFUGs in the 1990s. While better-quality forests did exist, those remained under government control (Nagendra, 2002).

Nepal's CFUGs are charged with managing forests for communal benefit, sustaining livelihoods, and alleviating poverty. Groups have some creative

freedoms in how they achieve this. However, due to lack of internal funds and/ or lack of expertise, many CFUGs choose to partner with national and international organizations to "bring programs". Although this is a reality for most CFUGs, not all CFUGs' projects depend upon these external partnerships. Thus, while many (rightly) associate community forestry in Nepal with international partnerships, this is not the only method by which users' rights are expressed and enhanced. CFUGs with diversified sources of income, such as those in this study, can independently conduct needed projects and programs, and not rely solely on partnered projects to address community needs. The CFUGs discussed below are advancing human rights and creating better lives for their communities, both through their own internally funded programs and through partnered projects.

Jhapa CFUGs and FECOFUN

Jhapa, located in the eastern Tarai, is home to 28 established CFUGs with an additional 24 in the process of being formed. While all five groups in this study rely on the sale of forest products for their budgets, some also profit from rubber tapping, tourism, and interest earned on loans to users. In 2008, the 28 CFUGs had an average income of 987,017 Nepalese rupees (around US$14,000) each and managed a total of 7685ha. The CFUGs are large in size and income compared to hill counterparts. For example, the hill district of Gorkha had 361 CFUGs with an average income of 12,912 Nepalese rupees (around US$180) and managed 16,748ha total (ISRC, 2008).

These CFUGs work in areas beyond forest management and access that improve quality of life in their communities (see Table 6.1). During a community meeting in 2007 to review the new Prakriti CFUG budget, a committee member declared:

> *Our community forest group has brought us clean water. What have the politicians in Kathmandu done for us? We have built roads and a school. What have they done for us in Kathmandu? If we want change, we need to do it as a community. We are the ones working to improve our community.*

This sentiment is echoed by community members who turn to their CFUGs for a range of services, from health to education to livelihoods. Prakriti CFUG is the most limited, financially, of the groups in this study. During a group interview in 2007 with poor households, respondents claimed inequity in the CFUG's road improvement and electricity distribution; they also expected the CFUG's help in building toilets. Another unmet demand, both in Prakriti and Junkiri, is for more women-focused programs and women's income-generating opportunities. If health and livelihood are basic human rights, then users are clearly expecting a wider range of rights access from their forest management group.

Table 6.1 *Community forest user groups (CFUGs) and their projects*

CFUG name*	Types of projects**
Kumari	Biogas loans, women's micro-lending, animal breeding
Junkiri	Biogas loans, development of non-timber forest products, wetland restoration, medical assistance, school fee and book assistance for the poor, clean drinking water system, road improvement, goat keeping
Prakriti	Biogas loans, clean drinking water system, road improvement, electricity, pre-school, home building for elderly poor, goat keeping
Diyo	Biogas loans and grants, savings and loan program, road improvement
Jureli	Biogas loans, road improvement, electricity, job training, animal breeding, toilet building, land distribution to landless poor

Notes: * CFUG names listed are pseudonyms.
** This list reflects the programs cited by community members and CFUG committee members during interviews.

Over 11,200 CFUGs partner with the Federation of Community Forest Users, Nepal (FECOFUN), a national organization with sub-national branches whose goal is to promote and protect forest users' rights. Many organizations work in community forestry; but this study focuses on FECOFUN, given its extensive national network, and many international organizations partner with FECOFUN to implement programs. FECOFUN is also involved in a variety of social justice and rights-based activities, including political and rights awareness campaigns.

Community Forestry: Widening the Circle of Rights

Nothing is going to happen without community forestry; the government is going to do nothing. The community forest is doing all the development programs. The community forest is looking after the people who are getting sick. The community forest is paying for books and fees for poor village students. Biogas is very essential. Almost every family has biogas in the village. If there are people in the village who cannot afford to pay the hospital bills, we manage to take these people to the hospital and pay for their care. Though this action committee goes and a new one comes in its place, the decisions will be implemented. Even though the individuals may change, the decisions will not be changed; the programs will continue. (Junkiri CFUG treasurer, female, 2007)

Forest rights and users' expectations

As previously mentioned, the 1993 Forest Act and the 1995 Forest Regulations provide legal basis for CFUGs and communal forest rights. Simply declaring a right does not put it into practice; people must understand how their rights operate within given structures and who to hold accountable. To this end, FECOFUN's Jhapa District chapter conducts forest rights awareness programs throughout the district, including one in Jureli CFUG in 2007.

