

Environmental Good Governance in the Future Constitution of Nepal

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Introduction

Destruction of forests, landslides, solid waste mismanagement, water and air pollution, destruction of biodiversity, inequitable access of women, Dalits, indigenous people and poor communities to environmental resources, goods and services and inequitable sharing of benefits arising from the use of such resources, goods and services are the main environmental problems in Nepal. Only very few government agencies, organisations and people accept that the principal reason for present environmental degradation is the failure of environmental governance. Limited authorities, agencies and individuals and perhaps communities have certainly benefited economically from the problems created by the present failure of environmental governance, but at the same time they have displaced many communities and destroyed ecosystems (*Belbase, 2010*).

The use of the political rights for management of public affairs of a state is governance (*UNDP, 1995*). Governance has also been interpreted in the following way:

Governance is about the choices we make and the way in which we carry them out (*Ivanova, 2005*). The very need for governance arises from the interactions of members of a social group - be it a tribe, kingdom or a state (*Figueres and Ivanova, 2002*). Upon realisation of interdependence, the need for some form of collective management develops in order to avoid conflict and attain common goals. Governance is therefore a tool to facilitate coordination of the collective activities of individuals in a group (*Ivanova, 2002*).

Organisation for Economic and Co-operative Development (OECD) has identified the following fundamental elements for good governance:

- Openness, Transparency and Accountability;
- Fairness and equity in behaviour and activities with citizens;
- Efficient and effective services;
- Clear and transparent laws and regulations;
- Consistency and coherence in policy formulation;
- Respect rule of law / legal gateways; and
- Highest level of standards of ethical behaviour of the highest norms.





The element to be paid special attention to in the definition of OECD is the highest standards of ethical behaviour of the highest norms. This aspect does not find a place in most of the definitions. Good governance is also defined as a set of social values, beliefs/norms comprising of the rule of law, honesty and accountability (*Licht et al., 2006*). Although a state is rarely prepared to include norms or values in the element of good governance, it is necessary for all to consider this aspect (*Licht et al., 2006*).

The right to use the natural resources and the environment of a state is environmental governance (*UNEP et al., 2003*). In context of Nepal, the definition of environmental governance includes such norms and values, policies, technologies and organisations through which society ensures sustainable economic growth and social development by managing resources in a transparent, accountable, participatory and equitable manner (*SCDP/NPC/UNDP, 2003*). It means effective environmental governance is attainable only if there is existence of elements of environmental governance in the approaches of different levels of the state (*SCDP/NPC/UNDP, 2003*). Environmental governance includes:

- Transparency, accountability, people's participation, decentralisation up to the lowest level of community and the rule of law;
- Making environment related decisions publicly.
- Making individuals and communities participate in environmental decision-making processes and discussions;
- Representation of communities to be affected by environmental decisions; and
- Holding decision makers accountable for the integrity of decision-making procedures and the result of decisions.

All forces that can influence human behaviour are potential tools of governance (*Zaelke et al., 2005*). In spite of this, majority of communities have very little concern about environmental governance. Environmental governance is viewed as an extra burden while preparing a programme or policy, Bosselman and others maintain that environmental governance remains a minor concern in most societies, an add-on, or a minimalist, shallow program, designed to avoid litigation and voter disquiet. Environmental governance is a poor cousin of economic governance (*Bosselmann et al., 2008*).

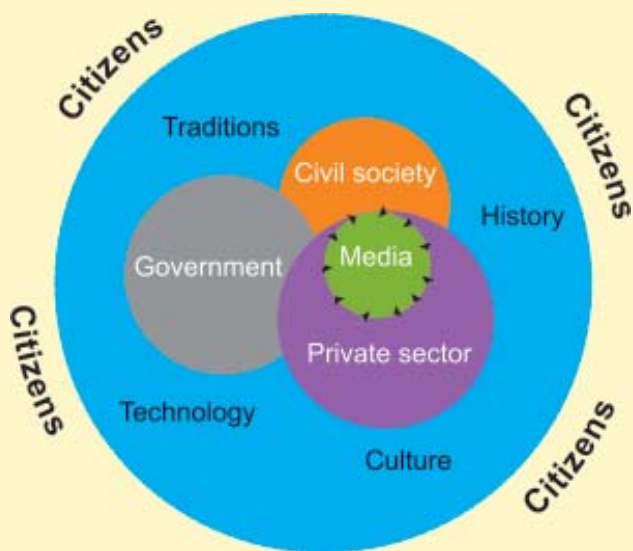
Although government and governance seem to be the same, a government usually means a different body and a process rather than citizens, civil society and the private sector. In governance the government is only a main actor among many different actors. To equate governance with government means putting blinders around the range of strategies that seems available (*Pumptre and Graham, 1999*).



