In the 62 years of Nepal’s constitutional history, as many as six Constitutions have been promulgated and enforced. The current Interim Constitution was promulgated by the Legislative Parliament after being framed by the Interim Constitution Drafting Committee. One of the historical characteristics of the Interim Constitution is the constitutional provision for the development of a new Constitution through an election of a Constituent Assembly.

Individuals, communities and organizations across the cross-section of society and professions have got an opportunity to offer their suggestions concerning their interests, concerns and areas of expertise in the development of constitution-drafting with the direct involvement of the people. In this connection, in pursuance of the demand made by the Constituent Assembly, the International Union for Conservation of Nature (IUCN) Nepal Country Office has submitted suggestions regarding the various provisions related to environment specifically prepared by the National Committee of members of IUCN.

"Environment" means the natural, cultural and social systems, economic and human activities and their components and the interactions and interrelationships between these components.

On February 26, 2009 (Falgun 15, 2065), IUCN submitted recommendations on various provisions related to the environment that need to be incorporated in the New Constitution presented before all the CA members belonging to the Natural Resource, Economic Rights and Revenue Allocation Committee and State Powers Allocation Committee after presenting it before the CA Fundamental Rights and Directive Principles Committee. This policy brief is based on those recommendations.
Fundamental Duty

Rights and duties are two faces of the same coin. If everyone were to seek only their rights and not do their duties, conservation and sustainable use of environmental resources, services and goods would not be possible. Although there is no practice of incorporating fundamental duties in the series of constitutional development, it seems pertinent to initiate this in the Constitution to be drafted now. Hence, it would be expedient to incorporate immediately after the preamble to the New Constitution the provision “It shall be the fundamental duty of every individual, community and the State to practise sustainable conservation and promotion of the environmental resources, services and goods as well as the unique indigenous knowledge, skills and practices related to such resources, services and goods.” No State alone can conserve the environment. Citizens, civil society, local agencies and the private sector should also dedicate themselves from their areas in this endeavour. Hence, it would be extremely relevant to introduce a provision “it shall be the duty of all to conserve in a sustainable manner the environmental resources for the wellbeing, conservation and use and prosperity of all citizens, individuals, communities and the State.” In addition, it would be timely to incorporate the provision “it shall be the duty of every individual to respect the environment, nature, living beings and vegetation.” If the fundamental duty towards sustainable conservation of the environment and biodiversity is incorporated in the Constitution, the Centre and State/Government will be able to enact appropriate necessary laws, as well as guaranteeing this right through other measures.

In order to ensure conservation and sustainable use of environmental resources,

• The Interim Constitution has granted every individual the right to live in a clean environment, but a fact that is to be kept in mind is that, unless and until the natural environment or various ecosystems are healthy, it cannot even be considered that the right to live in a clean environment can significantly be applied in practice. Hence, in Nepal’s Interim Constitution 2063, article 16 (1) the phrase every individual shall have the right to live in a clean environment should be replaced by the phrase “every individual shall have the right to live in a clean and healthy environment in an inalienable manner.” The fundamental right to live in a clean environment ensures the right of people living in suburban and urban areas, whereas the right to live in a healthy environment, along with preventing destruction of environmental resources such as trees and saplings, flora and fauna, rivers and streams, etc, shall help keep such environmental resources healthy, as a result of which, the present and future generations will be able to live in a clean and healthy environment for ages and can earn their livelihood by utilising the environmental resources, goods and services.

• The communities earning their livelihood by being directly dependent on natural resources and that follow an environment-friendly lifestyle are bearing the brunt of the pollution and environmental degradation arising from physical infrastructure development such as industries, factories and other activities. If necessary provision is not included in the New Constitution, there is great likelihood that these communities will continue to suffer disproportionately. Thus, if the provision “every citizen shall have the right to protection from suffering from environmental degradation and pollution and environmental policy, Act and Regulations in a disproportionate manner” is incorporated in the fundamental rights, the communities pursuing an environment-friendly lifestyle can be free from the possibility of suffering from the adverse environmental effects in a disproportionate manner. Not only in Nepal, India and Bangladesh, but also in countries such as the USA, while constructing toxic factories, industries and big projects, those communities are targeted that have weak political and economic power. On account of this, environmental injustice can easily be forced upon such communities and limited people can easily benefit from their value. In the past, numerous such incidents have occurred in Nepal, too. It is extremely necessary to end such past unfortunate incidents forever, along with stopping their recurrence through the New Constitution.

• Since every individual needs the basic environmental resources, services and goods, while discussing fundamental rights, the fact that equitable access to environmental resources, services and goods has to be ensured as a fundamental right cannot be ignored. Although, constitutionally, Nepal has been declared a federal democratic republic nation, poor, Dalits, women, nomads, Madhesis and indigenous communities do not have equal access to environmental resources, services and goods. In such a situation, the equitable use of such resources by them seems to be question
able. Hence, in the forthcoming Constitution, the provision of “every citizen shall have the right to equitable access to and sustainable use of environmental resources, services and goods” should be included in the fundamental rights.