Facilitators meet with small gendered groups and interactively discuss the history, rules, purpose, and users' rights and expectations of the CFUG to ensure that everyone is aware of forest rights and the possibilities and limitations of community forestry.

Respondents listed access to firewood, fodder, and lumber, as well as forest protection, when asked to identify the purpose of their CFUG. People also complained about timber smuggling and poor people selling firewood collected from the community forest in the market. Maintaining access to forest products, conservation, and complaints of smuggling are not surprising responses. What is interesting is that many also identified a range of community development and poverty alleviation programs among their CFUGs' responsibilities – projects such as road building, electricity, clean drinking water, job training, healthcare, and more. When these were not provided, or were perceived to be provided inequitably, it led to user frustration. By restoring what had been severely degraded forestlands into productive forests, forests that both meet users' needs and provide a communal income, communities now expect their CFUG to provide access to a broader range of rights and services that improve their quality of life. This expectation is born of the experienced success of communal resource management; CFUGs have not only become but are expected by users to be a reliable and tangible mechanism for advancing a broader range of rights.

Widening circle of rights

As outlined above, all five CFUGs are actively engaged in various projects outside the direct realm of forest access and management. The broad suite of human rights includes rights to work, healthcare, food, housing, education, and culture: the rights needed to live a life with dignity. These CFUG actions promote and advance such types of basic human rights.

A right to "livelihood" is a more appropriate framing to consider than "work" as a basic necessity for a life with dignity. CFUGs are actively involved in securing livelihoods through multiple approaches. They employ community members in lumbering and forest-based enterprises – for example, Junkiri CFUG employs dozens of people in rubber tapping and tourism. Farming in Nepal is highly dependent upon forests; ensuring access to forest resources helps to secure those livelihoods. Two CFUGs operate animal breeding centers that also support farming livelihoods. CFUGs have dabbled in goat-keeping programs where members are given loans to raise and breed goats, but have met with mixed success.

CFUGs expand alternative livelihood options through job training, such as Jureli CFUG's sewing, hair cutting, and bamboo craft-making programs, and through micro-credit lending, such as Kumari CFUG's program to loan money to groups of five women to start vegetable vending businesses. In 2007, there were 85 groups (425 women) participating and benefiting from Kumari CFUG's micro-credit and livelihood program. Women in Junkiri and Prakriti CFUGs are demanding that their CFUGs offer more job training opportunities for women.

Not all CFUGs offer alternative livelihood programs; however, members still expect their CFUG to enhance livelihood options.

CFUGs also address healthcare. Junkiri CFUG provides need-based grants for health emergencies and pregnancy. CFUGs are involved in multiple preventative measures, including clean drinking water systems, sanitation, and biogas. Clean drinking water systems with deep wells that distribute water to communal taps, such as in Prakriti CFUG and being replicated in other CFUGs, are made possible with combined support from the CFUG and government assistance (however, Prakriti CFUG's system began malfunctioning in 2009 due to a faulty pump). Jureli CFUG provides members with supplies to build toilets. In Prakriti CFUG, a meeting with poor women revealed their sanitation concerns and frustration that their CFUG could not provide assistance in building toilets. Again, members are expecting their CFUG to play an active role in obtaining a basic human right: health.

All five CFUGs promote biogas in their villages. Biogas contributes to forest protection, improves quality of life, and improves health by replacing firewood with methane for cooking. Biogas is created by mixing manure with water and releasing it into an underground digester where the methane rises and is piped to the kitchen. While the level of support varies among groups (some work in conjunction with partners, whereas others work from their own funds), by facilitating material support for biogas, CFUGs directly affect women's and forest health. Replacing firewood for cooking improves health by reducing upper respiratory diseases suffered disproportionately by women and children who inhale smoke from open fires in enclosed spaces; a benefit cited by all biogas-owning respondents. Biogas slurry is an organic fertilizer that can replace urea, thus helping to secure farming livelihoods. By promoting biogas, CFUGs conserve forests while affecting households' health and livelihoods.

While the CFUGs' larger projects address livelihood and health, they also contribute to education, housing, and culture. CFUGs have built pre-schools (Prakriti CFUG) and provide grants to poor families for school books and fees (Junkiri CFUG). They have provided homes for the elderly (Prakriti CFUG) and transferred land to the landless (Jureli CFUG). Respondents explain that CFUGs preserve Hindu culture by providing funeral pyre wood free to the poor. Through forest management, CFUGs ensure that forest products for religious purposes are available, such as *sal* leaves. CFUGs also strive to improve quality of life by working with government offices to improve roads and electricity access.

