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INTEGRATED PROTECTED AREA CO-MANAGEMENT (IPAC)

A Summary Report on the Mission
by the Environmental Law Institute
to Analyze the Legal Framework
Governing Co-Management in
Bangladesh

December 9, 2008

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1. Introduction

Staff Attorney Lisa Goldman undertook ELI's first mission to Bangladesh in October 2008 to provide legal analysis and support to the IPAC Project. The mission inquiry was two-pronged: first, to assess whether and to what extent Bangladesh's existing legal authorities can be used to support the development of a formal, "scaled-up" co-management strategy; and second, to identify gaps and recommend future changes or additions to strengthen the legal framework in support of a co-management approach. As described in the terms of reference for this mission, planned activities during and following the mission included: (1) a review of legal and policy documents concerning natural resource management; (2) interviews with government and NGO representatives about co-management; (3) a review of sources of authority for co-management in the existing legal framework; (4) identification of gaps and additions that would strengthen the legal framework in support of co-management; and (5) proposal of legal and policy recommendations for development of a protected area co-management strategy.

Much of the mission was spent interviewing IPAC partners, government officials, and NGO representatives about issues relating to the legal framework for protected area co-management, with the remaining time spent reviewing legal and policy documents. Due to time constraints, it was not possible to go out into the field to meet with local communities, although their input should be obtained as well. On the last day of the mission, ELI held two briefings for the interviewees on our preliminary observations concerning the key legal issues relating to protected area co-management – one for the NGO and lower-level government officials, and one for the higher-level government officials and USAID project managers. The meeting schedule for the mission is provided in Annex 1.

2. Summary of Observations

The interviews and background research conducted during this mission have generated several initial observations on the legal framework for protected area co-management. The summary of our preliminary findings is set forth below, followed by a more detailed analysis of the legal framework.

(1) Government and NGO staff support the co-management concept

The interviews with government and NGO decision-makers and resource managers generally reflect support for and acceptance of the co-management approach to protected area management, both as a way of meeting community subsistence needs and as a means to ensure more effective protection of valuable resources. There is a widespread sense that the models are working and that momentum for co-management is building – it is not a question of whether to scale up, but how. Of course, not everyone takes the same view of how co-management should function, and questions have been raised (among others) about such issues as the relative roles of communities and government in the co-management scheme; whether protected areas should be defined to include community resource use; and how to extend the co-management concept from fisheries to protected forest areas, given the significant distinctions in how these resources are classified and managed by the government. Nevertheless, the support of agencies and NGOs is crucial to both the continued implementation of co-management and the adoption of more fundamental legal changes to enable this approach in the long term.

(2) Although the framework environmental laws do not formally authorize co-management in protected areas (or elsewhere), they provide some authority for participatory resource management

Since the fundamental environmental and natural resource laws in Bangladesh (1927 Forest Act, 1950 Protection and Conservation of Fish Act, 1974 Wild Life (Preservation) (Amendment) Act, 1995 Environment Conservation Act) predate introduction of the co-management concept, there is no explicit mention of co-management in the current legal framework. However, this does not mean that Bangladesh lacks legal authority to undertake co-management projects. Some of the laws and their accompanying rules do espouse participatory concepts of resource management, and, as will be described more fully below, agencies are using other legal tools at their disposal to move their co-management efforts forward pending more comprehensive changes to the legal framework at some later point.

The 1927 Forest Act (as amended in 2000) provides some authority for participatory approaches to forest management. Section 28 of the Forest Act authorizes social forestry programs in the reserve forests, and triggered the development of Social Forestry Rules (and a social forestry program) in 2004. Section 28 also authorizes the establishment of village-forests, and rules to implement this provision are currently being written. While these approaches do not specifically apply to protected areas (although there may be some social forestry agreements operating in protected areas, according to one interviewee), recognition of participatory approaches under the Forest Act is particularly significant given that the country's forest protected areas (national parks, wildlife sanctuaries, and game reserves) all lie within reserve forest lands.

On the other hand, neither the 1974 Wildlife Act nor the 1950 Fish Act addresses community participation in resource management. As will be discussed below, some efforts are already under way to remedy these deficiencies. A large-scale proposed amendment to the Wildlife Act would incorporate the co-management approach for protected areas covered by the Act, and the Department of Fisheries is recommending new laws and changes to existing MOUs and guidelines to implement elements of a co-management approach. Additional co-management authority may be found in a number of legal and policy tools, as described below.

(3) Agencies are using rules, administrative orders, policies, and strategies to implement pilot co-management activities, although a more coherent strategy is needed

Since the bedrock laws do not explicitly authorize co-management of protected areas, agencies are using rules, administrative orders, policies, strategies, and related "soft law" authorities to implement their pilot co-management activities. For example, the National Forestry Policy (1994) espouses "active participation of the people" (along with NGO involvement) in promoting afforestation efforts, including in reserve forests. While not explicitly aimed at protected areas, the Social Forestry Rules have also been cited as possible support for a co-management approach in forest protected areas. The two-volume 1993 Forestry Master Plan also discusses participatory approaches, although this document does not appear to be currently used by the Forest Department.

On the fisheries side, the Inland Capture Fisheries Strategy (2005) lists community-based co-management as a central component of its fisheries management plan, including plans to formalize co-management where it has already been established and to expand it to additional water bodies. The Department of Fisheries is also seeking to bolster its co-management approach through revisions to what appears to be a 2005 Memorandum of Understanding that it has with the Ministry of Lands. These revisions would institutionalize long-term fisheries leases to community organizations.

Other policies at the national and international level that support co-management, and that could be used by agencies to reinforce their existing co-management activities, include the Forest Department's Nishorgo Vision 2010, which focuses on co-management and community partnerships as strategies for strengthening the management of protected areas; and the National Biodiversity Strategy Action Plan for Bangladesh, which calls for enhanced protected area management, including co-management, and urges the adoption of participatory mechanisms to promote biodiversity conservation, use, and benefit sharing with local communities and other partners. The 2005 Poverty Reduction Strategy Paper and Climate Change Action Plan also address participatory resource management.

The Multilateral Environmental Agreements to which Bangladesh is a party (including the Convention on Biological Diversity (CBD) and the Ramsar Convention, among others) may also provide authority for participatory resource management. The CBD stresses the importance of preserving indigenous and customary practices for the conservation and sustainable use of biological resources and urges the adoption of economic and social incentives and public-private cooperation, among other measures.

