

नेपालमा आदिवासी अधिकार

नीतिगत अवस्था, चुनौती र अवसरहरू

सम्पादन सल्लाहकार

शान्ति कुमारी राई दिनेश कुमार घले

शंकर लिम्बू भिम राई

अमृत योन्जन-तामाङ

सम्पादक

टहल थामी

गोबिन्द छन्त्याल

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Indigenous Peoples Rights in Nepal: Policy Status, Challenges and Opportunities

Editorial Advisors: Shanti Kumari Rai, Dinesh Kumar Ghale,
Shankar Limbu, Bhim Rai, and Amrit Yonjan-Tamang.

Edited by Tahal Thami/Gobinda Chhantyal

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Abbreviation

AD	Anno Domini
ADB	Asian Development Bank
AGRBS Sharing	Access to Genetic Resources and Benefit
AIPP	Asia Indigenous Peoples Pact
CA	Constituent Assembly
CBD	Convention on Biological Diversity
CBR	Community Based Rehabilitation
CBS	Central Bureau of Statistics
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
CERD	Convention on the Elimination of All Forms of Racial Discrimination
COP	Conference of the Parties
CPN	Communist Party of Nepal
CRC	Convention on the Rights of the Child
CSR	Corporate Social Responsibility
CSRDSP	Committee for State Restructuring and Division of State Power

DDC	District Development Committee
DFID	Department for International Development
EA	Electricity Act
EIA	Environment Impact Assessment
FPIC	Free, Prior and Informed consent
GI	Governance Index
GL	Generation License
GoN	Government of Nepal
GSi	Gender and Social Inclusion
HDI	Human Development Index
HLSRRC	High Level State Restructuring Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICIMOD	International Centre for Integrated Mountain Development
IEE	Initial Environmental Examination
IFAD	International Fund for Agricultural Development
IFC	International Finance Corporation
ILO	International Labour Organisation
INC	Indigenous and Nationalities Commission
IPPs	Independent Power Producers
IPs	Indigenous Peoples
IWGIA	International Work Group for Indigenous Affairs
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
LGBTI	Lesbian, Gay, Bisexual, Transgender & Intersex
LTR	Lands, Territories and Resources
MAT	Mutually Agreed Terms
MoAD	Ministry of Agricultural Development
MoFSC	Ministry of Forest and Soil Conservation
MoFSC	Ministry of Forests and Soil Conservation
MoLJPA	Ministry of Law, Justice & Parliamentary Affairs

MoPE	Ministry of Population and Environment
MW	Mega Watt
NBSAP	National Biodiversity Strategy and Action Plan
NC	Nepali Congress
NEFIN	Nepal Federation of Indigenous Nationalities
NESAC	Nepal South Asia Centre
NFDIN	National Foundation for Development of Indigenous Nationalities
NPC	National Planning Commission
NTFPs	Non-Timber Forest Products
PES	Payment for Ecosystem Services
PI	Poverty Index
SL	Survey License
SOM/P	Standard Operating Manual/Procedures
SRHLRC	State Restructuring High Level Recommendation Commission
UCPN (Maoist)	Unified Communist Party of Nepal (Maoist)
UML	Unified Marxist Leninist
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNPFII	United Nations Permanent Forum on Indigenous Affairs
VDC	Village Development Committee
WB	World Bank
WRA	Water Resource Act
WSSD	World Summit on Sustainable Development

