



Southasia Institute of Advanced Studies (SIAS)

# Natural Resources Sharing in Federalizing Nepal: Issues and Contestations



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## 1. Introduction

As the government of Nepal is making great efforts to restructure its various institutional apparatus in the federal context, pertinent questions of how natural resource governance will be shaped and how the sharing of resources, revenue and rights among the three level of governments, i.e., federal, province and local levels will unfold have emerged. While the National Natural Resources and Fiscal Commission (NNRFC) is yet to gain its shape, sectoral policies and legislative frameworks are being revised amid various contradictions and confusions. Among several issues, demarcation of boundaries for revenue sharing based on the size of population or geographical coverage is getting attention of policymakers. Additionally, NNRFC is also in the process of devising a neutral ‘formula’ to share revenue and resources among the three tiers of government. In this regard, NNRFC has consulted with the governments of all the seven provinces and reviewed practices of India and South Africa, however, the basis of sharing revenue and resources is still under discussion as this process needs to consider socio-economic indicators like human poverty and multi-poverty index, and health and education status of that place in addition to the capacity of revenue generation and the total expenditure of an administrative boundary.

Against this backdrop, Southasia Institute of Advanced Studies (SIAS), a policy research institute, organized an expert meeting<sup>1</sup> to discuss the challenges and issues of contestations pertaining to natural resources sharing in the federal Nepal. The meeting aimed at with seeking experts’ views on resource sharing in federalism, and mapping out diverse discourses and positions. This report captures the main issues and potential contestations that emerged during the meeting. In the following section, issues and contestations are presented according to the themes, i.e., forest, water and land. The report also indicates the dynamics of contestations between upstream and downstream communities and environmental consequences in federal Nepal. Finally, the report concludes with the main issues and contestations and discusses some ways forward towards resolving them. As the government of Nepal is drafting various legislations such as the Forest Act 1993 will be replaced by the recently drafted Forest Act Bill 2019, the outputs of the report, we think, will inform the ongoing process of policy and legislative reform.

## 2. Main points of contestations on sharing of natural resource in federalizing Nepal

Resources such as forest, water and land are not only natural entities, but also an integral part of people’s livelihoods, their place and culture. In this section, besides presenting the points of contestations under different themes, the relationship between upstream and downstream communities in terms of resource sharing is also presented. Potential environmental consequences, which may be an issue of compensation at the scale of governments in federal system, are also discussed in this section.

### 2.1 Forest

Forestry experts in the meeting opined that as forest is the source of livelihoods for many communities sharing income and resources between the forest user groups and local governments

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<sup>1</sup> The meeting was held on 29 March 2019 at SIAS Office, Kathmandu. Please see Appendix 1 for the list of participants.

will be challenging. The issue of *equitable* sharing of resources and benefits across three levels also gain huge attention during the meet ensuing debates around whether to share revenue based on 'performance' or 'ownership' or something else. Civil Society Organizations (CSOs) such as Federation of Community Forestry Users Nepal (FECOFUN) that represent the voice of communities claimed that community forestry institutions are contributing to local development activities, conserving local biodiversity and providing positive environmental outcomes to many people (maybe termed as 'outsiders'). They asserted that Community Forestry User Groups (CFUGs) should not be imposed tax burden, but entitled rights to make decision regarding the utilization of income generated from forest management. Further, local government may claim the stake of the revenue generated by CFUGs, which can be a major source of contestation while federalizing forest management. Additionally, after the advent of Reducing Emissions from Deforestation and Forest Degradation (REDD+) and carbon trading, *performance-based* benefit sharing is gaining prominence and Nepal has already started practicing it at subnational level. There is a new debate concerning if the performance-based mechanism be a viable option in federalism. But there are still some communities who are not getting forest related benefits as expected. Distributing resources and income equitably is another challenge for the government. To address 'equity' dimension, we may need to develop mechanisms of sharing income and benefits to geographically and politically marginalized communities in federalism. Perhaps benefits should be targeted to 'vulnerable communities and places', so equitable distribution of benefits could be executed.

Another contestation could be related to rangeland as it also contributes to the revenue collected from forests. Since the rangelands are mostly (98%) located in the mountain provinces (see Pande 2010), local governments may be reluctant to share the revenue and resources with the Hill and Tarai governments, which may create conflicts between communities and among local and province governments.

Although issues related to indigenous people and their *de facto* control over resources were not raised in the meeting, studies (see Poudel 2018) show that indigenous communities living in trans-Himalayan Nepal still hold rights over forest and rangeland and can even sanction local users as well as outsiders through institutional structure popularly known as the headman tradition (*mukhiya pratha*). Hence, the issue of incorporating indigenous communities and their natural resource management traditions in the federal system remains a pertinent one.

## 2.2 Water

Water is not only a natural entity, but also has socio-cultural significance (e.g., worshiping, death rituals) at different geographical scales. While using water for commercial purposes (e.g., hydropower), prevailing socio-cultural practices may ignite political conflict between and/or within provinces. The chance of conflict is even higher because many rural (municipalities) and provinces boundaries are based on river channels. In Lamjung, for instance, there was a confrontation between hydropower company and local community concerning a shifting of funeral place (*mashan ghat*) in Marshyandi river. Water is also related to human civilization and development. Communities have a strong sense of attachment to their (home) land. If the government takes water from the revenue perspective only, this may create a clash of local values and economic interests in the future. Also, what about fishing communities? Whose property is fish? Managing traditional rights of fishing community over water will be equally challenging.

