

Sounds of Sokshing: Revisiting the Contested Provisions of the Land Act 2007⁺

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The Issue

In July 2007, the former National Assembly passed the Land Act, which among other things provided for the deletion of records of *sokshing* (woodlots) and *tsamdرو* (pastures) from private and community land registers called *lagthrams*. These *lagthrams* are the records of categories and sizes of landholdings owned by Bhutanese families or communities. Records of *sokshing* and *tsamdرو* owned by peasants are also reflected in these *lagthrams*.

Why did the National Assembly decide to delete records of *tsamdرو* and *sokshing* from the *lagthrams*? Its rationale was that *sokshing* and *tsamdرو* lands belonged to the state although they were reflected in private *lagthrams*. In case of *sokshing*, it argued that *lagthram*-holders were only granted the 'right' to collect leaf litter for use as organic manure in agricultural fields. That is why it reasoned that peasants were not required to pay taxes for *sokshing*, whereas they pay taxes for other categories of their landholdings. They were also not allowed to cut down trees. The argument justifying the deletion of *sokshing* records from private *lagthrams* and

⁺ I would like to thank the Members of National Council and its Natural Resource and Environment Committee for kindly commenting on the arguments of this paper and for the suggestions they made while the issue of *sokshing* and *tsamdرو* were discussed in two sessions of the National Council.

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transferring it to a state land register called *Chhazhag Thram* suggests that the state is now taking over what always belonged to it. The *Chhazhag Thram* would be maintained by the National Land Commission. It would have records of all the acreage of *sokshing* and their previous 'rights-holders'. Thereafter, the previous 'rights-holders' would be given priority to opt for leasing *sokshing* for not less than 30 years. The lease period can be extended. Besides, *sokshing* can also be inherited within the terms and conditions of the lease. But it cannot be sub-leased or transacted. Nor can permanent infrastructure be established on *sokshing* lands. Those individuals who agree to lease *sokshing* from the state must do so according to a management plan that has to be prepared among the lease-holder, Department of Forest and Department of Agriculture. The objective of preparing such a plan is to improve the vegetation and land of *sokshing*. Even with the management plan, the only purpose for leasing *sokshing* shall be for collecting leaf litter, not for cultivating the land or felling trees. In other words, the state would be giving previous 'rights-holders' the option to lease *sokshing* again for 'rights' to collect leaf-litter. The lease would be annulled if *sokshing* is sub-leased, not managed according to the plan, or if lease-holders no longer own agricultural lands.

The state's position on *sokshing* as articulated in the Land Act has, however, been contested by peasants and is not well-received in rural communities. In their perspective, *sokshing* is a category of land, which they 'own' and not a 'right' that the state granted them. That is why, they argue, that *sokshing* records are reflected in private *lagthrams* just as other categories of their landholdings and not in state's land register. They understand that the state's conservation policy did not allow them to cut down *sokshing* trees.

On the other hand, they have supported this policy by managing *sokshing*, planting and nurturing the growth of young saplings and protecting the trees since the time of their forefathers. They insist that it is due to such care and protection that there is well-protected *sokshing* in many communities. When the trees have grown and *sokshing* has

matured, it is unthinkable for them that the state can decide to delete 'ownership' records from their private *lagthrams*. Besides, the state has never justified why *sokshing* records are being deleted. Therefore, rural peasants aspire to have the *sokshing* rights reinstated in their *lagthrams*.

Nearly four years after the passage of Land Act, its provisions concerning *sokshing* 'rights' remain only partially implemented as rural people contest the state's position, and state agencies are constrained from fully implementing the law. Meanwhile, it has led to many problems in local communities (see below for details). The issue has been raised in the National Council, one of the two houses of Parliament, although any concrete outcome would have to await the amendment of the Land Act, which the National Assembly resolved to initiate in its seventh session in summer 2011.

This is a preliminary discussion paper that could help inform debates in Parliament and in the society. It will seek to elaborate issues concerning *sokshing* although some arguments would equally apply for *tsamdros* rights. It will highlight problems of enforcing the provision of the Land Act concerning *sokshing* and provide recommendations for possible consideration in addressing the issue.

Resolutions of the previous National Assembly on *sokshing*

It must not be assumed that the issue concerning *sokshing* and *tsamdros* is recent. The former National Assembly had discussed it several times. This section will briefly recall these discussions and resolutions in order to provide an understanding of the historical basis for this issue. Again, it needs to be mentioned that the National Assembly's discussions also took place on the *tsamdros* issue although the present focus is only on *sokshing*.

As I have mentioned above, one argument cited by the state to justify its ownership of *sokshing* is that peasants do not pay taxes for *sokshing*, whereas they do so for other

categories of landholdings. An assumption underlying this argument is that peasants never paid taxes for *sokshing*. However, the decision not to levy taxes on *sokshing* was a result of discussion in the 16th session of the National Assembly held on 9th July 1961. It was resolved that no taxes would be levied on 'Sokshing and trees located in and around the vicinity in keeping with the government's forest conservation policy.'¹ What this suggests is that taxes may have been levied before although this suggestion needs to be confirmed. If taxes were levied earlier, the suggestion that *sokshing* always belonged to the state would need to be re-examined. The idea that the state always owned *sokshing* may be a later development. The idea and practice of owning *sokshing* must definitely precede modern legislation.