(4) Certain legal changes are desirable in the long-term to formalize a co-management approach

Although agencies are relying on rules, policies, strategies, and similar tools to forge ahead with their pilot co-management activities, this approach is a bit ad hoc, and certain changes to the country's framework environmental laws would help institutionalize a more formal co-management approach. These changes include a revision of the 1927 Forest Act, which has been interpreted to prohibit any investment by non-government parties in protected areas (see further discussion below); approval of the Draft Amended Bangladesh Wildlife Preservation Order 2008, which introduces the concept of co-management of Protected Areas and the creation of Community Conserved Areas; and language in the Protection and Conservation of Fish Act, or a new fisheries law, that would enshrine a co-management approach to fisheries, perhaps along the lines of the plans articulated in the Inland Capture Fisheries Strategy.

Agencies have proposed other laws, rules, and MOUs to strengthen the establishment of protected areas and institutionalize elements of a co-management approach. For example, the draft Fish Sanctuary Law prepared by the Department of Fisheries would create over two hundred additional wetland sanctuaries. The Department has also proposed rules regarding biological management of fisheries that would implement long-term (at least 10-year) fisheries leases for community groups. The draft "Guideline for the Collection and Utilization of Revenue earned from the Protected Areas" (September 2008), proposed by the Forest Department and received by the Ministry of Finance, would institute a revenue-sharing system for communities near protected areas. The Bangladesh Environmental Lawyers Association (BELA) is working on rules to implement village forestry under Section 28 of

the Forest Act. On the environment side, BELA has also prepared draft rules to establish Ecologically Critical Areas, although some revisions are desirable before the rules are finalized.

These proposed changes raise the question of whether to focus efforts on developing a framework co-management law that would apply to all protected areas across different government departments and agencies, as opposed to a piecemeal approach that focuses on each agency's sectoral authorities. While a framework co-management act offers the simplicity of formalizing the co-management approach through a single law, passing such a law could be complicated. For one thing, it might be difficult to tailor the law to the different circumstances presented by forests, fisheries, and other ecosystems in a way that would meet with the approval of all relevant agencies. Agencies might refrain from pursuing individual legal and policy changes (such as rules, MOUs, and administrative orders that are easier to get approved) under the belief that they will not be necessary under a framework law, even though developing and approving this law could take a significant amount of time. This is not to say that a framework co-management law might not be a good approach, but the decision to develop such a law should be taken carefully.

(5) It is important to maintain flexibility in the legal framework and focus on authority, not details

In making changes to the legal framework, policymakers should be careful not to introduce too many specific requirements into the laws. Agencies should be given the flexibility to employ a variety of approaches to co-management within their general grants of authority, rather than being forced to follow a prescribed approach. The details of an on-the-ground co-management strategy are likely to vary not only according to the targeted resource (forests, fisheries, wildlife reserves, etc.) but also according to the region, the community (its relationship to the resource, livelihood needs, cultural practices, etc.), participating government and NGO actors, and other factors specific to each geographical area. The buffer zone concept provides one example of such variation: while the conventional model envisions a core protected zone surrounded by a buffer zone allowing for some degree of community use, in some regions it is the inner forest areas that have become more denuded, giving rise to a greater need to protect the outer forest areas. That is, "protected forests" under the Forest Act (which are distinct from, and lie outside the boundaries of, formally designated protected areas such as national parks, wildlife sanctuaries, and game reserves) in some cases harbor more diverse species than the reserve forests within which the aforementioned protected areas are located.

One way to preserve the necessary legal flexibility vis-a-vis co-management is to give agencies the authority to write their own rules fleshing out co-management programs under their respective governing laws. This could be done by incorporating general co-management authority (including rulemaking authority) into the Forest Act (note that the Draft Amended Wildlife Preservation Order already adopts co-management authority for protected areas, and could serve as a useful example), Protection and Conservation of Fish Act (or the draft Fish Sanctuary Law, when it is approved), and Environmental Conservation Act – although the latter raises special considerations regarding the Department of Environment's role in protected area management. Not only is it comparatively easier for agencies to write their own rules, it might also be easier to get new or amended laws approved that merely add general co-management authority rather than instituting a complex statutory co-management

regime. One way to think about such an approach is to focus new legislation on enabling the co-management approaches that are already being used.

(6) A developed legal framework is only the first step; on-the-ground implementation is equally important

While by no means simple, establishing the necessary legal framework is only the first step to formalizing a co-management approach for protected areas. Good laws on the books mean very little unless they are properly implemented – and this requires capacity, funding, and institutional will. As the Nishorgo experiences show, community empowerment does not automatically follow the granting of legal authority; rather, it entails a fundamental shift in mentality on the part of both communities and government that can be slow to occur. It is critical to help communities understand the rights that co-management affords them, and equally critical that government entities recognize and accept the authority that co-management vests in communities.

3. Thematic Issues

In thinking about the current legal framework governing protected areas, as well as potential changes to this framework, a number of thematic issues come to mind. These are briefly discussed below.

3.1 Definition of protected areas

One question concerns whether, and how, the legislation should explicitly define protected areas. While there is no formal definition of the term under present law, the Wildlife Preservation Amendment Act does define national parks and wildlife sanctuaries so as to prohibit community access. In order to formalize a co-management approach, the Government might consider incorporating a legal definition of protected areas that supports co-management objectives, such as by explicitly allowing some degree of community access to resources or a community role in managing protected areas. A proposal along these lines would likely engender some debate, given the traditional view of protected areas as excluding all human activity, but it is worth considering.

3.2 Jurisdiction

The current legal framework in Bangladesh raises a host of jurisdictional questions with respect to protected areas management. One issue involves overlapping jurisdiction between the 1927 Forest Act and other laws, which creates a risk of regulatory conflicts. For example, because protected forest areas, which fall under the authority of the 1974 Wildlife Act, are located within reserve forests, they are also subject to the Forest Act. Similarly, while the treatment of fish falls under the Protection and Conservation of Fish Act, fish caught in forested areas are considered forest produce, and also implicate the Forest Act. The draft Ecologically Critical Area Rules also introduce jurisdictional confusion, by vesting the Department of Environment with authority over land use and zoning in areas, such as forests and fish sanctuaries, that fall under the authority of the Forest and Fisheries Departments and their respective laws. A countervailing question arises as to how to promote a landscape-level approach to protected area management when the resources within a single ecosystem or landscape fall under the control of different departments. Presently, the Forest Department cannot address activities, such as tea gardens, on the borders of protected areas that do not

fall under its control (rather, these gardens operate on long-term leases from the Ministry of Lands).