प्रकाशकीय

संविधानसभामार्फत संविधान निर्माणलाई लोकतन्त्रको उत्कृष्ट नमूना मानिन्छ। इतिहासमा यस्ता अवसर विरलै आउँछ। नेपालको सन्दर्भमा पनि नेपाली जनताको लामो संघर्षपछि यो अवसर जुरेको हो। तर जसरी संविधानसभाले आम जनता तथा समुदायहरूको अधिकारका आवाजहरूको सम्बोधन गर्नुपर्थ्यो, त्यो हुन सकेन। संविधानसभाबाट बनेको संविधानमासमेत आदिवासीलगायतका समुदायहरूको अधिकार सुनिश्चित हुन नसक्दा असन्तुष्टिहरू भन्न बढेका छन्। त्यसको समाधान बेलैमा निकाल्न नसके देश भयंकर दुर्घटनामा पर्न सक्छ। त्यसरी संवैधानिक अधिकारबाट वञ्चित एक समूह हो आदिवासी। ती समूहहरूको अधिकारका सम्बन्धमा संविधानमा भएका व्यवस्था र उनीहरूले चाहेको अधिकारका सम्बन्धमा गत पुष २२-२३, २०७३ (6-7 Januray 2017)मा काठमाडौँमा बृहत् सम्मेलनमा छलफल भएको थियो। सो कार्यक्रमको आयोजना गर्न पाउँदा लाहुरिप गर्व महशूस गर्दछ।

सो कार्यक्रम आयोजनामा विभिन्न व्यक्ति, व्यक्तित्व तथा संघसंस्थाहरूको अमूल्य सहयोग लाहुरिपलाई मिलेको थियो। यसरी सहयोग तथा सल्लाह सुझाव दिनुहुने डा. कृष्ण भट्टचन र डा. नवीन राईप्रति हामी आभारी छौं। त्यसैगरी United Nations Permanent Forum on Indigenous Issues (UNPFII) का उपाध्यक्ष Mr. Raja Devasish Roy, सोही निकायकी सचिवालयबाट पाल्नु भएकी Ms. Julia Raavad, र International Work Group for Indigenous Affairs (IWGIA) बाट कार्यक्रममा सहभागी बन्न आउनु भएका Mr. Christian Erniप्रति लाहुरिप आभारी छ। त्यस्तै कार्यक्रमलाई सफल पारिदिन सहयोग गर्नुहुने अमृत योन्जन तामाङ, यशोकान्ती भट्टचन, डम्बर लोहोरुङ, डम्बर तेम्बे र नारायण निडलेखुप्रति पनि धन्यवाद व्यक्त गरिन्छ।

सो कार्यक्रम सफलतापूर्वक सम्पन्न गर्नका लागि महत्वपूर्ण सहयोगका United Nations Permanent Forum on Indigenous Issues (UNPFII), International Work Group for Indigenous Affairs (IWGIA), International Fund for Agricultural Development (IFAD), United Nations Development Programme (UNDP) लाई पनि धन्यवाद टर्क्याइन्छ । साथै कार्यक्रमा उपस्थित भई कार्यक्रमको शोभा बढाई दिनु भएकोमा राष्ट्रिय मानवअधिकार आयोगका अध्यक्ष माननीय अनुपराज शर्मा, आदिवासी जनजाति उत्थान राष्ट्रिय प्रतिष्ठानका उपाध्यक्ष चन्द्रबहादुर गुरुङ र सदस्यसचिव गोविन्द माझीप्रति लाहुर्निप कृतज्ञ छ । त्यसै गरी नेपाल आदिवासी जनजाति महासंघ, राष्ट्रिय आदिवासी जनजाति महिला महासंघलाई पनि धन्यवाद साथै सो कार्यक्रममा गरिमामय उपस्थितिका लागि माननीय सांसदहरू, विभिन्न संघसंस्थाका प्रतिनिधिहरू, बुद्धिजीविहरू, राजनीतिक दलका प्रतिनिधिहरू, विभिन्न राजदूतावासका प्रतिनिधिहरू, व्यापारिक क्षेत्रका प्रतिनिधिहरू, सरकारी निकायका प्रतिनिधिहरू, संयुक्त राष्ट्रसंघलगायत अन्तर्राष्ट्रिय निकायका प्रतिनिधिहरू र सामाजिक अभियन्ताहरूप्रति हार्दिक धन्यवाद ज्ञापन गरिन्छ ।