UNDP maintains that:

Governance includes the state, but transcends it by taking in the private sector and civil society. All these are critical for sustaining human development. The state creates a conducive political and legal environment. The private sector generates jobs and income. And civil society facilitates political and social interaction - mobilising groups to participate in economic, social and political activities. Because each has weaknesses and strengths, major objective of our (of UNDP) support for good governance is to promote constructive interaction among all three (UNDP, 1997).

Figure 1



Source: Graham, Amos and Plumptre

If different entities of a state, which cover the social and economic landscapes are taken into account, the understanding of governance at the national level becomes more easy or clearer. As portrayed in figure 1 above, there are media, civil society, trade and industry and government in a state. The size of circles within this figure represents their powers in any Western countries. They overlap each other, because another agency can enter into their boundary and work there (Graham, Amos and Plumptre, 2003). In countries with a military regime there are agencies with powers distributed differently. In such countries army occupies a major part, whereas the media and the civil societies are confined to a very limited scope. The scope of the agencies in the figure above increases or decreases with passage of time. The scope occupied by the private sector a decade ago was very narrow. Now, this sector has well broadened its scope. Similarly, the scope of media sector has been widening.

At present the subject-matters of environmental governance are extraordinarily dynamic. Although citizens' right to participation, transparency in governmental and





non-governmental decision-making and processes, the need to control corruption, people's right to demand and obtain information on the status of the environment, pollutants and land-use related decisions from government bodies and industries or factories, the right to demand punishment against those who are guilty of violating environmental laws and the right of victims of environmental injustice to full compensation etc are the subject-matters of environmental governance but the government bodies and polluting factories seem to overlook these matters. Following are some of the elements of governance:

The Rule of Law

There are several elements of environmental good governance. The first element is the existence of institutions and the implementation of laws. The rule of law is naturally a concept against the rule of a person (*Shrestha, 2007*). Accordingly it needs to be proved that every action of the government is consistent with the laws. The actions which are not supported by the law or actions that are arbitrary and not based on law do not fall within the ambit of rule of law (*Shrestha, 2007*). Therefore, the first element of the concept of the rule of law is the existence of law and the second element, on the other hand, lays emphasis on the fact that such law should be legal and based on popular will. Any law that provides powers to dictatorship is not recognised within the concept of the rule of law. Similarly, the supremacy of law is another main element of this concept. It keeps the arbitrary use of rights at bay. In addition, the concept of equality before law is another important aspect.

The existence of law *per se* doesn't establish the rule of law. To translate the rule of law into reality, effective implementation of law is as necessary as the existence of law itself. Only enactment of laws is not enough. Information about such laws needs to be disseminated to rural areas in Nepal.

According to the European Commission, the rule of law encompasses the following elements:

- A legislature that enacts laws that respect the constitution and human rights;
- An independent judiciary;
- Effective, independent and accessible legal services;
- A legal system guaranteeing equality before law;
- A prison system respecting the human person;
- A police force at the service of law;
- An effective executive that is capable of enforcing the law and establishing the social and economic conditions necessary for life in society and that itself is subject to the law; and
- A military that operates under civilian control within the limits of the constitution.