A more fundamental question is posed by the way in which co-management would alter the balance of power between government agencies and local communities. Under the current legal framework, the government exercises direct control over protected area management, with specific rights granted to communities on a case-by-case basis (through social forestry, the fisheries leases, etc.). A formalized co-management approach would redefine the traditional lines of authority in creating a level playing field for all actors in protected area management. It may take some time before both government agencies and communities internalize the implications of such a shift. In addition, not everyone holds the same views on where government and community powers should be allocated – some may favor a 50-50 division, some may place the weight of authority closer to the government, and some may hew more closely to a community forestry model vesting primary decision-making authority within the local community. There is no single “correct” approach to this question, which will likely be resolved through hands-on experience with co-management in different regions of the country.

Another question, and source of potential conflict, concerns whether to designate a lead agency to oversee protected area management, or to continue with the sectoral responsibilities operating under the current framework. The Draft Amended Bangladesh Wildlife Preservation Order would give the Forest Department the authority to declare as sanctuaries any land in the country (thus vesting control over these areas, including fisheries, in the Forest Department), while the draft Ecologically Critical Area Rules, as mentioned above, would give the Department of Environment a coordinating role over protected areas, including the authority to make land use and zoning decisions. Interviewees criticized the notion of vesting either Department with a lead role, believing that they lack sufficient capacity to assume the necessary responsibilities. Some also stressed the importance of maintaining a system of checks and balances, in which no agency assumes a master role.

3.3 Land ownership and long-term use rights

The volatile issue of land tenure, while far too complex to address under a co-management approach, illuminates some of the difficulties in determining how the legal system should facilitate community access, particularly for indigenous communities, to natural resources. In some cases, community resource use predates the establishment of protected areas, and tensions have arisen over the claims of communities that currently reside in protected areas. While traditional land reform based on large-scale redistribution of private land is considered unrealistic (given the shortage of land, the intensity with which it is used, and the number of small-holders), the Government has introduced a broad-based Land Use Policy that seeks to reform and update the current land administration system. The country’s 2005 Poverty Reduction Strategy Paper emphasizes the importance of making title secure; bringing transparency to land administration; establishing community ownership, particularly for ethnic minorities; and creating collateral value for land, among other things. A protected area co-management strategy should at the very least operate in a way that is consistent with national laws and policies addressing land ownership and use.

At the same time, co-management can and should address long-term use rights by local communities, including historic claims to these rights. Granting such rights, under appropriate conditions, can provide communities with incentives for sustainable, long-term

resource management and strengthen both resource protection and community livelihoods. Elements of use rights that should be considered include (i) rights of exclusion; (ii) rules governing resource use; and (iii) rights of enforcement. Agencies have already begun to establish use rights through such initiatives as the draft Fish Sanctuary Law proposed by the Department of Fisheries and the Social Forestry Rules under the Forest Act.

3.4 Zoning

Another issue entails whether and how to institute a zoning system within the legal framework governing protected areas. While the laws do not formally provide for zoning, some protected areas appear to have de facto buffer zones, with income-generating activities operating around their borders. The Forest Department, in its report on Lessons Learned from Co-management under Nishorgo, has called for the delineation of buffer zones around protected forest areas for social forestry plantations, and staff members within the Department have even proposed the creation, through an administrative order, of separate buffer zones *within* select large-scale protected areas, such as Teknaf Game Reserve.

Moreover, the zoning system – at least when comprised of a core protected area surrounded by a more flexible buffer zone – is not appropriate in all cases. For example, the establishment of such a zoning scheme under the draft Ecologically Critical Area Rules is overbroad, since the ECAs that would be subject to this scheme include land uses, such as commercial and residential, that go beyond the conservation purposes for which the core zone concept was developed. A second problem is that most of the Nishorgo pilot protected areas do not border reserve forest land that could be used for buffer plantations (this land is under control of a different division of the Forest Department, and currently not available for benefit sharing). Additionally, in some regions the inner, less accessible protected areas are more degraded than the surrounding forests, which a conventional zoning approach would not protect. As a result, it may be more useful to provide legal authority to create flexible use zones that are tailored to particular areas (e.g. protected areas rather than larger landscapes), without mandating their establishment.

3.5 Benefit sharing

Benefit sharing is a critical component of the co-management approach, and arguably constitutes the foundation upon which co-management must be structured, for co-management will not succeed without addressing the subsistence and livelihood needs of local communities living near protected areas. Examples of benefit sharing approaches include the apportioning of revenue from resource-based activities such as ecotourism and resource harvesting (fisheries leases, timber sales); the sustainable harvesting by communities of resources (such as non-timber forest products and intermediate harvest) within and adjacent to protected areas; and support for alternative income-generating activities, such as sewing, trading, small-scale poultry farming, and medicinal gardens. Carbon sink projects have also been explored as a potential revenue source, although without success thus far.

Agencies are taking certain steps to promote benefit sharing as part of a co-management approach. One key example is submission by the Forest Department of a draft “Guideline for the Collection and Utilization of Revenue Earned from the Protected Areas” (September 2008) to the Ministry of Environment and Forests for review. This guideline would allocate a portion of entry fees directly to local communities, without this revenue having to pass through the central government. The Department has also proposed an

administrative order that would create buffer zones within protected areas for community activities. Similarly, the existing Social Forestry Rules allow communities to participate in, and receive revenues from, afforestation projects (albeit outside of protected forest areas). For its part, the Department of Fisheries has proposed an amendment to the Ministry of Land's fisheries rule that would use a portion of lease revenue to support alternative livelihoods for local communities. At a more macro level, the 2005 Poverty Reduction Strategy Paper for Bangladesh also lays out plans for using natural resources such as fisheries, forests, livestock, and poultry to improve livelihoods, such as through an afforestation program that plants fruit trees alongside timber, fuel wood, and non-wood forest products.