Take, for example, the resolution of the 43rd session held in 1975. The National Assembly resolved then that the government would demarcate all government and public forest to develop forest resources. Recognizing that some private *sokshing* and *tsamdrol* rights would fall within the demarcated areas, the National Assembly also resolved to allow the owners to collect leaf litter and retain *sokshing* 'rights' in their names. They could also fell trees if they obtain permits from the Department of Forests.² This resolution clearly implies that *sokshing* was not considered to be 'government and public forest' as the National Assembly was mindful of them falling within areas demarcated as 'government and public forest.' The idea that *sokshing* and *tsamdrol* 'rights' are private is suggested in this resolution. Since collection of leaf-litter would continue and felling of trees would be regulated, the resolution also implies that leaf-litter collection and felling trees in *sokshing* were unregulated earlier since they were privately owned.

¹ NAS 1, p.54.

² NAS 2, p.157.

The felling of trees in *sokshing* was prohibited by a resolution of the 45th session held in 1976. “In view of the problem thus created, the 45th National Assembly session decided that as *sokshings* were mainly preserved for their leaves for manure, felling of trees within *sokshing* would henceforth be prohibited.”³This provides room for re-thinking the contemporary argument that *sokshing* was always meant for leaf-litter collection and not for felling trees for wood fuel. As I will show below, the usage of *sokshing* for fuel wood collection is even prevalent today.

It appears that some peasants had started by then to convert *sokshing* into cultivable land. Why would they do that? A plausible explanation is that they sought to derive maximum value from *sokshing*-land since the felling of trees was prohibited by the National Assembly resolutions. The 46th session resolved to prohibit the conversion. “Though the people who had already done would be excused in future and all would have to abide by resolution No.3 of the 45th session of the National Assembly.”⁴

In the 52nd session held in 1980, some representatives proposed levying taxes on *sokshing* and *tsamdro*. But the Land Act, which had been passed only the previous year (in 1979), did not require taxes to be paid. His Majesty King Jigmi Dorji Wangchuck had commanded that it was not desirable to amend the Land Act soon after its adoption. Hence the National Assembly resolved that taxes would not be levied. But the issue of taxation resurfaced during the 58th session in 1983. The representative of Trashigang Dzongkhag reported that there were two kinds of *sokshing*, ‘one for the purpose of manure and the other for firewood.’ He proposed that the *sokshing* be registered accordingly and taxed. Referring to the Land Act, the Director of Forests stated that

³ NAS 2, p.168.

⁴ NAS 2, pp. 173-174.

sokshing are meant to be used only for manure, and that those *sokshing*, which are 'not fit for the purpose of manure must be confiscated by the Royal Government even if it is registered in the *Thram*.'⁵

An important question that arises is why did the people's representatives propose levying taxes on *sokshing* and *tsamdrol*? A plausible explanation is that paying taxes confirms private ownership of *sokshing* and *tsamdrol* just as peasants pay taxes for owning other categories of landholdings. Hence, it would have been a strategic move to re-gain ownership that translates not only to rights for leaf-litter collection but for felling trees and conversion to cultivable lands. It is also evident that there were two categories of *sokshing*, (one for leaf-litter collection and one for fuel wood-collection purposes) which modern law does not recognize. During one of my visits to Trashigang, I found out in some *gewogs* that people use *sokshing* not for leaf-litter collection but to meet fuel wood requirements.

These resolutions allow us to revisit the argument that the state always owned *sokshing*. If *sokshing* 'rights' were 'private' and if peasants paid taxes, collected leaf-litter, felled trees and converted to cultivable lands, it does not seem impossible that it was the peasants who 'owned' *sokshing* although modern legislation and conservation policies gradually brought *sokshing* under state ownership and regulation.

⁵ NAS 4, pp. 98-99.

Provisions of the Land Act 2007

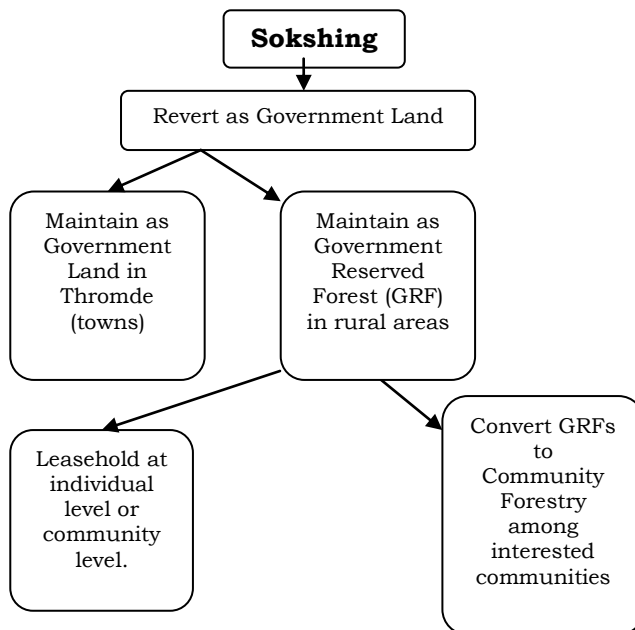
The provision to delete *sokshing* records from private *lagthrams* is stated in Chapter 11 of the Land Act 2007. This Chapter outlines how *sokshing* records will be retained by the state and how *sokshing* provided on lease would be managed hereafter. The following are the main provisions of Chapter 11.

