



# Equitable Access and Benefit Sharing of Environmental Resources, Goods and Services

Subodh Gautam

*Individuals should participate in decision-making process related to conservation, management and sustainable use of those resources they are concerned about. Equitable access can be maintained only after having access to the decision-making process, information and justice.*

*Only time will show how the new constitution equitably distributes the benefits obtained from environmental resources, services and goods to poor people and disadvantaged communities of the country.*

## Introduction

### Environmental Resources, Goods and Services

The term *environment* refers to the natural, cultural and social systems, economic and human activities and their components and interaction and interrelation between these components (*Environment Protection Act 1996*).

Mankind has been receiving different kinds of goods and services from environmental resources since days long gone by. These resources include food, grass, fuel wood, medicinal herbs, water, oxygen etc. Such environmental or ecological services are divided into three categories. Food, clean water, timber, fuel wood, biochemicals and genetic resources obtained from environment come under provisioning services. Regulation of climate, diseases, water and water purification belongs to regulating services. Non-materialistic things, such as spiritual, religious and aesthetic inspiration and educational aspects, obtained from environmental and ecosystems come under cultural services (*Josephs Alcamo and others, 2003*). Today's main challenge is equitable access to these services by poor people, women, *Dalits*, indigenous nationalities, etc of the country and equitable sharing of benefit obtained from these services.



## Meaning of Equitable Access to Environmental Services

The term equity implies that all people should obtain equal justice. This term is based on two prevailing principles: public trust doctrine and the principle of permanent sovereignty over natural resources. The first principle has a perspective that the right to environmental and natural resources be ensured and also that the access and right of commons to the conservation and promotion of natural resources like air, water, land and forest and sites of historical, religious and cultural importance should be ensured.

The meaning of equity may be different to different people. The meaning of equity may be different for a philosopher, economist, political scientist and jurist; but the foundation remains the same - a just and fair society.

“Equity derives from a concept of social justice. It represents a belief that there are some things which people should have, that there are basic needs that should be fulfilled, that burdens and rewards should not spread too divergently across the community and policy should be directed with impartiality, fairness and justice towards these ends.” (*Jim Falks and others, 1993*)

Equity in any community refers to a concept that all should have equal access to community resources or opportunities and none of the individuals or groups within the community should be imposed to more environmental burden as compared to others because of government work or any other procedures.

Sharon Beder defines equity as follows:

“It is generally agreed that equity implies a need for fairness (not necessarily equality) in the distribution of gains and losses, and the entitlement of everyone to an acceptable quality and standard of living.”

As put by Sharon Beder, it is not appropriate to confine equity to equality. Therefore, with a view of maintaining fairness towards the ultra poor classes of people in a society and classes of people

and communities who have been in a disadvantageous position for a long time, special measures should be adopted by putting aside the principle of equality. Some also regard equity as equality of the highest level.

Therefore, for maintaining equitable access, individual should participate in any decision-making process related to conservation, management and sustainable use of those resources which they are concerned about. Equitable access can be realized only after acquiring access to decision-making process, information and justice.

Equitable access is direct participation of everyone residing in and around the neighborhood of natural resources in the decision-making process related to conservation, management and sustainable use of these resources. Individuals being citizens of the state, who are entitled to obtain a share of the national resources or property as prescribed by the state, should have equitable access to those resources (*Environmental Justice, Martin Chautari*).



*An orientation workshop on environmental rights in the new constitution organised in Kathmandu by Nepal Environment Journalists' Group for media workers*

## **Meaning of Equitable Benefit Sharing of Environmental Services**

Equitable benefit sharing is the activity of maintaining the equal rights of all classes of people, ethnic groups and gender of society to air, water and food required for the life process or natural resources including forests, rivers, streams and land and the services obtained from them which are necessary for livelihoods and sharing of benefits received from these resources and services based on certain limitations and standards (*Environmental Justice, Martin Chautari*).