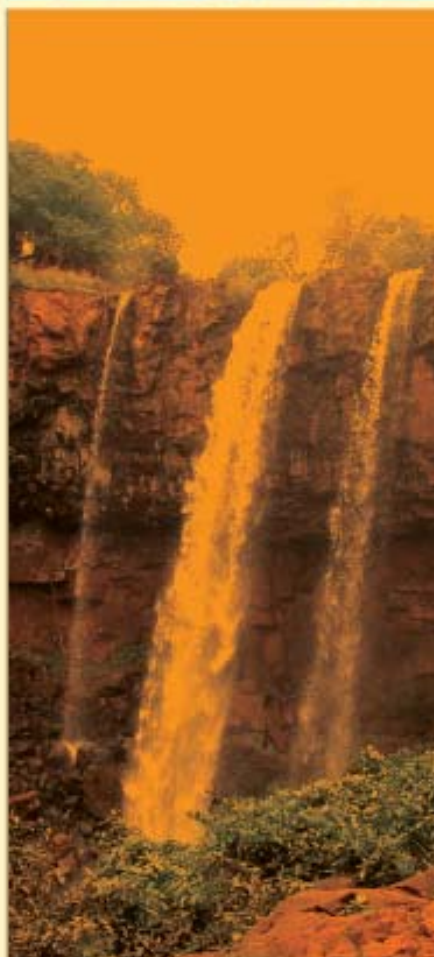
If the status of the rule of law in Nepal is evaluated based on the above elements; it would certainly help in the drafting of the future constitution of Nepal. Some of the above elements do not exist at all in Nepal's rule of law and even if some of them are included, they are only for formality. Although the Ministry of Forests and Soil Conservation (the then Ministry of Population and Environment), Ministry of Water Resources, Ministry of Agriculture and Cooperatives, and Ministry of Industries have been enforcing different pieces of the legislation related to the use of environmental resources, the implementation of these laws is not effective. The main reason of such ineffective implementation of laws is that there is no flow of information to citizens about the laws and also lack of interest on the part of citizens. The Ministry of Environment has not been able to develop itself as a strong, capable ministry. There is enough room to question the integrity of some of the decisions made by this ministry. Though it has already been 15 years since the Ministry of Population and Environment (then the Ministry of Science, Technology and Environment) and the current Ministry of Environment was established, Department of Environment has not yet been established. It is apparent that environmental governance has been relegated to low priority by past and present governments. It is ridiculous even to expect compliance and enforcement of environmental legislation at this point of time when the violating of environmental law is more lucrative than compliance with the legislation. Some of the existing laws of Nepal have this drawback (*Belbase, 2010*). Similarly, the implementation of existing laws is very weak. As a result, the situation of environmental governance is gradually becoming fragile.

It is necessary to take steps towards incorporating the elements mentioned the European Commission and other things that need to be established for effective implementation of those elements in the new constitution. If the rule of law is to be incorporated in the constitution, the above elements determined by the European Commission and subject-matters mentioned under this section should be included under the preamble, fundamental duties, legislative, executive and judiciary sections or chapters of the new constitution being drafted.

Participation and Representation

The roots of the ecological crisis at the institutional level lie in the alienation of the rights of local communities to actively participate in environmental decision-making processes (*Shiva, 1998*). According to *Bosselmann and others (2008)*, direct participation by citizens in decision-making process has several significant effects, such as:

- Fostering people's awareness of their social, political and environmental context;





- Increasing tolerance, empathy and understanding of pluralism;
- Heightening awareness of the implications of individuals' actions on broader environmental and social context; and
- Generating community empowerment as individuals and groups recognise their capacity to change and influence their surroundings.

Notwithstanding the above importance of participation, public officials at the different levels of the state have ignored the right of citizens to participate. It is necessary that serious initiative be taken about the following concerns:

- How and to what extent people in general can influence the formulation of natural resource-related law and challenge a law they are not satisfied with?
- Who represents those people and communities depending on natural resources while natural resource related decisions are made?
- What measures have been adopted to ensure the participation of people of unequal educational, social and economic status?
- What measures have been adopted to solve obstacles like distance, language, literacy and connectivity?

Although the Environment Protection Act requires that while preparing an environmental impact assessment report, local people and communities should be involved in the environmental impact assessment process through public hearing, the tradition of providing local people and communities only with the executive summary of a report written in very difficult English language has made the people's participation-related legal provision confined to only formality (*Belbase, 2010*). The Ministry of Environment has not taken any concrete steps to garner meaningful people's participation in the environmental decision-making process. If the government doesn't provide local people and communities with the opportunity to contribute to or express their concerns over the decision-making process by not garnering their participation, such environmental decisions will only create conflict and resistance.

Foti *et al.* (2008) rightly argue that:

For participation to be fair and effective, a decision-making process should include a range of stakeholder voices. Decision making can take many forms. At one end of the spectrum it can be direct - where stakeholders collectively make a decision, either as a majority or consensus. At the other end of the spectrum is indirect decision making by a third party; usually a government official, makes the decision with or without the participation of stakeholders. The third party could be an elected representative. It could also be a judicial or administrative officer appointed by the government.



Access rights are important to both direct and indirect decision-making. However, they are particularly important in the context of indirect decision making, where elected or appointed officials can easily marginalise stakeholders or limit their access.