यस पुस्तकमा सो कार्यक्रममा प्रस्तुत कार्यपत्रहरू समावेश गरिएका छन् । कार्यक्रममा कार्यपत्र प्रस्तुत गरिदिनुहुने विभिन्न मन्त्रालयका प्रतिनिधि-कर्मचारीहरू तथा बुद्धिजीविहरूप्रति पनि लाहुर्निप आभारी छ । साथै यस पुस्तक प्रकाशनमा प्रत्यक्ष तथा परोक्ष रूपमा योगदान गर्ने सबैप्रति हामी आभार व्यक्त गर्दछौं ।

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Policy Analysis on Indigenous Peoples and Forest Resources in Nepal

Dhananjaya Lamichhane

Introduction

Nepal is a multi-ethnic, multi-lingual, multi-religious, multi-cultural and geographically diverse country. Recently promulgated Constitution has envisaged of protecting and promoting social and cultural solidarity, tolerance and harmony, and unity in diversity. It also states that participatory principles for ensuring economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability. The Constitution in its

policies relating to protection, promotion and use of natural resources has provisions to protect, promote, and make environmental friendly and sustainable use of natural resources available in the country, in consonance with national interest and adopting the concept of inter-generational equity, and make equitable distribution of fruits, according priority and preferential right to the local communities.²⁴¹

There are 125 caste/ethnic groups reported in the national census, 2011. Chhetri is the largest caste/ethnic groups having 16.6% of the total population followed by Hill-Brahman (12.2%), Magar (7.1%), Tharu (6.6%), Tamang (5.8%), and others. Similarly, altogether 123 languages have been reported as mother tongues. Nepali is spoken as mother tongue by 44.6 % of the total population followed by Maithili (11.7%), Bhojpuri (6.0%), Tharu (5.8%), Tamang (5.1%), and others. There are ten types of religion categories reported in the census. Hinduism is followed by 81.3% of the population while Buddhism (9.0%), Islam (4.4%), Kirat (3.1%), and others.²⁴²

There is no official definition of indigenous peoples

241 MoLJPA (2015) The Constitution of Nepal, 2015, Kathmandu: Government of Nepal, Ministry of Law, Justice & Parliamentary Affairs.

242 CBS (2012) National Population and Housing Census 2011 (National Report), Kathmandu: Government of Nepal, National Planning Commission Secretariat, Central Bureau of Statistics.

(IPs) in UN-System. IPs are those people who practice unique traditions, they retain social, cultural, economic and political characteristics that are distinct from those of the dominant societies in which they live. United Nations Declaration on the Rights of Indigenous Peoples, 2007 (UNDRIP) concerns that IPs' historic injustices regarding their lands, territories and resources (LTR), and recognises the urgent need to respect and promote the inherent rights of IPs which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their LTR. Member States should provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of dispossessing them of their LTR.

Art. 31 of it envisaged that IPs have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts, and have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.²⁴³

243 UN (2007) United Nations Declaration on the

Nepal has ratified the Convention on Indigenous and Tribal Peoples (No.169) adopted by the International Labor Organisation (ILO) in 1989. Nepal thus becomes the first country in South Asia to ratify this convention and the only second country in all of Asia to do so. The convention supports the principle of self-management and guarantees the right of IPs regarding consultation and participation in issues relating to their own development. Among other aspects, it protects the right to practice traditional economies, to traditional land and resources and to use indigenous languages in education. It is the only legally binding instrument on IPs' rights and serves as a framework for Constitutional and legal reforms leading towards the development of more equitable and inclusive societies.

Art. 15 of ILO convention states that the rights of the peoples concerned to the natural resources pertaining to their lands should be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources. The peoples' participation in the benefits of development activities, and receive fair compensation for any damages which they may sustain as a result of such activities.²⁴⁴

Rights of Indigenous Peoples, New York: United Nations.

244 ILO (1989) Indigenous and Tribal Peoples Convention, 1989 (Convention No. 169), Geneva: International Labor Organisation.