While these initiatives should assist communities in several important ways, several obstacles to an expanded benefit sharing approach must be addressed. One significant problem is that neither the 1974 Wildlife Act nor the 1927 Forest Act provide a formal role for local residents in protected area management or benefit sharing. Section 26(1) of the Forest Act, which sets forth a list of prohibited activities in reserve forests, has been read to forbid investment by anyone other than the government (such as communities, NGOs, and private groups) on reserve forest lands, including in protected areas. This means, as Abdul Mueyed Chowdhury noted in *The Daily Star* earlier this year, “there exists no viable policy or procedure by which the local poor can invest their time or capital in protecting and restoring forests and expect to have any benefit in return.”

This situation is hampering the Forest Department's ability to promote co-management in protected areas. For example, although some government-approved management plans allow community patrollers to undertake certain activities, such as thinning operations, within the protected areas themselves, Forest Department field staff have refused to allow such these operations, arguing that the Wildlife Act prohibited any such resource extraction. One way to get around this problem may lie in Section 26(2), which allows forest officers to authorize, in writing, specific actions that are otherwise prohibited in subsection (1). Section 26(2) also allows the Government to authorize such actions through the enactment of rules. By its terms, this section could be used to authorize community participation in protected area conservation and management, at least until affirmative co-management concepts are introduced into the law.

Even if Section 26(2) can be used to authorize community access to protected area resources, such access must also be allowed under the 1974 Wildlife Act. Although Section 23(3) of this Act essentially prohibits resource extraction from National Parks, under this same section the Government may relax these prohibitions “for betterment of the national park . . . or for any other exceptional reasons.” This language, together with Section 26(2) of the Forest Act, could be used to authorize limited community access to protected areas until a more robust legal framework in support of co-management is put in place.

Interviewees identified additional areas in which benefit sharing could be clarified or promoted. For example, a rule to determine how benefit revenues should be shared among community members would be helpful, as long as it does not impose stringent restrictions on how this money can be used. The authors of “An Exploratory Study on Performance and Capacity of Nishorgo Support Project (NSP) Co-Management Committees” have called for a separate, standardized benefit sharing contract for co-management activities that specifies the apportioning of benefits. Alternatively, benefit sharing approaches could be incorporated into “co-management agreements” for individual protected areas, such as those used in Uganda to allow limited resource harvesting from Bwindi Impenetrable National Park.

Of course, enabling benefit sharing is as much a question of resources as of legal authority. Because some departments have expressed their inability to adequately support alternative livelihood activities, they have suggested forming linkages with financial institutions to extend micro-credit to community-based organizations (while some people believe this is not necessary because micro-credit is already widely available, the Poverty Reduction Strategy notes that micro-credit has not reached the poorest of the poor). With respect to ecotourism, a rule instituting a sliding scale for entry fees to national parks could help ensure that greater revenue is captured for local communities. Another suggestion is to use available resources to provide core funds to community groups, such as the endowments given under MACH, to offset the seasonal nature of ecotourism revenues. Finally, support for alternative livelihoods including medicinal gardens, betel nuts, and fruit production may be particularly useful for indigenous groups who have been strongly affected by the establishment of protected areas. However, these activities must be carefully designed so that communities do not use their newfound income to invest more heavily in resource extraction.

3.6 Community-based organizations

Community-based organizations, or CBOs (including co-management councils and committees, resource user or management groups, and other community entities) lie at the heart of the co-management system. The MACH project and other initial experiences with co-management highlight some of the specific issues that have arisen with respect to CBOs. One very basic need is for national guidelines to regulate the formation, registration, and operation of community groups that are effective, equitable, and transparent. In particular, it is unclear how CBOs should be registered. The lack of clear rules in this regard means that some CBOs are registered under the Department of Cooperatives, while others (including the community organizations developed under MACH and Nishorgo) are registered under the Ministry of Social Welfare. As each avenue entails different advantages and disadvantages, rules that stipulate a single, coherent registration process would be useful.

Another issue concerns the coordination of the different project committees with local administrative committees. The number of committees that exist at the local, upazila, and district level, raises the question about how to integrate and make productive use of them. Officials at the Department of Environment have called for the integration of committees formed to manage ECAs under the Coastal and Wetland Biodiversity Management Project (including local government committees, administration committees, and village-level groups) with the Upazila and district-level committees, to ensure that project issues are addressed through the local administrative structure. These officials also suggest that the committees themselves can be integrated at the union level.

A more fundamental question is whether the co-management councils and committees established under the 2006 Gazette Notification can continue to operate after the Nishorgo project ends. The Notification does not appear to limit the committees' operation to the life of the Nishorgo project, as it provides for the members of the co-management council to be elected for four years, with new councils to be formed every four years through an Annual General Meeting. However, the Gazette does limit the CMCs to the eight protected areas targeted by the Nishorgo project. The possibility of extending the existing Notification, or to procure a new government order authorizing the formation of CMCs for other protected areas, should be explored. The Draft Amended Wildlife Preservation Order (2008) would

also authorize the formation of CMCs for protected area co-management purposes, but it has not yet been approved.

3.7 Enforcement

As a key component of protected area conservation, enforcement authority is essential to a successful co-management approach. It is clear that conventional approaches to enforcement have not been entirely successful – for example, brick-burning activities take place adjacent to protected areas in clear contravention of the Brick Burning Control Act of 1952, and resource plundering has taken place across a wide swath of protected areas.

One initial question concerns the extent to which existing legislation allows for a shift of enforcement authority to community organizations, and whether communities can help develop and enforce local regulations, as is done in West Africa. As with the co-management concept generally, community enforcement is not currently addressed within the framework laws governing protected areas, and some Forest Department field officers have been reluctant to allow community patrols for this reason. Nevertheless, the developing co-management structures do give communities some enforcement authority. For example, the community organizations established under the MACH project can bring sanctions against poachers, although it is easier to do so through informal or local mechanisms than through the courts. Nevertheless, the advantages of holding long-term use rights are clear: as lease-holders, these communities can choose to take formal action against unauthorized users in court – a power that does not exist for communities living near protected forest areas.

The Department of Environment's Coastal and Wetland Biodiversity Management Project provides another model for how communities can play a role in enforcement efforts. The project incorporates prohibitions on fisheries activities from both the Department and communities themselves. These prohibitions will be included in the draft Ecologically Critical Area rules, thus validating the role of local communities in managing fisheries resources. Extending this approach to the forest sector might be one way to broaden the involvement of communities in the management of protected forest areas.