All *sokshing* rights will be deleted from the *lagthrams*.⁶ *Sokshing* in towns (*thromde*) will revert as government land. In rural areas, *sokshing* will be maintained as government reserved forest land (GRF). However, *sokshing* reverted as GRF in rural areas can be converted to leasehold at the individual and community levels. In converting to leasehold, the previous right holders will be given preference.

But there are two important exceptions. One, those lands categorized as *sokshing* but do not have trees growing on them will not be given on lease. This means that even if a household has been cultivating the land reflected as *sokshing* in his/her previous *lagthram*, he/she can no longer cultivate it since it will revert as GRF. Two, a household that owned *sokshing* but does not own any agricultural land cannot hold it on lease. The justification for this appears to be related to the state's perception of the utility of *sokshing* as source of leaf litter for use as manure in the fields. Hence the argument that if a household has no agricultural lands, there is no need for leaf litter, and hence no need for *sokshing*.

⁶ It is important to mention that in the peasants' perception what is being deleted is not *sokshing* rights but *sokshing* ownership records.

The following flow chart shows what will happen after the deletion of *sokshing* records from *lagthram*.



Objective of deleting *sokshing* records

Why did the National Assembly decide to delete records of *sokshing* from *lagthrams* of the people? The Land Act does not answer this question. The rationale that circulates in the officialdom is that it is a strategy to redistribute *sokshing* to people who need them by taking over from those who do not need them. How that redistribution would be done is not explicit although it appears that the primary means is to lease out *sokshing* from 'rights-holders' who no longer own agricultural lands to those who own agricultural lands but do not have *sokshing* rights. Inherent in this assumption is also the concern that a handful of people own huge areas of *sokshing* compared to a large number of people who own far

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less. It also assumes that *sokshing* endowment and unequal distribution is true for all dzongkhags and regions.

Statistical evidence from the National Land Commission does indicate a certain disparity in *sokshing* ownership but it is not as vast as those of *tsamdro*. The total area of *sokshing* in the country is 21234.1 acres owned by 16,141 *lagthram*-holders. The highest acreage of *sokshing* is recorded in Trashigang Dzongkhag with a total area of 3,523.28 acres constituting 16.59% of the country's total *sokshing*. The lowest acreage is recorded in Sarpang Dzongkhag with an acreage of only 0.15 acres. Table 1 shows that while 96.39% of the *lagthram*-holders own less than 5 acres of *sokshing* in the country, only 0.12% (20 people) own more than 100 acres. In other words, 0.12% of *lagthram*-holders own 17.79% of *sokshing* whereas 96% owns only 59.31%.

Table 1: Sokshing ownership and distribution in the dzongkhag.

Dzong-khag	Acres of sokshing				No. of lagthram-holders	Total area of Sokshing	% of Sokshing distribution
	0-5	5-50	50-100	Above 100			
Bum-thang	318	31	0	3	352	1567.43	7.38
Chhukha	196	11	0	1	208	507.60	2.39
Dagana	227	4	1	1	233	425.03	2.00
Gasa	142	2	0	1	145	398.17	1.88
Haa	174	56	1	3	234	1585.72	7.47
Lhuntse	1217	81	1	0	1299	1870.56	8.81
Mongar	2701	22	1	0	2724	1752.26	8.25
Paro	105	127	0	0	232	378.76	1.78
Pema Gatshel	1474	4	1	0	1479	858.13	4.04
Punakha	592	29	3	1	625	1553.61	7.32
Samdrup Jongkhar	347	1	0	0	348	201.70	0.95
Samtse	6	0	0	0	6	8.31	0.04

Dzong-khag	Acres of sokshing				No. of lagthram-holders	Total area of Sokshing	% of Sokshing distribution
	0-5	5-50	50-100	Above 100			
Sarpang	1	0	0	0	1	0.15	0.00
Thimphu	383	24	1	2	410	507.6	2.39
Trashigang	3297	59	3	0	3359	3523.28	16.59
Trongsa	475	14	0	1	490	962.51	4.53
Tsirang	394	2	0	0	396	233.54	1.10
Wangdue Phodrang	928	70	4	7	1009	3247.46	15.29
Tashi Yangtse	2308	8	0	0	1316	1448.96	6.82
Zhem-gang	273	2	0	0	275	203.32	0.96
Total	15558	547	16	20	16141	21234.1	100.00
Number of Thram holders	96.39%	3.39%	0.10%	0.12%	100%		