Nepal is also a Party to the Convention on Biological Diversity (CBD), 1992 of the United Nations Conference on Environment and Development (UNCED). The convention is the only international instrument that comprehensively addresses biological diversity. The convention's three objectives are the conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits arising from the utilisation of genetic resources. To further advance the implementation of the third objective, the World Summit on Sustainable Development (WSSD), 2002 called for the negotiation of an international regime, within the framework of the convention, to promote and safeguard the fair and equitable sharing of benefits arising from the utilisation of genetic resources.

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation to the Convention on Biological Diversity was adopted at the tenth meeting of the Conference of the Parties (COP) on 29 October 2010, in Nagoya, Japan. The protocol significantly advances the convention's third objective by providing a strong basis for greater legal certainty and transparency for both providers and users of genetic resources. Specific obligations to support compliance with domestic legislation or regulatory requirements of the party providing genetic resources and contractual obligations reflected in mutually agreed

terms are a significant innovation of the protocol. These compliance provisions as well as provisions establishing more predictable conditions for access to genetic resources will contribute to ensuring the sharing of benefits when genetic resources leave a party providing genetic resources.

In addition, the protocol's provisions on access to traditional knowledge held by indigenous and local communities when it is associated with genetic resources will strengthen the ability of these communities to benefit from the use of their knowledge, innovations and practices. By promoting the use of genetic resources and associated traditional knowledge, and by strengthening the opportunities for fair and equitable sharing of benefits from their use, the protocol will create incentives to conserve biological diversity, sustainably use its components, and further enhance the contribution of biological diversity to sustainable development and human well-being with the aim of ensuring that traditional knowledge associated with genetic resources that is held by indigenous and local communities is accessed with free, prior and informed consent (FPIC) and establishing the mutually agreed terms (MAT) in the involvement of them.²⁴⁵

245 UNCBD (2011) Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation, Montreal: Secretariat of the Convention on Biological Diversity.

Policy status

Forestry Sector Gender and Social Inclusion

Strategy, 2008: The Ministry of Forest and Soil Conservation (MoFSC) has envisaged of gender and social inclusion. “Ministry of Forest and Soil Conservation is a gender and social equity sensitive and socially inclusive organisation practicing good forest governance to ensure equitable access to, benefits from and decision making power over forest resources of all stakeholders.” To achieve the vision, the Ministry has committed to address gender and social inclusion and promote equitable access of the socially excluded to forest resources and benefits. The Ministry has identified the following four change areas in order to attain the institutional vision:

- (1) Gender and equity sensitive policy and strategy,
- (2) Equitable governance,
- (3) Gender and equity sensitive organisational development and programming, and
- (4) Equitable access to resources and benefits.

In order to make this vision operational, MoFSC has developed the Strategy. Which provide the operational guidelines for implementation of gender and social inclusion issues in the forestry sector, make provision for proportional representation of women, dalit, Janajati and other excluded groups in executive committee, and adopt the policy of maximum two tenures in key posts and make provision of at least one woman in such post.

Herbs and Non-Timber Forest Products Development Policy, 2004:

The policy emphasises on preliminary processing of herbs and NTFPs at local level for generating employment and income opportunities in the remote areas, and value addition through collection and commercial centers with involving private sector, local government and others participation for local economic activities. Also focuses that enough assistance is needed for the management of necessary capital, infrastructures, and promotion of technical knowledge and skills, and marketing management, enhanced commercial competitiveness of the products for the poverty alleviation of local people through substantial improvement in their livelihoods. Ensuring the participation of poor, women and disadvantaged groups in collection, processing, production and sales and enhancing the gender and social mainstreaming in natural resources management are other key provisions of the policy.²⁴⁶

National Rangeland Policy, 2012: The strategies for management of rangeland biodiversity emphasise on improving knowledge and understanding of rangeland ecology and biodiversity, and development and implementation of integrated rangeland management plans and programs for the conservation of rangeland and enhancing the herders' livelihood. Rangeland