As mentioned above, maintaining only equal rights doesn't seem enough. With an objective to ensure that the benefits obtained from environmental sources and services be available to poor people and disadvantaged communities, positive discrimination should be adopted. Only after adopting positive discrimination, equity or equality of the highest level can be achieved. Local communities have been claiming benefits created by their contribution to conservation and management of resources.

Benefits' sharing means equitable sharing of economic benefits or other benefits obtained from any environmental resources. These benefits are also based on the principle of equitable sharing of benefits. The Biodiversity Convention, 1992 has also accepted this principle. Time will show how the new constitution equitably distributes the benefit obtained from environmental resources, services and goods to poor and disadvantaged communities in the country.

## Situation of Access and Benefit Sharing of Environmental Resources

All the people concerned have come to a conclusion that without access to, control over and equitable sharing of benefits from environmental resources, goods and services; improvements in the livelihood of ordinary people depending on natural resources, development of disadvantaged communities as well as development of the entire country is not possible. People are also demanding that local communities conserving the resources should have access to, control over and benefit sharing on management and use of resources. In the process of raising demands, citizens residing in the vicinity of resources are staging movements at different levels. In some places clashes have also taken place. Citizens residing in the proximity of forests, parks, medicinal herb production areas, rivers and streams are demanding their rights to the government.

Despite movements and demands, the government is not liberal to ensure citizens' rights to resources. The government gives importance to treaties, conventions and agreements it has signed rather than to citizens' demands. Based on these documents, it adopts law-making processes. Based on the same documents of treaties and conventions, national and international organisations as well as civil societies are also raising issues of access and benefit sharing. Particularly the Biodiversity Convention 1992 and the ILO Convention 169 have become the main medium for creating issues like local residents' and indigenous nationalities' access to and control over environmental and natural resources, goods and services.

The task of ensuring citizen's access to, control over and equitable benefit sharing of environmental resources is moving very slowly, both statutorily and legally. In this regard, some provisions have been made under the guiding principles of the state in article 34 of the Interim Constitution of Nepal 2007.

Article 34 (4) of the Interim Constitution of Nepal 2007 states that the main objective of the state is to make the national economy free, self-reliant and progressive, not letting economic resources and means be concentrated and accessible to limited people, making arrangements for justifiable sharing of economic achievements on basis the of social justice, making arrangements for protecting races/castes, classes, gender and the oppressed from economic exploitation, removing economic inequality and giving priority and support to native private and public enterprises.

If the executive and legislature become serious about the above provisions made in the guiding principles, there will be a great achievement in the area of equitable access and benefit sharing of environmental resources, goods and services. But these components of the state have overlooked this provision of the Interim Constitution.

Article 34 (5) of the Interim Constitution of Nepal 2007 states that the social objective of the state is to establish and develop a healthy social life based on justice and morality, removing all kinds of economic and social inequalities and establishing harmony between different castes, races, religions, languages, colours, communities and sects.

Nepal's environmental resources refers to forests, water, minerals, land, alternative energy and man-made resources like sites of cultural and tourist importance. Of these resources, some progress has been made in the forest and water resource sectors. Progress in access to, control over and benefit sharing of other resources is nil. The poor, traditionally disadvantaged communities and farmers have no access to land. The state has full control over other resources.

There are four types of forest management programmes being implemented in Nepal. They are: *Protected area management; Forests managed by the government; Community-based forest management; and Forests managed by the private sector.* Local users have been given the rights to conserve, manage and sustainably use community forests. These users have also been

ensured the right of access to, control over and benefit sharing of the community forest resources. Users' committees are allowed to spend all the income obtained from the community forest on forest development, local development and social work. But unfortunately poor people and traditionally disadvantaged communities have very little access to these forest resources. The poor and marginalised communities are deprived of participation in the decision-making process.

Similarly, there is partial participation of local people in protected area management. The government has made arrangements of giving 30 to 50 percent of benefits to people residing in the proximity of such area to spend on biodiversity conservation, local development and social work.