Additionally, demand of water for domestic purposes, - drinking and vegetable farming, is increasing, especially in the mid-hills, but water sources are drying there, and people are drilling upto 480

meters below ground to get water (e.g., Fikkal, Ilam). This type of activities has two consequences in the future. First, managing the problem of water scarcity requires coordination between/among provinces for sharing water. Second are environmental consequences due to drying water sources. Moreover, (rural) municipalities will have dire consequences not only in terms of economic management (e.g., arranging water) but also handling water related conflicts.

Mountain, Chure and Bhabar are important areas for water recharge, a vital source of underground water in the flat areas of Tarai. Interventions in these upstream areas may affect the water flow downstream. There is already a contestation between Tarai communities and upstream areas regarding land use practices. The upstream people/governments may aspect/demand some kind of compensation which is likely to escalate tensions in terms of sharing resource and benefit in the federal system.

Water has tremendous economic value, especially in hydropower generation. Framing royalty at local government can be a big challenge as project like hydropower has to go through multiple level of governments. This may discourage private investors. Nevertheless, about 50% of the total hydropower production in the country will be generated by private investors within 10 years, equivalent to an investment of about 10 *Kharba* Nepali Rupees (source: one of the participants) or about 90,000,000 USD. The problem will be even severe when private investors handover hydropower project to the government after 35 years of its installation. The question of whom (which tier of government?) to handover the project and how to distribute revenue will emerge as a tricky issue to settle in federalism. In the similar vein, who will hold licensing authority will also be a complex matter to tackle. However, if the governments address these challenges through prudent policies and institutions, the risk of conflict can be reduced.

### 2.3 Land

The land (geography) and resources (natural and human) are inversely associated in Nepal. While the geography with low population density has more resources, areas with high population density are having resource constraints. For instance, Tarai has more human population but has less forest resources, whereas Hill and Mountain have less human population but more resources. This unavoidable human geographical reality will, indeed, have countervailing effect in terms of politics and resource distribution across scales while federalizing natural resources in the future.

In fact, government rents land and will continue to do so in the future (e.g., licensing hydropower). But who will collect revenue from these lands and how to share benefits among the three levels of governments will be another point of contestation. Additionally, extraction of concrete and sand and associated licensing (e.g., sand mining) including other underground natural resources such as ores and mines and revenue collection will be contentious too, not only in terms of ownership but also benefits and revenue sharing.

### 2.4 Upstream and downstream communities

The confrontation and contestations related to forest, water and land directly affect the relationship between upstream and downstream communities. This may appear in terms of managing resources sustainably at different scale of governments and keeping socio-cultural relationship intact. Delinking communities may foster social problems owing to the attack on social solidarity and cohesion.

On top of all, the role of communities in sharing of resources and revenue, and how communities and their institutions will be linked from local to central governments will be a tough question ahead of the country while federalizing natural resources. Community of community forestry, for instance, has a successful story of managing forest resources, advancing local development and strengthening local institutions. Incorporation of such skillful communities without risking their rights over forest and income in federalism needs a harmonious relation between local communities and governments. Alternatively, communities may *resist* local government in federalism.

## 2.5 Environmental consequences

Not only scarcity of water, deep drilling (e.g., Ilam, Ramechhap) and drying water sources in the mid-hill are degrading local environment but also over extraction of sand from the Chure region is creating problems locally, for example collapse of many bridges along the East-West Highway. The Sunsari Morang Irrigation Canal has collapsed due to over extraction of sand mining in Budhikhola of Morang. However, hydropower generation and other types of construction companies (e.g., infrastructures) require plenty of sand, concrete and cement materials. So, they have to extract (if not, they have to import) sand and concrete from Chure thereby posing great environmental risk in the future. The governments should proactively handle this situation by linking communities, (rural) municipalities and provinces, which, indeed, demand not only cooperation and coordination among governments while devising the ‘formula’ in federalism but also a transparent, convincing and rational basis of managing natural resources in the new politico-administrative structure.

The above potential point of contestations is being explored at the time when government at different levels is designing various policies for natural resource management and revenue collection. We believe that the discussed points can be addressed effectively if the government takes into account the emerging issues of conflicts and contradictions while drafting policies.

## 3. Conclusion

The key message of this report is that there is high chance of disputes while sharing natural resources and revenue among the three levels of governments in federalism. Incorporating the voices and aspirations of local communities in this process will be daunting amid various dilemmas. Additionally, historical cultural rights and social practices (e.g., *kulo*, *kuwa*, *mashan ghat*) of local communities pertaining to land, water and other resources, and the relationship between upstream and downstream communities will further complicate the federalization of natural resources. Economic interests of local government and politicians in natural resources and policy confusion for private investors, especially in the case of hydropower, will indeed require a cautious designing of revenue collection and resource sharing modalities in federalism. Since the government lacks adequate and valid data concerning the availability as well as potentiality of natural resources from local to central levels, urgent initiation needs to be taken to collect nationwide data for aiding the designing of a smart policy for sharing resources and revenue in federalism, which, indeed, will help to minimize the contestations and facilitate designing a neutral ‘formula’ of equitable distribution for the National Natural Resources and Fiscal Commission (NNRFC).

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Appendix 2: Photos







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