3.8 Management plans

Over the years, a number of management plans have been prepared for protected areas pursuant to various projects, including the World Bank-supported Forest Resource Management Project, the Asian Development Bank-supported Forestry Sector Project, and the Nishorgo Project. In the past, some protected areas were also managed under the working plans for the reserve and protected forests out of which they were carved. The extent to which these successive management plans incorporate participatory management principles vary, and their implementation, which is dependent on project funds, has sometimes been hindered by a lack of resources.

It is not clear whether management plans are independently authorized under existing law, given that the 1974 Wildlife Act is silent on the topic, and the only reference to them in the Forest Act is found in the Social Forestry provision (Section 28) (such plans could also be provided for under rules that this author has not seen). The Draft Amended Wildlife Preservation Order does reference management plans in several places, although the relevant provisions presuppose their existence rather than mandate their creation. The draft Ecologically Critical Area rules also require management plans for all ECAs, although it has

been noted that such plans would likely conflict with existing management plans under the Forest and Fisheries Departments (it has been suggested instead that the ECA rules propose framework guidelines that would apply to the ECAs and the protected areas they contain).

Management plans can clearly support development of a co-management framework. The five-year plans prepared for three protected areas under Nishorgo include co-management agreements that focus on sustainable livelihoods through participatory forest use and alternative income generation. Management plans could also be used to sort out such issues as land use rights, zoning, and benefit sharing, among others. The management plan process could be improved through development of a code or manual to provide guidelines for plan preparation, in addition to simplifying the government approval process. It might also be useful to incorporate a provision into the Draft Amended Wildlife Preservation Order that specifically requires management plans to be prepared for protected forest areas. The involvement of community groups in this process would further ensure that management plans reflect local concerns and address the needs of local communities as needed for a successful co-management approach.

4. Sectoral Legal Issues

Having examined the various cross-cutting themes underpinning protected area co-management in Bangladesh, this report turns to the identification of next steps to be addressed within each natural resource sector.

4.1 Fisheries

Perhaps the biggest question with respect to fisheries is how to institutionalize the co-management model developed in large part through the MACH and Coastal and Wetland Biodiversity Management Projects. These projects amply illustrate the benefits of granting long-term leases to community groups for resource management. The Government has pledged to renew its wetland leases to Resource Management Organizations when they expire, but it is unclear how many years it will commit to. In light of this concern, the Department of Fisheries has proposed an amendment to the existing Ministry of Lands fisheries policy that would incorporate longer leases (at least ten years), require that leases are given to community-based organizations in addition to fishing cooperatives, and implement three separate management approaches (including fish sanctuary management; production-based management; and community-based management). These changes seek to shift the emphasis on fisheries management from a revenue-earning goal to a biological management system. Getting this document approved will be a key step towards institutionalizing co-management for inland fisheries.

It is also important to establish new community-based management organizations and leases to expand the co-management approach to other regions of the country. The Department of Fisheries has proposed a draft Fish Sanctuary Law that would create over two hundred additional sanctuaries (while Section 3 of the 1950 Fish Act provides implicit support for the fish sanctuary concept by allowing the Department to prohibit fishing in designated waters, it does not explicitly mention sanctuaries). Once approved, the Fish Sanctuary Law could be used to authorize rules that address co-management of fisheries more specifically, including committee formation and involvement in resource management. The Inland Capture Fisheries Strategy, which seeks to expand co-management as a central component of its fisheries management approach, should also play a primary role in the

continued development of fisheries co-management.

4.2 Forestry

Developing a co-management approach for protected forest areas presents unique challenges. Unlike with fisheries, where community groups have been given management authority over wetlands and the opportunity to share in the resulting benefits, there is no avenue by which local communities can assume such authority within reserve forests and the protected areas they contain. Part of this problem stems from fundamental differences between the institutional arrangements governing fisheries and forests (e.g. despite the existence of fish sanctuaries, fishing is not prohibited in all wetland areas managed by community groups – unlike the blanket restrictions on resource harvesting in protected forest areas). More specifically, community investment and participation in protected area management is not explicitly authorized under the Forest or Wildlife Acts.

One temporary response to this situation, as suggested above in the section on benefit sharing, is for the Forest Department to expand its reading of Sections 26(2) and 23(3) of the Forest and Wildlife Acts, respectively, to authorize limited community involvement until more established policies are put into place. Another approach recommended by the authors of “An Exploratory Study on Performance and Capacity of Nishorgo Support Project (NSP) Co-Management Committees,” is for the Ministry of Environment and Forests to promulgate a “general guideline” that would allow co-management committees and councils to undertake projects on protected forest lands.

Other issues to address in light of the current legal framework include the possibility of establishing a leasing mechanism for community groups similar to the fisheries approach; the redesignation of lands surrounded protected forest areas to allow for buffer-zone uses (as well as new authority to create buffer zones in protected forest areas); extension of the 2006 Gazette Order establishing the CMCs beyond the Nishorgo project (as discussed above); a system to provide community patrollers with direct benefits in return for their efforts; and ideas for expanding the benefit sharing model embodied in social forestry to protected forest areas.

Looking ahead, several priorities for near-term action emerge. The first one is to get the 2008 Amended Wildlife Preservation Act approved, although the Act could be strengthened by several additions, such as a general provision on the participatory preparation of management plans for protected areas and measures to harmonize, or at least resolve jurisdictional conflicts between the Wildlife Act, (new) Wildlife Policy, and the Forest Act. Once the Act is finalized, specific co-management rules (addressing such issues as benefit sharing for community patrols) could be developed. A second priority is to approve the draft “Guideline for the Collection and Utilization of Revenue Earned from the Protected Areas,” which would institute a much-needed revenue sharing approach. A third priority is to approve the administrative order proposed by the Forest Department to create buffer zones in protected forest areas for community use. In the medium-to-long term, revisions to the 1927 Forest Act could be used to considerably strengthen the legal framework in support of co-management.

4.3 Ecologically Critical Areas

The designation of Ecologically Critical Areas, as authorized under the 1997 Environment Conservation Rules, holds the potential to enhance resource conservation and management at the landscape level and, in so doing, scale up co-management across different protected areas and ecosystems. The Department of Environment, with the assistance of BELA, has prepared draft Ecologically Critical Area (ECA) Rules. However, as the initial responses to the draft Rules indicate, many are apprehensive about the impact these rules might have, as currently written, on forest and fisheries management. In fact, some government officials have questioned the purpose of the ECA Rules to begin with.