### **A Thirteen-Kilometer long Road from Forest Income**

Community forest users in Surkhet district have constructed a thirteen-kilometer long road by investing Nrs. 2 million from the income obtained from community forests. The Ujjwal Community Forest of Chhinchu-2 in Tolikhola has produced this unbelievable example of development in the very first year of its establishment. Until a year ago, for people of Tolikhola, forest resources in the proximity of Tolikhola were confined just as a source of fodder, fuel wood and animal grazing. But outsiders used to earn money by felling trees and selling them. Once, local residents converted national forests into community forests, it has brought not only a wave of development, but also have protected these forests from being further destroyed by smugglers. One year after handing over the national forest to the community in December 2009, the above thirteen-kilometer long road connecting Kalidmar Tolikhola was built with investment of Nrs. 2 million obtained from the forest. (Source: *Nagrik Dainik*, 17 January 2010)

For this, a Buffer Zone Management Council has been formed by declaring buffer zones in the vicinity of national parks and reserves. The council is represented by local communities and citizens.

There is no full participation of local communities in the decision-making process of conservation and management of these protected areas. Therefore, the protected area is not yet complete. Overall, 74.6 per cent of the total forest area is under the ownership of the state. A total of 25 per cent of forest area is under community forests and 0.04 percent under private forests (*Yamuna Ghale, 2010*). This information confirms that the situation of access to and control over resources and sharing of benefits is not equitable.

In water resources too, the government has made some provisions to some extent related to access to, control over and benefit sharing of resources to local people and concerned stakeholders. Twelve percent of the income received from the water resources goes to residents of the concerned watershed and 38 per cent to the District Development Committee. Similarly, arrangements have been made to deposit 50 per cent of the income as national revenue. The situation of ownership over cultivable land is even more depressing. 24.24 per cent of the total population is still without land ownership (*Water and Energy Commission and concept paper, Yamuna Ghale*).

## Equitable Access and Benefit Sharing: Needs and Importance

Ownership over environmental resources like water, land and forest and access to benefits obtained from these resources has become a subject of conflict in one way or the other. There is no possibility of building a New Nepal and restructuring the state without addressing such conflicts. The following issues also confirm that the importance of and need for access to and benefit sharing of resources has increased:

### Needs and importance:

- Poverty alleviation and livelihood improvements ;
- For achieving economic gains;
- Alleviation of economic, social and political conflicts;
- Conservation, management and sustainable use of environmental resources;
- For conserving the environment as a whole; and
- For controlling bio-smuggling and maintaining the right to resources.

### Examples of a Resource-based Conflicts

#### Administrative Intervention in a Pasture Dispute

At the end of July, 2010 a conflict arose between two Village Development Committees in Gorkha district on the grounds of a boundary dispute. The reason of the conflict was a forest in the boundary. When villagers erected a wall in the Numla stream located in the boundary between Lho and its neighboring village Samagaun, around 95 miles north of Gorkha bazaar (district headquarters), the conflict became too hard to handle. The residents of Lho had been grazing their cattle in the pasture of Samagaun since a long time, whereas the residents of Samagaun had been felling trees in the forest of Lho and selling them in Tibet. The dispute became even worse when they prohibited each other to enter their villages. To settle the dispute, the police were mobilised from the District Police Office and the Sirdivas Police Station.

#### A Murder Case in Nar

Ten youths who came to Manang from Gorkha district to collect *Yarsagumba* were murdered on the fourth week of June, 2010. The residents of Nar murdered those young men accusing them of collecting *Yarsagumba* in their territory. The police arrested 39 persons involved in the incident and filed a case against them. (Source: *Nagrik Dainik, July 2010*)



*Yarsagumba (Cordyceps sinensis)*

The above incidents are some examples of conflicts related to sharing of natural resources. It is not certain that such incidents won't happen in the days to come. Such incidents have also happened in the different countries of the world because of natural resources. Some examples are as follows:

In countries like Afghanistan, Angola, Myanmar, Cambodia, Congo, Indonesia (Acho province) and Liberia, many serious conflicts have taken place at different times because of gems, oil, diamonds, timber, minerals etc. Many people have lost their lives to these conflicts.