Access to Information

In the context of environmental good governance, “access to information refers to (1) the availability of information relating to the environment and (2) the mechanisms by which public authorities provide environmental information” (*Foti and de Silva, 2010*).

WRI, UNDP, UNEP and World Bank (2005) maintains that:

The democratic rights of the poor and their capacity to participate in environmental decisions affecting their livelihoods are central to their ability to escape poverty. Yet, despite their greater reliance on natural resources, the poor have less say than their richer counterparts in how environmental decisions are made.

In much of the developing world, the policies, practices and institutions of political life serve to exclude a majority of citizens from full participation in public decision-making, especially the poor and socially marginalised. This is true even in many nations that are nominally democratic. The above statement made in the 2005 report of World Resources Institute is literally applicable in Nepal. It is not only the different organs of the State established at the central level that have been providing continuity to such exclusion but also the user groups and other groups established at the district and village levels have also been promoting exclusion in Nepal. It is difficult to enhance participation in such a situation (*Belbase, 2010*).

The Rio Declaration, to which Nepal is also a state party, has mentioned three elements: (1) access to information; (2) opportunity to participate in decision-making processes; and (3) effective access to justice including redress and remedy. Though the Constitution of Nepal provides the right to information, unfortunately legal framework in the country have ignored these three elements of access to information. As long as these elements are not present in any system of participation, effective people’s participation will remain only rhetoric and environmental good governance will be confined to a political slogan only.

Past and present governments have not granted the Nepalese people the right to environmental information. It means they have violated the constitutionally guaranteed fundamental right. It is meaningless to expect other rights from such a government which does not want to provide rights granted by the constitution (*Belbase, 2010*).

It is necessary to understand clearly that in reality for the implementation and ensuring the right to live in a clean environment provided by Article 16 (1) of the Interim Constitution of Nepal, fundamental right of access to environmental information is indispensable. Access to information, public participation and access to justice; these principles strengthen the right to healthy or safe

environment and are in turn strengthened by an established, enforceable right to a healthy or safe environment strengthens these principles (Foti and de Silva, 2010). It would be pragmatic to expect that the framers of the new constitution would give appropriate place to access to environmental information in the new constitution that strengthens the right to live in a clean environment already guaranteed by the Interim Constitution of Nepal.

Transparency and Accountability


Another element of environmental good governance is transparency and accountability. According to the *World Bank (2004)*, accountability is a relationship among actors that have five features: Delegation, Finance, Performance, Information about performance and Enforceability.

Although issues such as to whom and to what extent public officials, authorities and individuals who control and manage environmental resources, goods and services are accountable for their decisions, to whom and to what extent they are accountable, how much the decision making process itself is open for detailed information, copies of records, decisions and complaints are available or not when demanded, the inventory of pollutants emitted or discharged by factories is publicly available or not, what kind of action can be taken against those authorities or agencies that do not fulfill their responsibilities come under accountability, Nepal has yet to apply many measures in order to ensure accountability.

While drafting any law in Nepal, attention is paid to or high-ranking officials asked to lay emphasis on the fact that the law doesn't create extra responsibilities for the government. Even if the responsibilities are created for the government, no obligation should be created for ministers and officials like secretaries and joint-secretaries. Until such thinking and behaviour prevail, neither the government nor high ranking officials will be transparent and accountable. If environmental good governance is really our felt need, amendments should be made in law to make the government and civil servants as transparent and accountable as industries, factories and individuals. Law should provide for making the public officials individually accountable and in case such official is not accountable, the law should provide for punishment.

The five features mentioned above in the World Bank's report should equally be applicable to service providers of public and private sectors and civil societies. The people of Nepal elect or appoint Ministers, secretaries, joint-secretaries and under-secretaries and delegate them the peoples' sovereign rights vested in the people of Nepal in order to manage the affairs and work of the respective ministries and also provide them the power to use budget and impose tax. Therefore, the ministers, secretaries and their subordinates should perform





their work and responsibilities in a reasonable and effective way. Then voters evaluate the performance of the ministers, secretaries and their subordinates based on their experience and available information. After that those ministers and civil servants are controlled through political (elections) or legal means (*adapted from World Bank, 2004*).

Once right holders delegate their rights and provide necessary economic means to the duty bearers, it is necessary that provisions should be included in the new constitution for making those duty bearers accountable either politically or legally if they don't perform their duties. Such provisions will create peace and prosperity and good governance in the country. Provision relating to accountability, therefore, should be included in the fundamental duties chapter of the future constitution. Similarly, to ensure accountability, it is imperative that provision be made in the new constitution that while taking any decision for doing or not doing any specific activity or task' public officials must provide detailed reasons for their decision.