One key concern with the draft Rules is that they may engender jurisdictional conflicts by superimposing the authority of the Department of Environment over areas managed by the Forest and Fisheries Departments and the Ministry of Lands. Because the ECAs would subsume areas that fall under the authority of various ministries, it is important that the ECA Rules add to, rather than duplicate or conflict with, other agencies' existing authority. One way to do so is for the Rules to set framework management guidelines for agencies operating within ECA areas. Among other things, these guidelines would regulate specific activities within the ECAs without supplanting existing approaches, thus allowing the Department of Environment to fulfill its traditional regulatory role.

However, the Rules as currently written are likely to create conflicts in protected area management. They propose a detailed management plan for each ECA, which would conflict with existing plans prepared by other agencies, and also seek to implement a one-size-fits-all zoning system that does not account for variations in land uses. The Rules also lack a process for identifying and declaring ECAs, thus creating confusion about the added value of the ECAs. More analysis about the proposed Rules is contained in the Nishorgo report, "Select Observations on the Draft Ecologically Critical Area (ECA) Rules, 2007." Given the current concerns with the draft Rules, they should not be approved until certain revisions addressing the above concerns have been made.

5. Conclusion

The above discussion indicates that while co-management has not been explicitly incorporated into Bangladesh's existing legal framework, support for participatory management concepts can be found in the sectoral laws governing forestry and fisheries. Certain provisions in the existing laws and policies can be used to bolster a co-management approach at the same time that more fundamental legal changes are contemplated. The recommendations listed below identify some initial steps that IPAC can take, in the immediate and longer term, to strengthen the legal framework underpinning co-management in Bangladesh.

(a) How IPAC can support and scale up co-management within the existing legal and policy framework

- **Consult with Forest Department legal counsel** about relying on Section 26(f) of the 1927 Forest Act and Section 23(3) of the 1974 Wild Life Act to temporarily authorize co-management activities in protected forest areas, pending passage of the amended Wildlife Preservation Order.

- **Use the Social Forestry Rules to establish more plantations in reserve forests outside of protected areas** and consider extension of social forestry into protected forest areas.
- **Extend the 2006 Gazette Notification** that created the co-management councils and committees beyond the eight protected areas targeted by Nishorgo, so that it applies to all existing and new protected areas without being limited to the life of a specific project.
- **Convene discussions with Departments/Ministries and their legal counsel to review the goals of the IPAC project and the role of the legal framework in co-management.** This will encourage agencies to actively consider how their sectoral laws can be used to promote co-management, and to identify additional legal changes that would strengthen a co-management approach.

(b) Critical gaps and areas to be strengthened

- **Give agencies rulemaking authority to develop co-management programs under their respective governing laws.** To do this, the GoB will need to incorporate general co-management authority into the Forest Act (or else pass the Draft Amended Wildlife Preservation Order), Protection and Conservation of Fish Act (or the draft Fish Sanctuary Law), and Environmental Conservation Act.
- **Secure passage of the Draft 2008 Amended Wildlife Preservation Order,** which authorizes a co-management approach for protected forest areas. While the Draft Order could be strengthened by several additions as noted in this report, finalization of the Act would allow for the development of specific co-management rules, as recommended above.
- **Convene a meeting of the Forest Department, Department of Fisheries, and Department of Environment to discuss the draft Ecologically Critical Area Rules,** including how the Rules can be used to improve protected area management and support co-management approaches without undermining existing agency authority.
- **Consider incorporating a legal definition of protected areas that supports co-management objectives,** such as by explicitly allowing some degree of community access to resources or a community role in managing protected areas. This definition could be introduced in the Draft Amended Wildlife Preservation Order and cross-referenced in other laws (including the Forest Act, Fisheries Law / draft Fish Sanctuary Law, and Environment Conservation Act).
- **Help move pending laws and regulations toward final approval.** As discussed above, efforts are under way to amend or write new laws, regulations, and policies to provide further support for a co-management approach. These include the Draft Amended Wildlife Preservation Order, draft Fish Sanctuary Law, draft “Guideline for the Collection and Utilization of Revenue Earned from the Protected Areas,” an administrative order proposed by the Forest Department to create buffer zones in protected forest areas for community use, and an amendment to the Ministry of Land

fisheries policy that would incorporate longer leases, require that leases are given to community-based organizations, and implement new management strategies. Each of these legal instruments can play a role in formalizing elements of a co-management approach. As mentioned earlier, the draft Ecologically Critical Area Rules should not be approved without further discussion and revision.

6. Next Steps

Key contacts for follow-up interviews:

Ministry of Law

- Mr. Syed Ahmed, Deputy Secretary, Ministry of Law (recommended by Nasim Assiz with FD-IPAC; is an environmental law expert)

Ministry of Land

- Someone who can talk about long-term lease arrangements for fisheries, community access to protected forest lands, and other land use issues relating to co-management of protected areas

Ministry of Finance

- Someone who can talk about the status of the Forest Department's revenue-sharing guidelines for protected areas and other benefit-sharing approaches

Forest Department

- Abdul Motaleb: works at the Forest Department and recommended by Farid Uddin Ahmed at Arannayk Foundation
- Laskar M. Rahman: formerly with the Forest Department; also recommended by Farid; and has done a lot of environmental legal work (he compiled the Forest Law 2000 update). Phone numbers: 0172-0398124 / 01711671727.
- If Laskar is not available, a legal specialist at the Forest Service who can discuss the current restrictions on community access to protected forest area resources

Department of Environment

- Director Reazuddin, Department of Environment: his name had been provided as the DoE contact knowledgeable about co-management

BELA

- Rizwana Hasan and other staff: to provide BELA's perspective on the legal questions and issues identified in this report, particularly with respect to forest protected areas and ecologically critical areas

Wildlife Trust of Bangladesh

- Prof. Md. Anwarul Islam, Wildlife Trust of Bangladesh (WTB) (he was unable to meet with ELI on the first mission due to illness)

Arannayk Foundation

- Farid Uddin Ahmed: due to scheduling problems, ELI was only able to meet with him for 15 minutes on the first mission.

IUCN

- Raquibul Amin or another staff person (perhaps Dr. Ainun Nishat, who was listed on the interview schedule), who could discuss implementation of the National Biodiversity Strategy Action Plan as one vehicle for promoting co-management.