Local people in Nepal heavily depend on environmental resources. A study conducted in Chulachuli and Banjho Village Development Committees, Ilam district, confirms that poor, small, medium and large farmers depend on grass, fuel wood, timber, litter, drinking water, irrigation and non-timber products (NTFPs), public and private resources for their livelihood. The percentage of dependence of poor, small, medium and large farmers for fuel wood in ward 8 of Chulachuli VDC on community forests is 96.1 per cent, 70.3 per cent, 52.3 per cent and 56 per cent respectively (Narayan Belbase and Lal Bahadur Thapa, 2007). Whereas the percentage of dependence of poor, small, medium and large farmers for fuel wood in ward 2 of Banjho VDC on community and national forests is 51.7 per cent, 44.2 per cent, 35.2 per cent and 55.6 per cent respectively. The minimum and maximum percentage of dependence on rivers and streams for irrigation in Banjho VDC is 74.8 per cent and 99 per cent, whereas the minimum and maximum of the same in Chulachuli is 85.7 per cent and 98 per cent respectively.

Dependence on environmental services and goods throughout the country may fluctuate from 8-10% plus or minus, but it will not be exaggeration to say that dependence on environmental resources and goods in the country is at least between 75 and 80 percent. The importance of equitable access and benefit sharing of environmental resources for the poor, women, Dalits, indigenous communities and minorities can easily be imagined. According to the residents of Chulachuli-8 and Banjho-2, equitable access to and use of natural resources for 35% and 66.3 per cent of the residents respectively is environmental justice. The 56.6 per cent residents of Chulachuli-8 also said that distribution of benefits obtained from environmental resources in a non-discriminatory way is environmental justice. For 29.8 per cent residents of Banjho from environmental law point of view equitable arrangement should be made to include the poor, women, Dalits, indigenous nationalities and minorities so that they should have equitable access to and benefit sharing of environmental resources, goods and services.

## Indicators of Equitable Access and Benefit Sharing

Environmental resources, goods and services are the main resources for the development and prosperity of any nation. These resources support economic, social and cultural development. Therefore, it is necessary that there be equitable access to and benefit sharing of these resources. If this access is translated into reality, any nation and its society will be prosperous and conflict less. Indicators of equitable access to and benefit sharing of environmental resources, goods and services are divided into the following two categories:

### (a) Basic indicators

*Access and benefit indicator:* Percentage of natural resource management groups consisting of poor and excluded families that receive at least average share of distributed forest products (e.g. fuel wood, fodder, grass, litter).

*Equitable governance indicators:* Proportional representation in a natural resource management group.

- Percentage of households from poor and excluded groups in the natural resource management group;
- Percentage of poor and excluded members (including women) in natural resource management group executive committee;
- Percentage of women members in the natural resource management group executive committee;
- Percentage of poor and excluded female members in the natural resource management group executive committee;
- Average percentage of the poor and excluded members (including women) in executive committees taking into account all natural resource management groups;
- Average percentage of women in executive committees taking into account all natural resource management groups; and

- Percentage of natural resource management groups with at least (a) one poor and excluded member (including woman) and (b) one female member in the three key decision making positions (chair, secretary and treasurer).

*Organizational development indicator:* Percentage of staff from excluded gender, ethnic, caste and religious groups in natural resource management institutions at decision making and support levels.

*Policy-level indicator:* Percentage of natural resource management groups with at least ... affirmative actions towards poor and excluded in their new or amended policy-level documents (constitutions, operation plan and strategic decisions).

## **(b) More Advanced indicators**

*Access and benefit indicator:* Percentage of poor and excluded people who are not members of a natural resource management group.

*Equitable governance indicator:* Percentage of poor and excluded expressing that committee decisions address their needs very well, well, satisfactorily and poorly.

*Organizational development indicator:* Percentage of budget allocated and spent for poor and excluded activities.