Decentralisation

At what level the right to environmental resources is vested in is another element of environmental good governance. The main issue is at what level and to what extent the right to environmental resources is vested at the local, regional, national or international level? Authority to formulate and enforce regulations and by-laws, budgetary and investment issues also need to be taken into account.

Another important element of environmental good governance is the principle of subsidiarity. Practice has it that people living in and around environmental resources, goods and services are not allowed to make decisions related to these resources, goods and services. But government ministries or departments located in the centre very far away from local environment resources, goods and services have the authority to make decisions. Consequently, such decisions are not well informed by local aspirations, knowledge, practices and problems. As most of such decisions are deprived of local knowledge and experience, they are against the interests of local environmental, resources, goods and services and local people. Therefore, the right to make such decisions should be decentralised to the grassroots level of a community under the principles of subsidiarity. But it has hardly been translated into reality in countries like Nepal.

It is necessary for the Members of Constituent Assembly, policy-makers and all staff involved in policy-making to realise the fact that the success of community forests, leasehold forests and conservation areas are attributable to a great extent to right to make decisions and manage those environmental resources provided to local communities. In the

same way, it is necessary that the local communities be given the responsibility of drafting policy, implementation and management related to other components of the environment. The extent to which decentralisation and devolution is included in the future constitution in favour of local people and community will show the intention of constitution makers and their commitment to federalism because “decentralizing government authority as much as possible has come to known as federalism” (Lueck and Yoder, 1997).

Institutions and Agencies

Another important element of good governance is the existence of institutions, organisations and agencies. So far as institutions or agencies are concerned, usually government and private institutions or agencies are mentioned. If a similar limited perspective is maintained in the context of good governance too, it will overlook a great aspect of good governance. *The World Bank (2003)* has defined institutions as they are the rules and organisations, including informal norms that coordinate human behaviour. They are essential for sustainable and equitable development.

In other words, an institution refers to informal norms, rules and organisations that coordinate human behaviour. This definition has accepted not only informal norms but also norms and values of those institutions that have been in existence at the local level since time immemorial. Age-old provisions or rules made by a community regarding protection, repair and maintenance of canal and distribution of irrigation water used to be equally binding for all the members of that community and those institutions and rules used to coordinate and regulate human behaviour. Thus this definition includes those traditional groups, user groups or institutions and policies, rules and norms formulated by those institutions along with civil society organisations and organs of a government-executive, legislature and judiciary and different agencies established under the three organs of a state and rules and laws made by them.

For the promotion of human well-being, the main functions of such institutional structure should be as follows:

It must *pick up signals* about the needs and problems, particularly from the fringes; this involves generating information, giving citizens a voice, responding to feedback, and fostering learning. It must also *balance interests* - by negotiating change and forging agreements and by avoiding stalemates and conflicts. And it must *execute and implement* solutions - by credibly following through on agreements (*World Bank, 2003*).

Both past and present governments have been absolutely indifferent to the establishment and strengthening of institutions, organisations and agencies required in the field of environmental good governance. Although the name of the Ministry of Population and Environment established in 1995 has been changed three times till date, no serious measures has been taken to establish a



Department of Environment and district-level offices under this ministry. Similarly, the past and present governments have been completely silent regarding the establishment of a green bench within the Supreme Court, let alone the establishment of a separate environment court within judiciary. Legislature has been able to do a bit encouraging business through its Natural Resource Committee only after the Second People’s Movement. If this element of good governance is taken seriously, informal organisations existing in different villages and communities needs to be first recognised by the new constitution as a vital part of good governance. The future constitution should make provisions for strengthening those institutions, organisations and norms socially. The constitution should also clearly provide for the establishment of an Environment Conservation Commission (ECC) and its powers, functions and duties. The ECC should be granted powers not less than the powers to be provided to a Fiscal Commission or any other commission to be established by the new constitution. An Environment Conservation Council should also be established at the central level in chairmanship of the head of government. Similarly, this council should be established in every province in chairmanship of the head of the respective province. In the same way, environmental good governance can be ensured in the long term only if an Environmental Court is established within the judiciary.