Table 2: Average sokshing ownership in the country

	Acres of sokshing	No. of Lagthram-holders	Acres of sokshing owned	Average Acres owned per person
	Above 100 acres	20 (0.12%)	3778.52 (17.79%)	188.9
	Between 0-5 acres	15558 (96.39%)	12594.36 (59.31 %)	0.809
	Between 5-100 acres	563 (3.48%)	4861.12 (22.90 %)	8.634
Total		16,141 (100%)	21,234.10 (100%)	1.315

What Table 2 shows is that 96.39% of *sokshing lagthram*-holders in the country own far less than the national average of 1.315 acres for every *lagthram*-holder. If redistribution of *sokshing* were to be done, it would have to be done largely

from those 20 *lagthram*-holders who own more than 100 acres, and partially from those who own between 5-100 acres. If this were so, Zhemgang, Tashi Yangtse, Tsirang, Samdrup Jongkhar, Dagana, Samtse, Sarpang and Gasa would not be affected much since most *lagthram*-holders in these *dzongkhags* own less than five acres. Bumthang, Chukha, Haa, Lhuntse, Mongar, Trashigang, Punakha, Thimphu, Trongsa and Wangdue Phodrang would see major redistribution. Paro would experience the most important redistribution since those *lagthram*-holders who own over five acres outnumber those who own less than that.

However, this could be tricky because a land category called *changra*, which is unique to Paro, must have been written off as *sokshing* in official records. On the other hand, *changra* is a traditional category of land, where people plant trees as a demarcation of land boundary or as protection against swelling rivers during the rainy season. Peasants had also paid taxes for *changra* like other categories of landholdings. The Land Act does not recognize this traditional land category of *changra*.⁷ If *changra* were separated from *sokshing*, then the number of *lagthram*-holders in Paro who own less than five acres of *sokshing* would increase.

If re-distribution were indeed the objective of deleting *sokshing* records from private *lagthrams*, there are difficulties as indicated both by the statistics given above and due to uneven regional endowment of *sokshing* resources. First, it is not realistic to suggest that *sokshing* in Trashigang be distributed to those in Sarpang, who do not own *sokshing*. Similarly, it is unrealistic to suggest that *sokshing* from Shongphu Gewog in Trashigang be distributed to those in Merak Gewog, which do not have any *sokshing*. Second, more than 96% of *lagthram*-owners own less *sokshing* than the

⁷ The idea and issue of *changra* was raised by Thuemi Ugyen Tshering, Hon'ble Member representing Paro Dzongkhag in the National Council.

national average of 1.315 acres. Redistribution would be feasible only if a large number of *lagthram*-owners owned far more *sokshing* than the national average. Therefore, redistribution may be possible only from those twenty *lagthram*-holders who own over 100 acres. Since these twenty *lagthram*-holders constitute less than 1% of *sokshing*-owners in the country, it may not be a strong justification to delete *sokshing* records from more than 99% of other *lagthram*-holders who own less *sokshing* than the national average.

Problems relating to implementation of Land Act

Partial implementation

The fact that new *lagthrams* of peasants in dzongkhag, where the cadastral re-surveys have been completed would not include *sokshing* records, suggest that section 255 of the Land Act that provides for deleting these records is being implemented. On the other hand, these peasants have neither applied for nor been given the opportunity to apply for leasehold of *sokshing*. Hence, section 256 that provides for converting *sokshing* to leasehold has not been implemented. According to the Land Act, all *sokshing* in rural areas would now be considered as GRFs. They would no longer be regarded as *sokshing*. As GRFs, cutting down trees, converting to community forests (CFs) and other activities have caused frictions in local communities.

Nevertheless, peasants continue to collect leaf litter which is legally permissible only from *sokshing* that are given on lease. Again, people could then be legally construed as collecting leaf litter from GRF, and not from *sokshing*. What we see then is not only the partial implementation of the Land Act but the problems created by partial implementation.

***Sokshing* not provided on leasehold**

Even as *sokshing* records are being deleted, there has not been a simultaneous initiative by the concerned state agency to enable people to apply for leasehold. What could have happened is that the making of new *lagthrams* without

sokshing records could have been accompanied by distribution of application forms to apply for leaseholds. Since this has not happened, some peasants have assumed that the *sokshing* of their neighbours are legally converted to GRF by the provision of the Land Act. Therefore, they have made attempts to harvest trees from these *sokshing*-turned-GRF with or without permits from forestry officials. In some cases, forestry officials have allegedly marked trees in these *sokshing* for felling and extraction by contractors.