*Equity sensitive organizational development and programming:* Percentage of the natural resource management organizations that have:

- Poor and excluded sensitive policy and strategy;
- Poor and excluded indicators in their monitoring and evaluation system;
- Provision for gender and social equity budgeting in the budget making process; and
- Provision of involving poor and excluded groups in the policy and strategy formulation processes

## **Chair of Community Forest Arrested**

The District Forest Office of Udayapur district has arrested Lalit Bahadur Khadka, chairperson of the Bahuni Community Forest Users' Committee in the Roopani area of Jogidah VDC of Udayapur district accusing him of smuggling timber and has begun the investigation. The DFO has arrested Chairperson Khadka based on local residents' information that sal trees (*Shorea robusta*) have been cut in the Roopani area of Jogidah for some time. Local residents had informed the Ilaka Forest Office and the District Police Office after they found over 80 trees being sold. (*National News Agency, 15 February 2010*)

*(Monitoring Natural Resource Management, Gender, Poverty and Social Equity (GPSE) Indicators and Guidelines, IUCN)*

If monitored using the above indicators, it will become clear whether only elite and sharp witted people or poor, disadvantaged and excluded people are benefiting from work and procedures of government agencies or organizations or users' groups involved in environmental management. After receiving the monitoring data, improvements in equitable access to, benefit sharing and governance of environmental resources, goods and services and other resources can be made by improving weak indicators. But to make such improvements, governmental and non-governmental agencies and users' groups involved in environmental management need to be very inclusive and equitable.

According to a World Development Report, interactions in society about political, economical, social and cultural inequalities provide a structure to organizations, agencies and law. The working style of these organizations and agencies affects the opportunities, investment and capacity of people to become prosperous. Therefore: "Unequal economic opportunities lead to

unequal outcomes and reinforce unequal political power. Unequal power shapes institutions and policies that tend to foster the persistence of the initial conditions.” (*World Development Report, 2006*)



According to the above statement, the main reason of inequity is political, economic, social and cultural inequalities. It is difficult, if not impossible, to ensure equitable access to and benefit sharing of environmental resources, goods and services for poor, disadvantaged and excluded people, until such inequality remains in the society. Livelihood Forest Programme (LFP) has become successful to alleviate poverty and maintain pro-poor governance by considerably reducing political and economic inequalities between its users’ groups. The base of this success is the inclusion of special provisions for poor, women and *Dalits* in the constitution of community forest users’ groups. If the governance system of users’ committees is in favor of the poor, women and *Dalits*, the political, economic and social inequalities can be replaced by equity. A total of 433,000 people (72,000 poor households) in seven LFP districts had come out of poverty from 2003 to 2008 (*Livelihood Forest Programme, 2009*).

## Measures to Adopt to Ensure Equitable Access to and Benefit Sharing of Environmental Services

To translate a concept or principle into practice, it is necessary to adopt many processes. Since this subject is comprehensive in nature, it requires a process according to resources, goods and services. The term *ensured* is considered the last point of implementation. To reach this stage, first and foremost, provision of equitable access to and benefit sharing of environmental resources, goods and services should be included in the country’s fundamental law, the constitution. To do this, first of all, those resources, goods and services should be identified to which people have no equitable access to and sharing of benefits. Similarly, existing successful concepts and principles in the country should be identified. For example, it is advisable to study concepts like community forest, users’ group, collaborative forest management, protected area, buffer zone management and irrigation users’ group and revising them by removing their negative aspects. To study and monitor these management systems, the above indicators have proved very effective. To bring these indicators to the ensured stage of access and benefit sharing of these resources, required policies, law and programmes should be formulated and implemented. Equitable access and

sharing of benefits is a people's campaign, through which equitable access to and benefit sharing of environmental services, goods and services can be ensured by conserving the environment in a sustainable way. This can be achieved by adopting the following measures:

### Measures to Ensure Equitable Access and Benefit Sharing

- Maintain constitutional rights;
- Formulate law and prepare action plans;
- Make policy provisions;
- Identify affected communities or resources;
- Conduct ideological debates at all levels; and
- Bring about changes in mental behavior.