These examples demonstrate that CFUGs have moved beyond securing forest rights and work to advance basic human rights of livelihood, health, education, housing, and culture. What would be termed "human rights" in the internationalized discourse are simply needs that are identified by the community and which the CFUGs work to attain. The FECOFUN district chairperson summarized it succinctly: "CFUG gives facilities; government can't do it. CFUGs do training such as sewing and hair cutting for the poor to start businesses. They give animals. It is organized and they save the forest."

Political rights beyond the forest

The previous section covered economic, social, and cultural rights. CFUGs also work in the areas of civil and political rights. The functioning of the CFUG itself is a demonstration of political rights (although with mixed experiences across Nepal); but that is not the focus here. Rather, this section covers political awareness campaigns, both for forest rights and for national political rights, organized around CFUGs by FECOFUN.

After the Peace Agreement was signed in November 2006 between the government and Maoists, ending a ten-year civil war, FECOFUN was among the organizations that set out to inform the broader public of the agreement, the coming new democracy, and the people's new rights and expectations. FECOFUN facilitators conducted a nation-wide campaign to explain the Peace Agreement and the upcoming election process through CFUGs. They did this through printed materials (see Figures 6.1 and 6.2), and through community meetings. Interestingly, the poster depicted in Figure 6.1 was also screened onto a T-shirt for facilitators, with the left side on the front and the right side on the back. Note that the Peace Agreement includes assurance of human rights. Figure 6.2 is a page from a flip-chart book distributed through CFUGs for facili-

Figure 6.1 *Peace Agreement?*

Note: This poster was sponsored by FECOFUN: "Elements of the Peace Agreement: Inclusive democracy, arms management, rehabilitation, and assurance of human rights, The light has embraced Nepal and the Nepalese. Now there will be sustainable peace in our country."

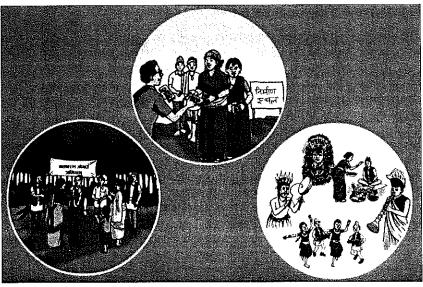*Source:* Federation of Community Forest Users Nepal (FECOFUN)

Figure 6.2 *International Covenant on Economic, Social, and Cultural Rights (1966)*

Note: This campaign was sponsored by Canadian International Development Agency, Center for International Studies and Cooperation, FECOFUN, and Worldview Nepal.

Source: People's Voice program flip-chart (p15) illustrating the International Covenant on Economic, Social, and Cultural Rights (1966)

Figure 6.3 *Community Forest Campaign for Inclusion and Good Governance*

Note: This poster was sponsored by FECOFUN: "Include people's rights in natural resources and community rights in the new constitution."

Source: Federation of Community Forest Users Nepal (FECOFUN)

tators to conduct standardized awareness meetings on the new political process and human rights; included are pages explaining the International Covenant on Economic, Social, and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966). Both campaigns were national efforts that also touched CFUGs in Jhapa.

On 15 December 2007, after the constitutional assembly elections had been postponed a second time, Jhapa FECOFUN held a bicycle rally, with CFUG members from across the district participating, to demand timely elections. About two-and-a-half years later, in April 2010, FECOFUN organized a series of Forest Caravan rallies across the country, which then descended on Kathmandu for a national rally, demanding forest rights be guaranteed in the new constitution (see Figure 6.3). Dozens of buses carried forest users and supporters to the regional rally in Biratnagar, including users from all five of the CFUGs in this study.

FECOFUN's network can reach a broad section of Nepal's population; but that is not the issue here. Rather, it is the fact that a resource management group, the individual CFUGs, would include political awareness campaigns in their activities. Politicization permeates nearly all sectors of Nepalese society – forests included – at all levels, from village to central government. 2010 has been a

year of wood smuggling and forest official scandals, culminating in the government's controversial July 2010 proposal that effectively restricts forest people's rights, despite evidence that irregularities happen more often in non-community forests. Forest users view forest benefits as a communal right, not as a policy subject to shifting political winds. Echoing Conway et al's (2002) right versus policy discussion, once forest access is extended as a right, it is more difficult to restrict. CFUGs and their advocates, who have successfully campaigned for political rights, must now retrench and defend their basic right to the forest.