Yet again, this would be legally permissible because it would constitute an act of marking and harvesting timber from GRF and not from *sokshing*. The Department of Forest has, however, issued notification to withhold marking of trees in *sokshing* till further notice. Even without the leasehold though, peasants continue to perceive *sokshing* as *sokshing* and not GRF. Former owners continue to exercise their rights not only to collect leaf litter but also to protect the trees. In quite a few instances, peasants went on with indiscriminate felling of their own *sokshing*. They were concerned that soon there could be other claimants to the very trees they have nurtured and protected thus far.

Inadmissibility of legal cases

Previous owners of *sokshing* and *tsamdrol* have sought legal course when other people cut down trees in their *sokshing* or brought cattle to graze in their *tsamdrol*. These people view *sokshing* and *tsamdrol* as government lands and not as private properties. When the owners approach the courts, they argue that they still enjoy the rights as provided for in the Land Act. The courts however, reason that *sokshing* and *tsamdrol* are government lands according to the Land Act. Besides, the owners cannot produce any evidence of having taken *sokshing* and *tsamdrol* on leasehold. Only if these owners produce evidence of leasehold would the courts be able to register cases for infringement or violation of leasehold by neighbours and other people. On the other hand, the

likelihood of these people suing the previous owners for denying them access to government reserved forests is likely.

Thus, *sokshing* and *tsamdro* owners find themselves without access to means of redressing grievances. The government has deleted the records of *sokshing* and *tsamdro* from their *lagthrams* but has not made arrangements to give them on leasehold. Without leasehold, the courts do not admit their complaints and register legal cases when other people cut down trees in *sokshing* or graze cattle in their *tsamdro*.

Confusion between local people and state agencies

In one *gewog*, a health clinic was to be constructed as part of its tenth five-year plan activity in a location, where there is still *sokshing*. Since the local administration now legally deems *sokshing* as GRF, they wanted to start the construction of the clinic after the local forestry office gives permit to cut trees in the *sokshing*-turned-GRF. But the forestry official asked the *gewog* administration to first seek approval and clearance of the *sokshing* owner before trees were felled. Meanwhile, the *sokshing*-owner refused to give the approval and the construction of health clinic was delayed. This shows that the *gewog* administration is implementing the Land Act provision by considering the *sokshing* as GRF. But the *sokshing*-owner still holds on to his rights as he exercised before the passing of Land Act. On the other hand, the forestry office, which is the local state agency, was uncertain about the exact legal status of *sokshing*.

In another instance, a *gup* (elected community leader) had given permission to cut down *sokshing* in order to build a farm road. The alignment of the road passed through the *sokshing* owned by a peasant. The peasant's complaint to the *gup* was dismissed on the grounds that the Land Act 2007 does not recognize private ownership of *sokshing*. It did not concern that *gup* that had the state given this peasant the opportunity to apply for leasehold in the first instance as provided for in the Land Act, that peasant would still have priority of ownership as long as he had agricultural lands.

In some cases, dzongkhag officials have converted *sokshing* to community forestry (see below for details on community forestry). Community forests are carved out from GRFs. Since *sokshing* are deemed to be GRF, dzongkhag officials have converted *sokshing* to CFs in quite a few instances. But in a few cases, these CFs were handed over to communities who would not have initially owned the *sokshing*. As a result, there are lots of inter-community grievances.

Prime Minister's Executive Order

On 4 March 2009, the Prime Minister issued an executive order instructing temporary suspension of *thram* transfers concerning *sokshing* and *tsamdros*. It stated that the decision to do so was taken in the 31st meeting of the cabinet. The suspension of *thram* transfers would continue till the Parliament approves the review of the Land Act. The order clearly mentioned that the Land Act would be submitted for review in the following session of the Parliament. Besides, it also instructed the Ministry of Agriculture and the National Land Commission to consult each other and consider alternative means to protect forest lands in accordance with the Land Act. This was because the people were cutting down mature trees that had grown on agricultural lands left uncultivated for a long time. Felling trees was widespread in preparation for the nation-wide cadastral survey.

The Prime Minister's order reflects the concern over *sokshing* and *tsamdros* issues, and the widespread felling of trees on private lands. But what the order did was momentarily suspend the implementation of the Land Act. Without implementation, peasants do not consider *sokshing* (and *tsamdros*) as GRF. The peasants' hope of having *sokshing* records reinstated in their *lagthram* has been reinforced by the executive order. Meanwhile, the anxiety on what could happen to *sokshing* issue has deepened since the Land Act was not tabled for review in either the third, fourth, fifth and sixth sessions of Parliament. The National Council discussed the issue related to *sokshing* and *tsamdros* in two of its

sessions. It has passed a resolution in its third session highlighting the issue of *sokshing* and *tsamdros*, and called upon the government to initiate the review. The National Assembly decided in its sixth session to begin the amendment of the Land Act in the seventh session this summer. It cannot be presumed at the moment that the *sokshing* records would be reinstated in private *lagthram*.

Transactions and inheritance issues

There are instances where people have sold and bought *sokshing* either by itself or along with land and houses. In the state's perspective, the buyer or seller would have bought or sold only the 'right' to collect leaf litter from that *sokshing*. On the other hand, both the buyer and seller in rural areas consider *sokshing*, as well as the land on which it grows, as part of the transaction. In their view, they did not engage in transaction of 'right to collect leaf litter'. It was the *sokshing* that was the primary object of transaction.