While ensuring equitable access and sharing of benefit of environmental resources, goods and services, it is necessary that the following subjects be made clear in policy, law and guidelines to be prepared in accordance with the above process:

- Right to resources, goods and services (private, public, community or state-level)
- Who should use and how much, whose decision? (Scope of permission)
- How and who should use resources, goods and services? (individual, community, region, state or centre)
- What are the provisions of control over, subjected to whom? (Centre, state, local people or community)
- Who is to conserve, manage and use sustainably?

The above subjects should be made clear. *(Yamuna Ghale, 22 July , 2009)*

### Constitutional Measures to Ensure Equitable Access and Benefit Sharing

All the people of society depend on environmental resources, goods and services. The livelihoods of over 80 per cent of the Nepalese people are dependent on environmental resources, goods and services. The protectors of such resources have been women, ethnic groups, indigenous nationalities, Dalits and migratory people since days long gone by. Ironically, only rich people, people with access and people/communities in power have access to these resources. But the access of indigenous nationalities, Dalits, migratory groups, marginalized communities and women to such resources are minimum. Also there is no equal sharing of benefits *(Narayan Belbase, 2010)*.



*A paper being presented to CA members on incorporating equitable access and sharing of benefits in the new constitution*

Such a situation has created an economic and social conflict between the rich and the poor. The gap between the rich and the poor is widening. This problem cannot be solved without equitable access and sharing of benefits. Equitable access and sharing of benefits is a kind of right which should be incorporated in the constitution of the country. To ensure equitable access and sharing of benefit for those people and classes who depend on environmental resources for livelihood, separate provisions should be made in the preamble, fundamental rights and responsibilities, guiding principles and policies of the constitution.

## **Preamble**

Being determined to the goal of equitable economic growth of the entire society and the state, social and cultural transformation, for the sustainable development of the state, for the unalienable existence of nature and living beings, handing over a safe earth to the future posterity by sustainably conserving and utilising national environmental and natural resources and means of the state and equitably sharing benefit obtained from them,

Proclaiming the fact that the sovereign right to the entire territory, natural and environmental resources of Nepal has collectively been vested in Nepali citizens, communities and the state.

## **Fundamental Rights of Indigenous Nationalities, Women, Dalits, Oppressed, Backward and Minority Classes**

Right of equitable access to and sustainable use of environmental resources, goods and services for women, Dalits, indigenous nationalities and backward minorities; the right to environmental information and participation as equal partners in the formulation, implementation and monitoring of environmental law and policies should be incorporated in the new constitution.

Identify, conserve and flourish fundamental and traditional knowledge, skills and practices available in the country and equitably share benefits obtained from their use with those groups that have such knowledge, skills and practices (*Narayan Belbase, 2010*).

Every Nepalese citizen may use their community and personal natural resources for their own purpose in accordance with the prevailing laws and nobody shall be deprived of a means of livelihood related to natural resources. Every citizen shall have the right of equitable access to and control over natural resources, and to use them (*Natural Resource National Chambers Nepal, 2009*).

## **Poor, Women, Indigenous Nationalities, Dalits, Madhesis, Terai Residents and Other Backward Communities**

On the basis of the principles of equality and justifiable and proportional inclusion, the above classes and communities who are backward from all perspectives shall have the right to participate individually and collectively in natural resource management, all development related national and community structures and equitable sharing of benefits. On no account shall Dalits, oppressed, backward classes and minority communities be deprived of their means of livelihood. Promotion of traditional knowledge and skills of migratory, indigenous, Dalit and local communities. These communities shall have the equitable right to benefit obtained from such knowledge, skills and practices (*Natural Resource National Chambers Nepal, 2009*).