246 MoFSC (2004) National Herbs and Non Timber Forest Products Policy, Kathmandu: Government of Nepal, Ministry of Forests and Soil Conservation.

ecosystems in Nepal are comprised of grasslands, pastures and shrub lands that cover about 1.7 million hectares or nearly 12% of country's land area. About 79% of the rangelands are located in the Himalayan region, 17% in Middle Mountains and the remaining four % in the Terai. ²⁴⁷ The alpine meadows are exceptionally rich in biodiversity where many of the floral and faunal species found are endemic to Nepal and others are high-value medicinal and aromatic plants. These grasslands are also home to endangered wildlife. Strengthening of the local innovations, knowledge and practices related to sustainable management of rangeland resources and promoting rangeland-based sustainable livelihood options is essential. The policy identifies the need of formulating Access to Genetic Resources and Benefit Sharing (AGRBS) Act to establish legal rights and equitable sharing of benefits for rich genetic resources and genetic materials of rangelands, as well as implementing necessary laws to establish intellectual property rights on rangeland resources and related traditional knowledge, skills, innovation, technology and practices, of individual, community and the state, by registering such traditional knowledge, skills and practices etc to help conserve the Nepal's genetic resources. According to the policy, the rangeland would be handed over to the real users of it for management (conservation, management, utilisation).

247 MoFSC (2014) Nepal Biodiversity Strategy and Action Plan 2014-2020, Kathmandu: Government of Nepal, Ministry of Forests and Soil Conservation.

National Wetlands Policy, 2013: The policy recognises the importance of traditional knowledge, skills and experience of wetlands-dependent communities and their promotions. It also envisioned for livelihoods improvements of communities through entrepreneurship of wetland resources by involving them in conservation and management of wetlands. Several communities across the country are dependent on wetlands for their livelihoods since the past immemorial, therefore the policy has emphasized on the classifications of wetlands on different bases for their effective management by indentifying appropriate management authority and assigning the roles and responsibilities.

National Forest Policy, 2015: The policy has the provisions on: increasing access of indigenous, ethnic, and local communities on sustainable management and utilisation of biodiversity, biological resources and watershed; scientific record keeping of traditional knowledge, skills, practices and technology related to plants and wildlife; ensuring the access of distant and poor, indigenous, ethnic, dalit, women and marginalised users to the forest resources through community based forest management systems; ensuring preferential access and benefit sharing to the communities of indigenous, ethnic, dalit, poor, single women, and disabled people; capacity building and employment generation activities for livelihoods improvement of forest dependent indigenous, ethnic, dalit, women, marginalised, minority, poor,

smallholders, herders, forest labor and youth; and use of traditional and customary knowledge and skills of community and local people in forest management.

National Biodiversity Strategy and Action Plan, 2014-2020: The specific strategies and associated actions are grouped into the six biodiversity themes and 15 cross-cutting subjects. The strategies for managing protected area and forest biodiversity aim at reducing or managing human pressures on natural resources, reducing human-wildlife conflict, controlling invasive alien species, mitigating climatic threats to ecosystems, species and their habitats, and addressing economic and social concerns of local and indigenous communities through targeted programs, enabling policy and legislative environment. Reducing the rate of loss and degradation of forest habitats, improving biological connectivity, enhancing knowledge and understanding about forests, promoting conservation of species and genetic diversities, enhancement of forest-based livelihoods are some of the focused areas. The strategies for wetland biodiversity focus on effective conservation and sustainable utilisation of wetland resources, and addressing the legislative gap and administrative ambiguities. Improving and expanding the existing community-based management of agricultural genetic resources; strengthening the national ex-situ conservation programs; enhancing communication, education and public awareness; and promoting indigenous traditional knowledge, skills and practices are some of the strategies for

management of agro-biodiversity.