Sokshing were also inherited along with other agricultural lands. Until lately, the system of property inheritance was largely determined by customary practices. When parents bequeathed agricultural lands to their children, the size of landholdings given to each would often be determined based on the category of land as well as their fertility and productivity. Sometimes, those children who inherit landholdings that are comparatively less fertile would be given larger acreage of *sokshing* as compensation. This is logical because larger areas of *sokshing* suggest access to more leaf litter to be used as manure and thus enhance productivity of the less fertile land they have inherited.

The provision of Land Act to delete *sokshing* records may not have considered the complexity of customary property transaction, inheritance and distribution. It had isolated *sokshing* and treated it as if the norms of inheritance had no relation to it whatsoever. For example, it did not ask the question of why some families own *sokshing*, while others do not. Local communities consider *sokshing* as part of their landed property, not as rights. Deleting *sokshing* records, and

having them reverted as GRF in some instance could have a bearing on the scale and nature of landed property distribution in local communities.

Converting *sokshing* to community forestry: the challenges

A major argument that has developed in relation to deletion of *sokshing* records and conversion to community forestry is that communities can harvest trees and meet their timber requirement from CFs, which is not possible from *sokshing*.⁸ Therefore, communities have been encouraged to surrender their *sokshing* so that it can eventually be converted to CFs. The Department of Forest considers it legally problematic to convert *sokshing* to community forestry since the Land Act states that *sokshing* will be leased out either to individual or communities.

However, those *sokshing* that were not taken on lease would be categorized as GRF. Once it is categorized as GRF, it is legally possible to convert to CFs. In other words, *sokshing* cannot be converted to CFs directly, but can be done indirectly once it is identified as GRF. This is a key problem in the context of present discussion. While *sokshing*-turned-GRFs can be given to communities as CFs, the communities have not been given the option to lease their *sokshing*. Without this option, all *sokshing* have been considered as GRF and in quite a few instances, many *sokshing* have already been given to some communities as CFs. But no CFs can be leased out to peasants as *sokshing* unless the government decides to remove it from the list of CFs that it

⁸ The Forest and Nature Conservation Act of Bhutan 1995 provided the legal basis for establishing community forestry which is defined as 'any area of Government Reserved Forest designated for management by a local community in accordance with the Rules issues under this Act.' The first CF was established in Dozam community under Drametse Gewog in Mongar. Today there are 200 CFs covering 24, 996 acres.

maintains. If a CF were removed from the list, the communities would be provided compensations.⁹

An important issue arises from a clause of the Land Rules 2007, which states that the authorities may lease any part of GRF land including reverted *tsamdros* and *sokshings* to juristic persons for sustainable operations including *private forest*. This means that *sokshings* taken over from peasants or communities and reverted as GRF may be leased to juristic persons such as corporations. This is an important issue that merits consideration.

Among many differences between *sokshings* and CFs, three stand out. One, *sokshings* can be legally taken on lease either at the individual or community level. But leasehold at community level will be far less than those at individual levels. *Sokshing* leasehold will therefore be predominantly at the individual level. CFs however, can only be at the community level. CFs are government forests given to communities. At the individual level, there can be private forests, which consist of trees grown on private agricultural lands that were left uncultivated.

Two, only leaf litter can be collected from *sokshings* whereas other forest products particularly timber can also be harvested from CFs. There is however, a ceiling called the Annual Allowable Cut, which is a restriction on the quantity of trees that can be harvested from CFs.

Three, access to *sokshing* resource, i.e. leaf litter, will only be to the lease-holder whereas *sokshings* converted to CF can be accessed by any member of CFs. For example, trees from a *sokshing* earlier owned by person A can now be harvested by person B or C, once it is converted to CF after obtaining the permits from the community's committee that manages the

⁹ Letter from Land Commission Secretariat (NLCS/PPD/(06)/09/318 dated 6th February 2009) changes incorporated in Land Rules and Regulation 2007 – Annexure 3

particular CF. Although CF management is determined by its own set of rules, there are many instances of difficulties faced when CFs are handed over to communities and the implementation begins. In relation to the present discussion on *sokshing*, some important observations merit consideration.

1. Some peasants still refuse to have their *sokshing* converted to CFs. If the Land Act were invoked, all *sokshing* not taken or given on lease would by now be categorized as GRF. The question of refusing to convert *sokshing* to CFs should not actually arise in the first place since it is the state and not the community, who legally owns GRF. If communities are interested in forming CFs, the state hands over some portion of GRF based on certain terms and plans. However, it must be pointed out that peasants have not yet been given the opportunity to apply for leasing the *sokshing* as provided for in the Land Act. So it cannot be assumed that they are not interested in leasing *sokshing*. It should be assumed that conversion of *sokshing* to GRFs was possible with voluntary support of the previous owners. Without being given the option to apply for leasehold, it may appear as if the owners have consented to convert their *sokshing* to GRFs. But consent was circumstantially forceful.