## **In Responsibilities, Guiding Principles and Policies**

### ***Responsibilities:***

- Give priority to indigenous nationalities and local communities while mobilizing country's environmental resources and means, services or biodiversity;

- Contribute actively to environment conservation campaigns by transforming environment related international conventions and other agreements to which Nepal is a party into the law of Nepal;
- Make the state environment friendly, clean and pollution free;
- Formulate law and policies based on the principles of sustainable environmental development like inter-prosperity equity, precaution and pre-informed consent;
- Provide children, adults and elderly people with sustainable environmental education through formal and informal environmental education;
- To conserve environmental resources and services and prevent depletion of the ecosystem and the state to maintain at least 40 per cent of Nepal's total territory as forest areas; and
- Give priority to such industries, businesses and work that support environmental conservation or are less polluting (*Narayan Belbase, 21 July 2009*).

#### ***Guiding principles and policies:***

- Give priority to environment friendly tourism and development;
- Lay emphasis on those industries that use clean and renewable energy and raw materials;
- Divide rights, roles and responsibilities between different levels of government and community based on the principle of proximity in order to conserve, manage and use environmental resources; and
- Environment pollution and destruction should be treated as a criminal offence and make provision of stern punishment for such offences.

## **Models of Equitable Access and Sharing of Benefits between Federation, Provinces, Local Governments and Communities**

A four-level structure - *federation, state/province, local government and special autonomous region* - can be maintained in a federal structure of the state. The roles, rights and responsibilities of the federation, state/province, local government and community regarding resources, goods and services have been made clear in the points below. Roles, rights and responsibilities justify equitable access to resources, goods and services. Therefore, sharing of benefit should be made equitable on the basis of equitable access.

(a) Income obtained from community based natural resource management to be invested in livelihoods based on social justice in mutual coordination with local governments, community enterprise development and social development and local communities themselves to spend income based on the principle of sustainable resource management.

(b) The indigenous nationalities, Dalits and local communities concerned will have the right to self-determination to mobilize community managed natural resources and income obtained from them.

(c) While conducting work related to natural resource mobilization by the state or any other external party, indigenous nationalities, Dalits and local communities will have the right to obtain the rights to natural resources based on the existing law.

(d) Economic resources obtained from natural resources appearing in the constitutional list related to sharing of rights between federation, states, local governments and communities, sharing of revenue, formulae prescribed by thematic law, mutual balance between the federation, state, local government and community will be in accordance with the principles of benefits (*Natural Resource National Chambers Nepal, 2009*).

## Organizational Form to be Adopted in the New Constitution

In the process of suggesting the Constituent Assembly regarding ensuring of equitable access to and benefit sharing of resources, goods and services, many organizations, individuals and professionals have envisioned a constitutional commission. Some people have even specified its name. Whatever nomenclature it may have, the formation of a commission is indispensable. There should be provisions to report of such a commission to the President. Similarly, separate environmental courts should be established in order to deal with environment-related disputes.

### Functions, Duties and Rights of the Commission:

- (a) Recommend environmental resources related policies and legal arrangements to be adopted by the federation, states, local governments and communities.
- (b) Probe any party involved in an act affecting indigenous nationalities, local communities, ordinary people and nature by inappropriately exploiting environmental resources, and recommend the government for necessary action against such party/s.
- (c) Recommend the body concerned for necessary action/s against those employees or officials who don't fulfill their responsibilities related to conservation and equitable distribution of environmental resources.
- (d) Recommend the body concerned if it seems necessary to file cases or departmental actions against individuals, employees or office bearers who violate the rights of indigenous nationalities, Dalits, local communities and people in general by violating environmental resource-related law or doing any other deed.
- (e) Coordinate and collaborate with civil societies in order to build the capacity of all stakeholders on environmental resources.
- (f) Review periodically environmental resource related policy and law, and recommend the government for necessary amendments therein.
- (g) Recommend the government with reasons if Nepal has to be a party to an environmental resource and environment related bilateral or multilateral or international treaty, agreement and convention, and monitor the implementation of treaties, agreements and conventions to which Nepal is already a party and recommend the government for implementation if they are not being implemented.
- (h) Make public the names of those individuals, office bearers or agencies who violate the right of indigenous nationalities, local communities and people in general to environmental resources and those who don't abide by the commission's recommendations or instructions, in accordance with law and record such people as violators of the right of indigenous nationalities, local communities and people in general to natural resources.