Access to Justice

Justice is the ascertaining of truth between reasonable and unreasonableness. Justice is the combined form of fairness, logic, equality and non-discrimination. Equality, fairness or non-discrimination should be ensured not only in outcome, but also in processes (*Khatiwada, 2010*). Justice is a cornerstone for the promotion of a democratic political system. Courts are expected to be a place where the poor and voiceless also are treated equally. If these people themselves cannot protect their rights, the state should ensure their access to justice (*Shrestha, 2010*).

It is necessary to have access to justice for human development and poverty alleviation because it is the poor and voiceless who are vulnerable to the violation of rights, discriminatory and criminal acts, as well as other illegal acts. Enhanced access to justice not only means the availability of judicial services, but it also means enhanced capacity to use judicial services. Enhanced capacity to use the judicial service contributes to promoting accountability of judicial services as well as other services of the government. Importance of enhanced access to justice also lies in minimising the social imbalance between people those who have power and the powerless. The powerful class of society has monopoly over all resources and means, misuses rights and treats people discriminatorily, whereas the poor and voiceless have to suffer from violence, oppression, ignorance, low wages, pressure and suppression (*Shrestha, 2010*).





Foti and others (2008) maintains that:

If environmental decision-makers are to be held accountable, people need access to procedures and institutions that provide redress and remedy when the government's decisions are wrong or unlawful. The public needs mechanisms to ensure that their government fulfills the right to access to information and right to participate. Additionally, laws and institutions should provide the means to promote compliance with environmental standards and enforce environmentally related rights.

Therefore, access to justice is the access to environmental information, right to participate in decision making processes and access to laws, procedures, processes, institutions and agencies which have been enacted and established for fulfilling environmental rights of the people. Access to justice is thus a vital aspect of accountability as it provides the avenues for enforcement of substantial and procedural environmental rights and duties (*Foti et al., 2008*).

Foti and others (2008) further argue that:

A comprehensive system for access to justice provides procedural justice that is fair and efficient means of resolving conflicts. This depends on a number of factors. The first is the right to bring cases to court, or "legal standing". Legal standing is often severely limited for environmental matters, even in countries where courts are frequently relied upon to adjudicate policy. Second, forums for conflict resolution need to be readily affordable. The costs in time and money of using the forum should not pose a barrier to poorer communities or individuals.

In an environmental justice-related study carried out in Chulachuli and Banjho Village Development Committees (VDCs) in Ilam district, the respondents reported two main reasons that obstructed them while filing a case or dispute in the court. The first reason was the distance between the study site and the court, and the second was expenses to be made (*Belbase and Thapa, 2010*).

Access to justice also entails substantive justice - the delivery of redress and remedy to the affected parties (*Foti et al., 2008*). In the process of providing substantial justice, a court or any other dispute resolving agency may order the government to review, withdraw or cancel its decisions, or industries or factories to stop polluting activities. The Court may order to immediately stop the destruction of an endangered species, or if environmental resources, goods and services on which poor, women, indigenous communities and *Dalits* depend for livelihoods are being destroyed, it may order to immediately stop such destructive activities. Similarly, it may also order to hold a fair public hearing involving the poor, women, indigenous communities, *Dalits* and *Madhesis* while conducting an environmental impact assessment.

Access to justice does not mean that the complaining party always wins, but environmental rights and values are protected as provided for in the law and that those advocating for those rights have impartial venues to resolve conflict and obtain remedies (*Foti et al., 2008*).



Bharucha, Judge of the Indian Supreme Court, says the following by indicating the government attitude of not paying attention to investment in judiciary:

“The states are, quite simply, not interested in doing anything about it. They have no money to spend on judiciary. That it is the obligation of the state to secure justice for its citizens doesn’t bother the states: litigants are not a vote bank they need to cater to it.”

If the government is dedicated to access to justice, it should construct the infrastructure of agencies, including judiciary, involved in resolving conflicts related to the protection of the right to environment and destruction of the environment. The government should also repair and maintain the infrastructure and provide enough human resources and financial resources to such agencies. Those agencies that provide justice create faith, commitment and respect in democracy. Such bodies shouldn’t be viewed as a vote bank. Therefore, it would be wise and far-reaching to make special provisions in the new constitution with a view to strengthening democracy by ensuring access to justice.

One of the main drivers of the destruction of natural resources worldwide is corruption. Public office bearers are involved in corruption for personal benefits. Similarly, corrupt authorities keep mum when industries and factories violate environmental norms. One of the main reasons of misuse of natural heritage worldwide is corruption. It is a great irony that Nepal’s position is 146th on the list of most corrupt countries.