2. Despite their refusal to convert *sokshing* to CFs, some peasants still enrol as members of CFs. As long as there was a minimum of ten households, CFs could be established by allocating 2.5 hectares (5 acres) of GRF for every household.¹⁰ Refusal to surrender *sokshing* and yet enrolling as members of CFs are tactical moves. They hope to enjoy the benefits of CFs and also the traditional rights over *sokshing*.

¹⁰ This ceiling for the number of houses will reportedly be brought down soon from ten to three households. Similarly, the 2.5 hectares ceiling for GRFs allocated as CFs would also be lifted on a case by case basis. See “Community forests made more accessible” in *Bhutan Observer*, 9 April 2011.

Quite often, *sokshing* are closer to village communities whereas CFs can be further away. In the process of creating CFs, people have realized that CFs benefit them when they are closer to it. Thus, some peasants have either withdrawn or suggested withdrawal from CFs which are far away from their villages.

3. Once communities enroll as members of CFs, they are expected to meet their timber requirement from the CFs. The Territorial Division of the Ministry of Agriculture and Forests with its mandate of conservation does not give permits for timber harvest from GRFs to members of CFs. It must be mentioned that permits to harvest timber from CFs by members can be obtained from the CF's committee. On the other hand, non-CF members and other users, such as government institutions, must obtain permits from the Territorial Division to harvest timber from GRFs since they cannot harvest timber from CFs. They can also buy timber from CFs if the annual needs of the members are met. Problems would arise for non-CF members of the same community if CF members refuse to sell for various reasons. Access to other GRFs becomes a problem since those GRFs in and around village communities are converted to CFs. They have to meet timber requirement from GRFs much further away, which is expensive and difficult. Thus, there is a certain element of circumstantial compulsion for people to either become members of CFs or have their *sokshing* converted to CFs. This problem may be addressed if people are allowed to harvest timber from *sokshing* and yet reinstate the records in their *lagthram* (see section 5 below for justifications).

4. Many people have thus agreed to have their *sokshing* converted to CFs. Whereas only leaf litter can be collected from *sokshing*, timber can also be harvested from *sokshing*-turned-CFs except that all members are entitled to the same resources. The process of obtaining permits for marking and felling trees has also been drastically shortened. The basis for people's consent to convert *sokshing* to CFs however, is not that of the CFs' perceived benefits alone. It is due to the fact

that the Land Act would anyway delete *sokshing* from their *lagthrams*. Consent was thus a strategic bargain to obtain the best deal out of perceived loss of *sokshing* to the state's *Chhazhag Thram*. This consent would certainly be questionable if *sokshing* records were not to be deleted from people's *lagthrams*.

5. There is no doubt that the major benefit from CFs' to their members is access to timber, which is not possible from *sokshing*. Of course, the Forest and Nature Conservation Act of Bhutan 1995 (FNC Act) permits transfer of ownership of forest produce that includes boulders, stone, sand, gravel, rocks, peat and surface soil in CFs to the people. However, the Forest Rules 2006 (section 36.7) as well as the Land Act state that such resources found in any registered lands shall belong to the state. Article 1.12 of the Constitution has also given the state the rights over mineral resources, rivers, lakes and forests. The state would regulate the use of these resources by law. There are conflicts between provisions of the FNC Act and Land Act. The Constitution however, supports the provision of the Land Act. Thus, CF members' major benefit is really the access to timber. But the primary purpose of disallowing timber harvest from *sokshing* was to protect and conserve forests. This objective is compromised as timber can now be harvested from *sokshing* converted to GRFs and CFs. What the Land Act then does is transfer the registration of *sokshing* from private *lagthrams* to the state's *Chhazhag Thram*. Cutting down trees from *sokshing* was not permissible when it was registered in private *lagthrams*. However, it is possible when it is registered in the state's *Chhazhag Thram*. If the harvesting of timber is to be permitted from the same woodlot (i.e. the *sokshing*) under different names and categories such as CFs and GRFs, transferring of *sokshing* records also may not be necessary since the state claims to own *sokshing* like any other GRF. One possibility then is to reinstate *sokshing* records in private *lagthram* and allow timber harvest besides leaf-litter collection under similar plans of CFs' sustainable management. This

will have the positive effect of being an incentive to people to protect and manage *sokshing* with a sense of ownership. Meanwhile, the objective of conservation and sustainable resource use, which is inbuilt in GRFs and CFs, will also be met.

6. A major argument and criticism against this suggestion is that those people who do not own *sokshing* will not be benefited. Instead, they may end up paying for timber and also leaf-litter from those who own *sokshing*. The cost of timber and leaf litter would depend on the owner of *sokshing*. This argument would hold true if the state insists that *sokshing* would be the only source of meeting rural timber requirements. However, timber requirements are being met from GRFs and CFs. On the other hand, it is important to note that most CFs are not necessarily created from existing *sokshing*. Rather, they are also largely carved out from GRFs. This implies that the state is willing to hand over government land and forest to communities. Following the same logic then, the government can provide GRFs to those people who do not have *sokshing*. Those GRFs could then be maintained as *sokshing*. In other words, rather than converting *sokshing* to GRFs, GRFs may be converted to *sokshing* and given to those who do not have *sokshing*.