In the process of performing the work, the Natural Resource Commission shall have all the rights as other courts have to decide all cases other than those that should be decided under the Military Act. It shall be the duty of the government agencies and employees, the private sector and communities to help the commission perform its work. The commission may establish branch offices or liaison offices in provinces as required. All expenses of the commission shall be borne by the federation (central government). (*Natural Resource National Chambers Nepal, 2009*).

### Other Pressing Problems

There should be national consensus between political parties in issues regarding to what environmental resources, goods and services, sharing of benefits, the access of sectors, communities and classes and to what extent to be made equitable. Social conflicts seem to have appeared in different parts of the country due to lack of equitable access and sharing of benefits. People have also witnessed violent incidents in this subject matter in the past. Therefore, to bring equitable access and sharing of benefits to the grassroots level is today's greatest challenge. There is growing demand that natural resources be made the main base while restructuring the

state. A conflict less society can be built if the country is divided on a natural resource basis and not on a geographic, ethnic or lingual basis. But recently this issue has been shadowed. Formulation of resources related policies, law, guidelines, etc is impossible without restructuring the state. This area needs extensive research, studies and debates.

Environmental resources, goods and services are considered the main resources of the state. Questions like to whom, how and why benefits obtained from these resources should be shared equitably still remains unanswered. Similarly, question like whose equitable access to what resources and what are the bases for sharing of benefits obtained from these resources too remain unanswered?



## Conclusions

Equitable sharing of environmental resources, goods and services is an age-old issue. Its importance and needs are growing with the restructuring of the state. No matter what terms are being used, society can't be non-violent, civilized and prosperous without equitable access and sharing of benefits. Even religions like Christianity, Islam, Buddhism and Hinduism seems to have promoted the subject of equity. In spite of these facts, there is no equity in sharing of rights, including the right of access and benefits sharing of environmental resources, goods and services. Even in the beginning of the twenty-first century in some countries like Nepal all these issues are still based on feudal systems.

The practice of access to resources and sharing has been used in a traditional way for a long time. These days this concept is also being practiced in different areas of environmental resources. But such practices are not enough. Equitable access and sharing of benefits has not been fully applied in any area of the resource. As a result, this practice has not been able to fully include poor people, Dalits, indigenous nationalities and disadvantaged groups.

Therefore, now as we are talking about the restructuring the state, there is an opportunity to make every group or class of people participate in equitable access to and benefit sharing of environmental resources. We should be able to incorporate in the constitution the issues of equitable access and sharing of benefits to the maximum extent possible. Since these rights should reach the grassroots level, it is necessary that an appropriate constitutional structure or body be established, so that a conflict-less prosperous society can be developed by removing environmental injustice.

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## Resource Persons

- Dr. Ravi Sharma Aryal, Joint-Secretary, Water and Energy Commission
- Dr. Krishna Chandra Paudel, Chief, Environment Division, Ministry of Forests
- Dr. Toran Sharma, Technical Director, Nepal Environment and Scientific Services Pvt. Ltd.(NESS)
- Dr. Hemanta Ojha, Natural Resource and Environmental Service Expert, Forest Action, Nepal
- Dr. Jagannath Adhikari, Martin Chautari

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The policy brief has been published under a project conducted by Nepal Environment Journalists Group and is supported by UKaid from the Department for International Development and International Union for Conservation of Nature (IUCN)

The views expressed in this Policy Brief are those of the author and do not necessarily reflect those of the publishers. The original version of this policy brief is in Nepali and we consider that version as the original report for authentication.



**UKaid**  
from the Department for  
International Development



IUCN Nepal  
P.O. Box 3923  
Kathmandu, Nepal  
Email: [info-np@iucn.org](mailto:info-np@iucn.org)  
URL: [www.iucnnepal.org](http://www.iucnnepal.org)

### Review committee

- Amit Pradhan
- Anu Adhikari
- Peter Neil
- Racchya Shah
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