Main action areas include supporting National Foundation for Development of Indigenous Nationalities (NFDIN), Nepal Federation of Indigenous Nationalities (NEFIN), and other federations and networks to protect and promote traditional knowledge, innovations and practices of indigenous and local communities relevant to conservation and sustainable use of biodiversity, and their customary use of biological resources. Moreover, it focuses on conducting research on indigenous and traditional knowledge of biodiversity and benefit sharing, formulation and enactment of Intellectual Property Rights Act recognizing prior art, geographical indication and trademarks and providing intellectual property rights to the group of indigenous and local communities on whose bio-cultural heritage such products are based. It further stresses on the development and implementation of protocol to document traditional knowledge, innovations and practices of indigenous and local communities associated to conservation and use of biological resources, and of mechanism to incorporate the local knowledge, customary practices and institutions of IPs and local communities in the management of biodiversity.

The Fourteenth Plan (2073/74-75/76) Approach Paper, 2073: The plan has set forth the provisions regarding improvement of livelihoods of vulnerable,

ultra-marginalised and marginalised indigenous communities by increasing their access to socioeconomic and governance sectors of the country, by promoting their participation on every steps of development and service delivery, by enhancing their capacity to get mainstreaming in the access and benefit sharing of the resources. It also states about specially targeted economic, social, and infrastructure development programs in the remote and backward areas, capacity enhancement of community based and non-governmental organisations working at local grassroots levels fair and equitable management and utilisation of resources to reduce poverty and to prepare base for economic prosperity. It further envisages that certain amount of income from the use of resources would be spent for their conservation, research and development activities, and the protection of endangered languages and cultures, consolidation of related academies so as to conserve and promote languages, literatures, arts and cultures.

Implementation status

The above mentioned policies and strategies have been gradually implemented with adaptive management principles and learning by doing basis. They have been regularly revised and updated accordingly to comply with the changes in international and national scenarios. Community-based forest management programs, including community forestry, leasehold forestry, and collaborative forestry have been substantially contributing to the livelihoods of

many indigenous and backward communities by providing forest-based products, generating income and employment. These three programs cover over 30% of the national forest area and have helped abate loss and degradation of forests and even reversed the trend in many areas, particularly the Middle Mountains. The improvement in forest condition under community management is believed to have positively contributed to biodiversity conservation and economic development at local levels. Currently approximately 19,000 community forest user groups involving 2.24 million households are managing 1.8 million hectares of forestland under the community forestry program; 50 collaborative forests, covering a total area of 75,000 hectares, in Terai districts. Similarly, the pro-poor leasehold forestry program implemented in 39 districts across Nepal has played an important role in restoration of degraded forestlands, thereby contributing to biodiversity conservation alongside poverty alleviation of poor and marginalised people. Currently, a total 7,413 households living below the poverty line are engaged in the management of 42,773 hectares leasehold forests. Private forest has also increased throughout the country and there are already more than 3,500 registered private forests with a total of 3,329,885 trees grown in 2,900 hectares of private land. Several landscape level programs in Terai and the Himalayan regions have contributed to the integrated development (ecological, social, economic and cultural) of the people and environment. The GSI Strategy has been

well implemented supported by various guidelines that ensure participation of women, dalit, IPs and other communities in proportional representation in decision making, executive committees, and implementation of the programs, resource utilisation and benefit sharing, and socioeconomic development activities.

Gaps

Despite some achievements, there are still several gaps between words and actions, for example, supporting local communities and IPs against poverty and marginalization by promoting greater national commitment and action towards policy, legal and institutional reforms that secure their rights to own, control and benefit from natural resources, especially forests. There is also a substantial gap in framing policies and their effective implementation by making necessary laws to realize the policies and international commitments. Institutional/organisational gaps are prevalent such as lack of regular meetings of various steering committee, coordination committee and implementation committee mainly due to lack of financial and human resources for them. Monitoring and evaluation is not very objective to assess the effectiveness of policies, programs and activities and consistencies among them. Scattered, small and patchy programs are not reaping the fruits of development activities as desired.