The report on Investing in Development: A Practical Plan to Achieve the Millennium Development Goals attributes ‘governance failures’ as a contributing factor to lack of progress in achieving the MDGs including the need for better engagement of civil society, more accountable and efficient public administration, improved governance of the private sector, and the need to protect human rights and to uphold the rule of law, while ensuring equity.

It needs to be realised that if environmental good governance is not effectively strengthened in the country, it will have negative effects on poverty reduction, increasing children’s education, women’s health, reducing child mortality, gender equality and empowerment.

Conclusions

If Constituent Assembly, Legislative Parliament, government agencies, the private sector, civil society, the media and individuals make collective efforts, the weak condition of environmental governance can certainly be improved. All sectors and individuals need to work for promoting environmental good governance, transparently and accountably. If concerted efforts are not made to protect endangered transparency and accountability, it is unlikely that transparency and accountability will be established and developed in the near future. Environmental good governance is not a priority of Government of Nepal and donor agencies. At present their priority

is fiscal, administrative and political governance. If the donor communities extend their support by giving priority to environmental good governance, the future posterity too will enjoy its outputs. The government, government agencies, the private sectors and donor agencies are unlikely to take the initiative in this issue, because economically, politically and socially backward sections of the society, whose survival depends on environmental resources, goods and services are their constituency for name sake only. The government, government agencies and the private sectors are more likely not to take the initiative in environmental good governance because if local people are politically and economically empowered, there is a possibility that their vested interest will not be realised.

The efforts and contribution made for the promotion of good governance by the media for the last few years have been appreciable and replicable. But unfortunately the media also couldn't give due priority to environmental good governance. If environmental good governance is given as much importance as the political, economic and administrative governance, a lot of improvements can be made in this sector even within a short span of time. But it is very difficult to have significant improvement in environmental governance unless the media give priority to it. Although there is no provision of the right to environmental information and its access right in the Interim Constitution of Nepal, it would be wise to include these rights as fundamental rights in the future constitution. As long as all Nepalese do not have the right to receive environmental information, they cannot participate in environmental decision-making process in informed manner. Therefore, the provision "Every citizen shall have the right to demand and regularly receive environmental information necessary for participation in environmental decision-making processes" should be included in the future constitution as a fundamental right.

If the future constitution under its fundamental rights doesn't provide communities, women, *Dalits*, indigenous peoples, *Madhesis* and politically and economically weak people - whose survival directly depends on environmental resources, goods and services for their livelihood and are now suffering from environmental pollution and depletion - with opportunities to participate as equal partners in all steps of development, including formulation implementation and monitoring of environmental laws, the tradition of making people participate at the mercy of or not making them participate arbitrarily by the policy and decision makers will not come to an end. Therefore, it would be reasonable and fair to include the provision "Every citizen shall have the right to participate as an equal partner in the formulation, implementation and monitoring of environmental law, rules and policies and the right to meaningful participation in the environmental decision-making process on a fully inclusive basis" as a fundamental right in the new constitution. If the provision "It shall be the duty of public office bearers to be transparent and accountable while using their rights and discharging their public responsibilities and duties" is included under the heading fundamental duties, the public office bearers will be bound to be transparent and accountable. It will eventually contribute to good governance.

The new constitution also needs to provide due recognition to traditional institutions, organisations and norms and their good management practices. The principle of subsidiarity should be one of the key guiding principles of the new constitution. Members of the Constituent Assembly should not shy away from providing appropriate institutional arrangement for promoting access to justice and making the decision-makers accountable as mentioned in this policy brief.

According to Claus Bosselmann, Ron Engel and Pru Taylor (2008), representative democracy creates 'politicians', a type of decision-makers whose job depends on meeting the immediate needs of voters. In fact, their performance is measured solely by their success in meeting immediate needs. There is little to be gained from meeting less immediate needs, let alone the needs of future generations. Short-term achievements can be rewarded with re-election, long-term aspirations won't be rewarded. In this sense, unsustainable decisions are key characteristics of representative democracy.

Let us hope that the Members of Constituent Assembly and leaders of political parties will include appropriate provisions for promoting environmental governance and ensuring environmental justice to the present and future generations of Nepal in the new constitution as fundamental rights and prove that the above statement by Claus Bosselmann, Ron Engel and Pru Taylor is wrong with respect to Nepal's representative democracy.

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