Connecting to human rights discourse

The preceding sections highlight the different ways in which CFUGs are promoting and enacting a broad range of human rights. Community members are making specific human rights claims, demonstrating that human rights are not a static discourse, but are modified and co-produced through action by individuals and communities according to their need. The focus is on their actions, and how those actions are examples of a locally grounded human rights agenda. CFUGs modify and enact locally understood human rights, but also reproduce larger global human rights discourses, as the next two examples demonstrate.

Over 1000 people, including school children, local organizations, FECOFUN, and CFUG members, came to the streets of Birtamod in December 2007 to celebrate International Human Rights Day, and the beginning of the 60th-year celebration of human rights. The community forest contingent carried a banner, clearly positioning themselves in the international discourse: "Let Us Successfully Celebrate the 60th International Human Rights Day Observance: Let Us Honor Human Rights." A year later, Jureli CFUG held a three-day capacity-building workshop, run by Lutheran World Federation, to train community facilitators in human rights. The trainer drew a, perhaps unfortunate, analogy: human rights must spread to all, just as mobile phones are now in every pocket. Mobile phones are only in the pockets of those with disposable incomes, in range of a network, and with the means to recharge it; mobile phones are also a foreign import, dependent on a highly centralized network. Thus, his analogy serves to demonstrate human rights criticisms – that human rights are a Western-dominated narrative in a structured network to which millions of people lack access.

When asked why the CFUG held this program, the then Jureli CFUG chairperson explained it is necessary to understand that everyone, regardless of gender, caste, and ethnicity, has the same basic rights. About 18 months later, I asked the new Jureli CFUG chairperson, elected in 2010 after a conflict arose over resource extraction that led to the previous committee being quite literally locked out by the users for eight months, about the connection between community forestry and human rights. He explained that while they do not work directly with human rights activists, "our feeling may be similar" and "we also respect the will of the people while carrying out our activities". And the will of the people is to widen the circle of human rights and for that circle to reach a wider constituency.

Conclusions

Observing these five CFUGs in Jhapa over the course of three years, it is clear that each has unique dynamics, problems, and successes. The political situation in Nepal is fluid and dynamic, and forests and forest peoples are clearly caught up in those forces. This can result in conflict and inaction (as happened in Jureli CFUG for eight months), and in focused action addressing users' varied needs – which all five CFUGs demonstrated in their various programs to improve quality of life in their communities. Some initiatives are funded internally; others are done in partnership with other organizations or government offices; but all are grounded in community members' articulations for broader services and rights. Human rights cannot be reduced to a static, universalizing, Western-bureaucratic, top-down narrative dependent on quantitative indicators. As this case shows, human rights are identified, modified, and broadened by communities. Human rights need not always be granted from on high; they can be enacted from below. The actions of CFUGs, as outlined above, demon-

strate that they are actively widening the circle of rights their communities enjoy – from access to health to education to livelihoods – based upon needs identified in the community, not necessarily international agendas. Groups that find their legitimacy on a rights-based approach to forests can, and do, create their own spaces to advocate a broader social justice that pursues guaranteeing access to a range of material and social human rights, allowing a wider public to build a life with dignity.

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7

Forest Devolution and Social Differentiation in Vietnam

To Xuan Phuc

Forest cover in Vietnam dropped from more than 40 percent during the 1940s to 28 percent by the end of the 1980s (Nguyen Van Dang, 2001). In response to the rapid loss, the government implemented a forest devolution policy during the 1990s, under which it transferred a large area of forestland to new landholders, many of which were local households. Land-use certificates were granted to the landholders. The land-use certificate allows the holder to keep the land for 50 years, with the possibility of expansion. Five individual rights attached to the land were granted to the holders: rights to exchange, transfer, lease, mortgage, and pass the land on to third parties. The government expected devolution to be an important vehicle for the improvement of local livelihoods for the upland poor, and an effective means to put an end to swidden cultivation, which is often seen as destructive to the forest (Nguyen Quang Tan, 2006; To, 2007).

How Does Forest Devolution Contribute to Social Differentiation in the Vietnamese Uplands?

This chapter explores the contribution of forest devolution to social differentiation in the uplands of Vietnam. Based on data collected from a three-month fieldwork period in 2004 in an upland village, Thanh Cong, located in northern Vietnam, this chapter argues that the implementation of forest devolution has contributed to social differentiation. At the local level, the exercise of land rights is heavily dependent on the household's knowledge and capital, and is strongly