Challenges

Unstable political situation and lingered sociopolitical and economic transition in the country have become the main challenges for effective implementation of existing policies, rules and regulations regarding the rights of IPs. Many development activities have been superseded by the political agendas such as delayed Constitution making process, conflict resolution and peace process so that root causes of rural poverty could not be prioritised and addressed. Policies are not supplemented by necessary legal, institutional and administrative arrangements. International commitments and obligations needs to be complied with adequate national instruments such as ratification, law-making and preparing for their implementation mechanism. Need to supporting the IPs and local communities in forests and other rural areas, helping them to secure and realize the rights to own, control, and benefit from the natural resources they have depended on for generations.

Conclusion and recommendations

Humans and nature are inseparably linked. Nepal is committed to support the community-based natural resource management approach to promote the policy of biodiversity conservation. Several policies have been introduced to transfer management and use rights for natural resources to the local communities and IPs. However, the fast, donor-driven top-down procedure of establishing new rules contradicts the local tradition and culture. Different individual economic interests can hinder successful collective action for

natural resource management. Based on the analysis and discussions made so far regarding background, existing policies and their implementation, gaps, and challenges, following recommendations can be postulated for further considerations by concerned stakeholders.

- International commitments and national policies should be implemented in the stipulated time frame.
- Necessary institutional arrangements and their strengthening with adequate resources and budget are necessary to implement effectively the policies related to IPs.
- Participation on decisions regarding access to forest resources has been increasing but meaningful participation needs to be ensured.
- Income generation activities and educational promotional activities required to make them understand their rights and duties concerning management and utilisation of resources.
- Sufficient promotional activities from government and non-governmental sector are to make IPs self reliant for their basic needs and expedite the endeavors towards sustainable development.
- Meaningful participation in local and national program planning with participatory appraisal identifying and prioritizing the rational and implementable programs with certainty of required financial and organisational supports by the government and non-government

organisations.

- Development activities that affect their traditional rights should be taken into consideration and provide compensatory relief or ensuring adequate employments with good wage rates.
- Redistributing policies of the government should focus on plowing back at local communities a good share of benefits/income accrued from the use of resources from the outsiders.
- Special provisions such as subsidies on sustainable harvesting of the medicinal plants and other resources will be a good incentive for them to take ownership of resources conservation and management.

References

- CBS (2012) *National Population and Housing Census 2011 (National Report)*, Kathmandu: Government of Nepal, National Planning Commission Secretariat, Central Bureau of Statistics.
- ILO (1989) *Indigenous and Tribal Peoples Convention, 1989 (Convention No. 169)*, Geneva: International Labor Organisation.
- MoAD (2012) *National Rangeland Policy*, Kathmandu: Government of Nepal, Ministry of Agricultural Development.
- MoFSC (2004) *National Herbs and Non Timber Forest Products Policy*, Kathmandu: Government of Nepal, Ministry of Forests and Soil Conservation.
- MoFSC (2008) *Forestry Sector Gender and Social*

- Inclusion Strategy*, Kathmandu: Government of Nepal, Ministry of Forests and Soil Conservation.
- MoFSC (2013) *National Wetlands Policy*, Kathmandu: Government of Nepal, Ministry of Forests and Soil Conservation.
- MoFSC (2014) *Nepal Biodiversity Strategy and Action Plan 2014-2020*, Kathmandu: Government of Nepal, Ministry of Forests and Soil Conservation.
- MoFSC (2015) *National Forest Policy*, Kathmandu: Government of Nepal, Ministry of Forests and Soil Conservation.
- MoLJPA (2015) *The Constitution of Nepal, 2015*, Kathmandu: Government of Nepal, Ministry of Law, Justice & Parliamentary Affairs.
- NPC (2016) *The Fourteenth Plan (2073/74-75/76) Approach paper*, Kathmandu: Government of Nepal, National Planning Commission.
- UNCBD (2011) *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation*, Montreal: Secretariat of the Convention on Biological Diversity.
- UN (2007) *United Nations Declaration on the Rights of Indigenous Peoples*, New York: United Nations.