Additional issues for discussion:

- Reason for the delay in approving the Draft Amended Wildlife Preservation Order, and steps that can be taken to move this process forward
- Status of the draft Village Forest Rules
- Source of legal authority for writing protected area management plans
- Completeness of the list of laws, regulations, and policies – this should be reviewed with the relevant departments

Key documents to obtain:

- draft Guideline for the Collection and Utilization of Revenue Earned from the Protected Areas (September 2008) (this replaces the previous Guideline for the Management of Co-Management Committee (CMC) Funds. A hard copy was provided to ELI by Nasim Assiz at the Forest Department, but was accidentally retained by Azharul Mazumder)
- administrative order proposed by the Forest Department to create buffer zones in protected forest areas for community use (this order was referenced in a separate IPAC report)
- draft Village Forest rules (currently being prepared by Rizwana Hasan)
- copy of Rizwana Hasan's report on legal issues with respect to co-management

Annex 1: Interview Schedule

Wed., Oct. 22	Forest Department: CCF (name n/a); Legal Affairs contact (name n/a); Tariqul Islam, DCF (together with Bob Winterbottom and Ram Sharma) Bob Winterbottom, Ram Sharma, and Azharul Mazumder (USAID)
Thurs., Oct. 23	Paul Thompson, MACH Giasuddin Khan, World Fish Center Raquibul Amin, IUCN
Sun., Oct. 26	Farid Uddin Ahmed, Arannayk Foundation Md. Shahjahan, Mahbubur Rahman, Department of Environment Rafiqul Islam, DG, Department of Fisheries
Mon., Oct. 27	Masud Siddique, Shahin Akhter, Department of Fisheries Mujibur Rahman & Nishat S. Chowdhury, Bangladesh Centre for Advanced Studies
Tues., Oct. 28	Shimona Quazi, East-West Center
Wed., Oct. 29	Syeda Rizwana Hasan, Bangladesh Environmental Lawyers Association
Thurs., Oct. 29	Ishtiaq Uddin Ahmad, CF, Rafiqa Sultana, Nasim Assiz, Forest Department
Sat., Nov. 1	Bob Winterbottom, Ram Sharma, Azharul Mazumder
Sun., Nov. 2	Debriefings: 2 PM and 6 PM

Annex 2: Preliminary List of Laws, Policies, & Plans Relevant to Co-Management

Forest Department

- The Forest Act, 1927 (as modified up to 30th April 2000)
- Social Forestry Rules, 2004
- Draft Village Forest Rules (being prepared by BELA)
- Wild Life (Preservation) (Amendment) Act, 1974 (proposed amendments under way in the form of the Draft Amended Bangladesh Wildlife Preservation Order 2008)
- draft Guideline for the Collection and Utilization of Revenue Earned from the Protected Areas (September 2008) (replaces previous Guideline for the Management of Co-Management Committee (CMC) Funds)
- draft Wildlife Policy
- Forestry Master Plan, 1993 (2 volumes- i. Environment and Land Use; ii. Forest Institutions)
- National Forestry Policy, 1994
- draft “Participatory Protected Area Management Plans”
- draft administrative order to provide for zoning in protected areas (proposed by FD to MOEF)
- Brick Burning (Control) (Amendment) Act, 1992

Department of Fisheries

- Protection and Conservation of Fish Act, 1950 (most recently amended in 1995)
- National Fisheries Strategy (1998)
- National Fisheries Policy (1998)
- draft Fish Sanctuary Law
- MoL policy guidelines re: leasing (Jamohal public water leasing policy management document, Public water bodies management policy 2005) and 2007 suggested changes from DoF
- Inland Capture Fisheries Strategy

Department of Environment

- Environment Conservation Act, 1995
- Environment Conservation Rules, 1997
- Ecologically Critical Area draft rules (have new version from Rizwana)
- Gazette notification addressing coordination of DoE with other agencies
- DoE notification regarding prohibited activities in ECAs (various dates, 1999 and 2001)
- DoE policy concerning co-management committees (?)

Other national laws

- Section 29(g) of Agricultural Development Corporation Ordinance, 1961 (allows establishment of protected areas)
- Section 6 of Territorial Water and Maritime Zones Act, 1974 (establishes conservation zones)
- Section 28, Marine Fisheries Ordinance, 1983 (government may declare marine reserves)

National-level plans and strategies

- National Biodiversity Strategy and Action Plan (IUCN)
- National Conservation Strategy (listed in forestry master plan)
- National Environmental Management Master Plan
- Bangladesh Country Report for UNCED
- 1995 National Environmental Management Action Plan (NEMAP)
- 1997 National Conservation Strategy
- 2000 ADB Environmental Operational Strategy
- Bangladesh Biodiversity Conservation Strategy and Action Plan
- Aug. 10, 2006 Gazette Order creating Co-Management Councils & Committees
- 2005 Poverty Reduction Strategy Paper (PRSP)

International

- Ramsar Convention
- Convention on Biological Diversity
- CITES
- World Heritage Convention
- Convention on the Conservation of Migratory Species of Wild Animals
- International Convention to Combat Desertification

Annex 3:
Preliminary Observations on the Legal Framework
Supporting Co-Management in Bangladesh



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Preliminary Observations on the Legal Framework Supporting Co-Management in Bangladesh

Lisa Goldman
Environmental Law Institute



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TOR of Mission

- Review legal & policy documents re: natural resource management
- Interview agency and NGO representatives about co-management
- Identify sources of authority for co-management in the existing legal framework
- Identify gaps and additions that would strengthen the legal framework in support of co-management
- Propose legal and policy recommendations for development of a protected area co-management strategy



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Interviews

- Forest Department
- Department of Environment
- Department of Fisheries
- MACH
- World Fish Center
- IUCN
- Arannayk Foundation
- Bangladesh Center for Advanced Studies
- East-West Center
- Bangladesh Environmental Lawyers Association



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Overview: Policy Framework

- **Nishorgo Vision 2010**
- **Inland Capture Fisheries Strategy (2005)**
- **Poverty Reduction Strategy Paper (revised 2nd draft 2008)**
- **National Biodiversity Strategy Action Plan (2006)**
- **Anything else?**



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Overview: Legal Framework

1927 Forest Act

- Social Forestry Rules (2004)
- (proposed) Village Forestry rules
- draft Protected Area Revenue guidelines

1974 Wildlife Preservation Act

- draft Amended Wildlife Preservation Act (2008)

1950 Fish Act

- draft Fish Sanctuary Act
- Proposed revision to 2005 MoL Leasing Policy

1995 Environment Conservation Act

- 1997 Environment Conservation Rules
- draft Ecologically Critical Area Rules (2008)