- Another indispensable right that should be included as a fundamental right in the New Constitution is that of equitable sharing of benefits from commercial and other uses of environmental resources, services and goods. To date, it has been found that people enjoying special privileges and concessions, as well as wielding economic and political influence, have predominantly benefitted from the benefits of these environmental resources, services and goods. It would not be asking for too much if it is said that, in the Constitution that is to be drafted by the members of the Constituent Assembly elected by Nepalese citizens of the Federal Democratic Republic of Nepal at the beginning of the 21st century, non-inclusion of the provision of equitable distribution of benefits from commercial and other uses of environmental resources, services and goods would be tantamount to diminishing the age-old contributions of Nepalese living in rural areas who have been conserving the clean environment and great biodiversity for centuries, as well as meting out injustice to them. Hence, it would be extremely relevant and necessary to include in the New Constitution the provision “every citizen shall have the right to equitable distribution of benefits from commercial and other uses of environmental resources, services and goods.”

- Although the Interim Constitution doesn’t grant the right to environmental information or contain a provision for access to information for exercising that right, it would be farsighted to give a place to this subject as a fundamental right in the Constitution that will be drafted. Unless and until all Nepalese have the fundamental right to receive environmental information, the conditions conducive to taking part in the environmental decision-making process in an informed manner cannot arise. Although Article 27 of the Interim Constitution of Nepal 2063 grants every citizen the right to seek or obtain information on any topic of their or public concern, since this right is lacking in respect of environmental information, the provision “every citizen shall have the right to demand or continually receive environmental information necessary to take part in environmental decision-making process” should be included as a fundamental right.

- As the various decision-making processes from the Centre to district, VDC level have yet to become fully inclusive, the issue of inclusion has now become a focal point. Owing to the environmental decision-making process not being inclusive, like other decision-making processes, the rights to livelihood and live in a clean and healthy environment of a majority of citizens of the country have been adversely affected. Obligations are forcibly imposed on common citizens without seeking their opinions, suggestions or advice. Hence, the ongoing process of exclusion should be ended by including the provision of “every citizen shall have the right to meaningful participation in environmental decision-making process in a fully inclusive way” as a fundamental right.

- In the event of loss or damage caused to natural or environmental balance, the right to force the person causing such loss or damage to pay full compensation should also be included as a fundamental right. As it would be appropriate to make provision for seeking damages even from a natural or legal entity causing irreparable damage to the environment, only after the provision of “right shall be granted for seeking full damages from persons causing harm to lives of citizens in an either direct or indirect way through environmental pollution or loss, as well as causing damage to the nature or environment” is incorporated as a fundamental right in the Constitution that it would be possible to obtain full compensation. Until now, individuals causing damage or loss to the environment have seldom, if ever, paid fines or penalties or those who have paid only nominal fines or penalties. As a result, such persons, instead of being discouraged, have been encouraged to cause damage to the environment. No wonder, environmental impunity has found a place for itself. If the said provision is included in the fundamental rights, the culture of environmental impunity would come to an end, as well as paving the way for assuring environmental justice to individuals, communities and ecosystem suffering injustice and predicaments due to environmental damage.

- Life is born amidst the nature. Conditions must be present for the systems, structures, activities and processes necessary for the nature to exist to operate uninterruptedly in the course of evolution of such nature. As there is no dispute over the fact that, in case the nature is not able to operate its indispensable cycle, structure, activities and processes, each one of us would be deprived of the benefits granted by the nature to the human race and other living beings, even if from the utilitarian perspective, incorporation of the provision of “the nature and living beings shall have the inalienable right to existence and renew themselves in an inviolable manner” as a fundamental right in the New Constitution seems to be in the interest of both current and future generations.

- As it is expedient to make provision for the right to adapt along with the climate change with a view to being informed about the adverse impact that have been generated or might be generated in the future, protecting oneself against the potential adverse impact, as well as mitigating and causing to mitigate such impact, it would be a farsighted perspective to incorporate as a fundamental right the provision of “there shall be the right to adaption by being well informed about the adverse impact of climate change that has been generated or might be generated in the future and to protection
from possible adverse impact, as well as mitigating and causing to mitigate such effects.”

We Nepalese have received unpolluted, clean and healthy environment from our forefathers. However, owing to the indifference towards the constitutional, legal, administrative and other measures that should have been adopted in the past for its sustainable conservation and utilization, it has experienced widespread deterioration. This is illustrated by the pollution in the different cities and suburban areas, including Kathmandu, which is turning into a gargantuan problem, and the degradation of forests in rural areas. Water and air pollution, forest degradation, biodiversity degradation, destruction of unique biodiversity heritage such as rhinoceroses and tigers have crossed all limits. If this process is not stopped, the country will witness catastrophes of unprecedented magnitude, along with upsetting the very foundations of livelihoods of hundreds of thousands of citizens, in the near future. In such a situation, instead of debating whether or not to encompass the provisions and rights related to the environment in the Preamble, fundamental duties and fundamental rights, it would be worthwhile to consider the situations in which specific provisions are included in specific parts, how to incorporate all kinds of provision that would ensure hundreds of future generations of Nepal to live in a clean and healthy environment in an inalienable manner, equitable access to the environmental resources, services and goods and equitable distribution of the benefits of environmental resources, services and goods, as well as maintaining environmental good governance.

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