Recommendations

In order to address serious concerns of rural peasants pertaining to the deletion of *sokshing* records from private *lagthrams*, the following recommendations are being proposed in the context of above discussions. Some of these recommendations may be visited while reviewing the Land Act 2007, while others would be the prerogative of His Majesty the King.

1. In relation to issues of *sokshing*, the Land Act review could consider if *sokshing* rights and records could be reinstated in peasants' *lagthrams*.
2. If reinstatement of *sokshing* records is found to be justifiable, Parliament could fix a ceiling for the maximum

acreage of *sokshing* a *lagthram*-holder can have registered in his/her *lagthram*. The ceiling must consider the size of the person's agricultural landholdings so that he/she can collect enough leaf-litter and also meet minimal timber requirements if *sokshings* are to be converted to private forest (see section 6 below).

3. The state may take over those *sokshing* whose acreage exceed the ceiling as well as those *sokshing* whose owners do not have agricultural lands. They could be redistributed to those landholders who either do not own any *sokshing* or own very little *sokshing*. However, *sokshing* may not be provided to those landholders who have left their lands fallow and uncultivated for a long time. Those *lagthram*-holders in the community who have less *sokshing* may be permitted to collect leaf litter from these *sokshing* belonging to peasants who no longer cultivate their fields. On the other hand, *sokshing* could be provided to those landholders if they resume cultivation of fallow lands.

4. In those communities where there is not enough *sokshing* for redistribution, the state may identify certain areas from nearby GRFs and provide them as *sokshing* to needy peasants. The land records of those GRFs would then need to be transferred in the people's *lagthram* as *sokshing* instead of GRFs. If the understanding is that the state would still own the land and trees, transfer of GRFs to private *lagthrams* can be legally done by Parliament. However, if the understanding is that the people would own even the *sokshing* land and trees, it would be His Majesty's prerogative to grant GRFs as *kidu sokshing*.

5. The Land Act states that those *sokshing* lands which have been cultivated since there are no trees growing on it shall not be leased. This means that even if the land has been under cultivation, it will revert as GRF. Technically, these will be forests without trees. But it would be illogical to call a *sokshing* bereft of trees as forests (GRF). Again it is His Majesty's prerogative to grant such cultivated land as *kidu*.

6. Many peasants hope that the state will enable them to convert *sokshing* to private forests (*gerde nagtshe*). The government has allowed people to retain uncultivated agricultural lands overgrown with trees as private forests. The lands belong to the people. However, the state considers *sokshing* lands as state lands. Thus, converting *sokshing* to private forests would involve privatizing state land since private forests can only be on private lands, not on government lands. In this case, the prerogative to grant *sokshing* land to peasants for conversion to private forests will be that of His Majesty the King.

7. If the law (by way of amending the Land Act) makes it permissible for *sokshing* to be converted to private forestry, it will be possible to harvest timber from these *sokshing*. The state is not averse to permitting felling of trees from *sokshing*, if they are reverted as GRFs. Those peasants who do not own *sokshing* could meet their timber requirement from CFs. The amendment could also consider permitting only leaf litter collection from *sokshing*, even if the records are reinstated in their *lagthram*. This would mean that communities would have to meet their timber and other forest produce requirement from CFs and GRFs. However, every community member must be a member of CF to ensure equitable access to forest resource. Thus the CF rules that require a minimum of ten households to establish a CF may need to be amended. Every community irrespective of the number of households must be permitted to establish a CF.

Both these suggestions have equitable benefits. In one way or other, both ensure access to leaf litter as well as timber requirements and yet address conservation concerns. If timber harvesting is permitted from *sokshing*, trees in GRFs need not be harvested. Otherwise, timber has to be harvested from GRF.

8. Review of the Land Act may consider other issues besides *sokshing*. For example, the legal requirement of a minimum plot size of ten decimals has created lots of difficulties in the process of *lagthram* transfers. The review of the Economic

Development Plan and Foreign Direct Investment policy 2010 has also pointed out the need to review the Land Act. Equally pertinent to the issue of *sokshing* is that of *tsamdro* for highland communities depending on livestock.

Conclusion

The concern generated by deletion of *sokshing* records from peasants' *lagthram* is an important issue. Reinstating these records and considering the above recommendations could achieve the same objective that was initially intended by deleting *sokshing* records from private *lagthrams*.

Since leaf litter collection is an important source of organic manure, it makes sense to encourage it in the light of government's policy to promote organic agriculture. This is even more relevant when smaller sizes of good breeds of livestock are promoted in place of traditional breeds. This will mean diminished supply of livestock droppings. So people will have to apply alternative organic manure like leaf litter.

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