2006 Gazette Order establishing CMCs

Multilateral Environmental Agreements



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Preliminary Findings

- Although the laws do not formally provide for co-management, they do support participatory resource management concepts
- Government and NGO staff are supportive of co-management concept
- Agencies are using rules, administrative orders, policies, and strategies to develop a co-management strategy
- Certain legal changes are desirable in the long-term to formalize co-management
- Want to maintain flexibility in the legal framework- focus on authority, not details
- A developed legal framework is only the first step; on-the-ground implementation is also important



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Key Legal Issues

- Defining protected areas
- Jurisdictional issues
- Using legislation to enable the approaches already being used
- Coordination and communication between Ministries, Departments
- Whether and how to integrate zoning into the legal framework



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Key Issues: Fisheries

- 1950 Fish Act, Section 3, supports use of sanctuaries
- How to institutionalize long-term lease system (proposed revisions to 2005 MoL lease policy)
- Institutionalizing fish sanctuaries (draft Fish Sanctuary Law)
- Using Inland Capture Fisheries Strategy to promote co-management
- Registration of community organizations



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Key Issues: Forestry

- National Forest Policy- support for co-management
- Can the Government authorize co-management activities in reserve forests under Section 26(2)(a) of the 1927 Forest Act?
- 2004 Social Forestry rules- how to link participatory management of reserve forests to co-management in protected areas?
- (proposed) Village Forestry Rules



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Key Issues: ECA

- Respect other agencies' jurisdiction
- Specify process for identifying and declaring ECAs
- Set framework management guidelines for agencies operating within ECA areas
- Regulate specific activities within ECAs
- Integrate ECA Committees with Local Administrative Committees?



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Benefit-Sharing

- Revenue-sharing from entry fees (protected areas), fisheries leases, forestry timber sales
- Provide core funds (e.g. MACH endowments) to offset seasonal ecotourism
- Need rules for how benefits should be shared among participants
- Establish linkages with financial institutions to extend micro-credit to CBOs
- Include alternative livelihood/benefit-sharing provisions in protected area management plans
- Support traditional income-generating activities of indigenous groups



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Priorities for Moving Ahead

- **Pass Amended Wildlife Preservation Act**
 - develop specific Co-Management Rules under the amended Act?
- **Use Section 26(2)(a) of the Forest Act** to authorize community access to reserve forests (and protected areas)
- **Pass Fish Sanctuary Law**
- **Finalize Ecologically Critical Area rules**
- **Finalize Revenue Collection & Sharing guidelines**
- **Finalize rules to implement 10-year fisheries leases for community groups**

Annex 4:
Preliminary Observations on the Legal Framework
Supporting Co-Management in Bangladesh



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Preliminary Observations on the Legal Framework Supporting Co-management in Bangladesh

Lisa Goldman
Environmental Law Institute



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TOR of Mission

- Review legal & policy documents re: natural resource management
- Interview agency and NGO representatives about co-management
- Identify sources of authority for co-management in the existing legal framework
- Identify gaps and additions that would strengthen the legal framework in support of co-management
- Propose legal and policy recommendations for development of a protected area co-management strategy



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Interviews

- Forest Department
- Department of Environment
- Department of Fisheries
- MACH
- World Fish Center
- IUCN
- Arannayk Foundation
- Bangladesh Center for Advanced Studies
- East-West Center
- Bangladesh Environmental Lawyers Association



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Overview: Policy Framework

- **Nishorgo Vision 2010**
- **Inland Capture Fisheries Strategy**
- **Poverty Reduction Strategy Paper**
- **National Biodiversity Strategy Action Plan**
- **Climate Change Action Plan**
- **Anything else?**



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Overview: Legal Framework

Forestry

- 1927 Forest Act
- Social Forestry Rules (2004)
- (proposed) Village Forestry rules
- draft “Guideline for the Collection and Utilization of Revenue Earned from the Protected Areas”
- Wild Life (Preservation) (Amendment) Act, 1974
- draft Amended Wildlife Preservation Act (2008)

Fisheries

- 1950 Fish Act
- draft Fish Sanctuary Act
- Proposed revision to 2005 MoL Leasing Policy



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Legal Framework: Continued

Environment

- 1995 Environment Conservation Act
- 1997 Environment Conservation Rules
- draft Ecologically Critical Area Rules (2008)

2006 Gazette Order establishing CMCs

Multilateral Environmental Agreements

- CBD
- Ramsar
- others



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Preliminary Findings

- Although the laws do not formally provide for co-management, they do support participatory resource management concepts
- Government and NGO staff are supportive of co-management concept
- Agencies are using rules, administrative orders, policies, and strategies to implement pilot co-management activities, but a more coherent strategy is needed
- Certain legal changes are desirable in the long-term to formalize co-management
- Want to maintain flexibility in the legal framework- focus on authority, not details
- A developed legal framework is only the first step; on-the-ground implementation is also important



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Key Legal Issues

- Defining protected areas
- Jurisdictional issues
- Using legislation to enable the approaches already being used
- Coordination and communication between Ministries, Departments
- Whether and how to integrate zoning into the legal framework
- Land use rights



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Benefit-Sharing

- Revenue-sharing from entry fees (protected areas), fisheries leases, forestry timber sales?
- Provide core funds (e.g. MACH endowments) to offset seasonal ecotourism
- Need rules for how benefits should be shared among participants
- Establish linkages with financial institutions to extend micro-credit to CBOs?
- Include alternative livelihood/benefit-sharing provisions in protected area management plans
- Support traditional income-generating activities of indigenous groups



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Near-Term Priorities

Forestry

- Approve Amended Wild Life Preservation Act
 - develop specific Co-Management Rules under the amended Act?
- Approve draft Guideline for the Collection and Utilization of Revenue Earned from the Protected Areas
- Determine whether Section 26(2)(a) of the Forest Act can be used to authorize temporary community access to reserve forests (and protected areas)
- Extend 2006 Gazette Order establishing Co-management Councils and Committees beyond Nishorgo Project



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Near-Term Priorities Continued

Fisheries

- Approve Fish Sanctuary Law
- Finalize rules to implement biological management of fisheries (including long-term leases)

Environment

- Finalize Ecologically Critical Area rules
- Finalize rules to implement biological management of fisheries (including long-term leases)