



# Constitutional Provisions Related to Environment Conservation: A Study

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## 1. Introduction

A constitution is not only an essential element to manage a state but also an important document to guarantee rights to all the people of the state. The constitution also serves as a medium to establish coordination between the ruler's jurisdiction and people's rights. The constitution, therefore, is not only a medium of governing a state but also an evidence of the fact that the people have been granted their rights. As the constitution guarantees people's rights, it maintains balance between the rights of the government and the people. In fact, the objective of a constitution is to specify the rights of the people by limiting the discretionary power of government. A country does not draft law that is not consistent with the constitution. If drafted, such law automatically becomes defunct. Therefore, a law should be formulated in accordance with the constitution. Granting the constitution room for the fundamental law means the supremacy of the constitution has been accepted.

In every country the constitution works as guidelines for managing the state. The constitution specifies the work, duties and powers of the main organs of the state. It also serves as a guide for the government.

The constitution is a legal weapon capable of providing the different organs of the state with powers and control. It is the constitution that specifies the rights and powers of the government formed to manage a democratic country. If it is not determined what the government is allowed to do and must do, the other organs of the state cannot work independently. As a result, it will be difficult to manage the state. The constitution specifies how much powers the government has and controls these powers as required. Therefore, the constitution is also a legal weapon that specifies and controls the powers of the government.

In Nepal, a new constitution is in the process of being drafted and since popular will is in favour of having a progressive constitution, it is natural to have a desire to make the world's most excellent constitution. In this process, internalising the basic values of constitutionalism, it is also necessary to observe the recent efforts of other countries to broaden their constitutional provisions. The inclusion of environment related provisions in the constitutions of many countries is the result of such efforts.

The environment is a clear example of the fact that human activities and behaviour happening on our planet are interrelated. Depletion and degradation of public resources like water and forest by one person may impact quality or quantity of goods left for another person. Similarly, degradation by a country may affect

the world's environment. Acid rain, effect on the ozone layer, increase in world temperature, rising sea level, greenhouse effect, depletion of biodiversity and forests, marine pollution, transboundary trafficking in harmful waste, etc. have a global impact. At present, the whole world is suffering from environmental issues like these. Our country too is suffering from these different environmental problems.

The Bhopal gas accident in India (1983), the Love Canal contamination in the USA as a result of polluted land (1978) and the Chernobyl disaster in the former Soviet Union (1983) still have effects. Similarly, the pollution produced by the Braer oil accident in the UK in 1993 attracted the attention of the whole world. Besides these, there are thousands of pollution related problems which are not publicised, but people are suffering from them every day. Some of these problems are causing irreparable loss to the environment.

Pollution has adverse impacts on both living and non-living structures of the environment and as well as the economic and social aspects. Owing to air pollution, the world has witnessed serious examples of plane accidents. As a result of water pollution, the world has experienced a number of health problems, including epidemics. Sound pollution has increased social contention. Similarly, land and soil pollution are presenting serious agricultural and economic challenges. Developing countries are bound to invest in the prevention and control of pollution from their limited resources.

In the above context, it is equally worth thinking of the ecosystem and services available from it. A healthy ecosystem encompasses the natural environment and its species and keeps them sustainable. They maintain biodiversity and produce seafood, timber and firewood, natural fiber and medicinal and industrial raw materials. Farming and trade of these goods have been an important part of the world's economy. In addition to the production of these goods, the healthy ecosystem provides the following services:

- Purification of air and water;
- Reduction of flood and drought;
- Reduction of the effect of waste;
- Renewal of soil and its productivity;
- Expansion of plant breeding, seed productivity and nutrients;
- Protection of biodiversity;
- Protection of biodiversity from harmful sunrays;
- Maintaining stability in weather, albeit partially;
- Control over temperature and wind velocity;
- Support for different human cultures; and
- Protection of human intellect and human beauty.

After the Declaration on Sustainable Development by the 1972 UN Stockholm Conference on Human Environment, Ecuador began staging a campaign to include in its constitution environmental issues and the provision of inalienable rights for natural communities and ecosystems to exist, flourish and expand within the country.

The following suggestions by the Expert Group on Environmental Law or the World Commission on Environment and Development (1986) in relation to environment conservation and sustainable development, supported by the Brundtland Commission for legal provisions to achieve sustainable development, are worth considering:

1. *Fundamental human rights*: All have the fundamental right to an appropriate environment for human health and clean life;
2. *Intergeneration*: The state shall conserve and use environmental and natural resources, taking into account the present and future generations;
3. *Conservation and sustainable use*: The state shall maintain ecosystems for the environment;
4. Determination and monitoring of environmental quality;
5. Initial environmental evaluation;
6. The state should provide access to pre-information, administrative and judicial procedures and due process of law for those who are to be affected by state planned activities;
7. The state should assure that conservation will remain an integral part of the implementation of plans and development activities. The state should also assist other countries, especially developing ones, with nature conservation and sustainable development; and
8. The state should help another state in its preceding rights and responsibilities in good faith.

The concept that environment related provisions should not be included in a constitution or cannot be implemented is no longer acceptable. In 1988, Professor Krier wrote a thought-provoking article, in which he asked: What can be more fundamental than the environment? Why is this not recognized constitutionally? (The Environment, the Constitution and the Coupling Fallacy: 32 Michigan Law Quadrangle Notes 35, 1988). A draft has been presented to include the right to environmental quality in the Constitution of the USA as follows:

Each person has the right to clean air, pure water and productive soils and to the construction of the natural, scenic, historic, recreational, aesthetic, and economic values of America's natural resources. There shall be no entitlement, public or private, competent to impair these rights. It is the responsibility of the United State and of the several states as public trustees to safeguard them for the present and for the benefit of posterity.

## 2. Environment Related Constitutional Provisions

Different countries have included environment related provisions in their constitutions in their own way. In some constitutions such provisions are similar whereas in others completely different. In the constitutions, one can observe the mention of the environment in different provisions, from preamble to the right to constitutional remedy.

### The Interim Constitution of Nepal, 2063



- It is the duty of everyone to abide by the constitution -7-1(2);
- Everyone has the right to live in a clean environment -16(1);
- Every citizen has the right to ask and obtain information on his own concerns or public concerns -27;
- Effective implementation of those international treaties and agreements of which the intermittent state is a party -33(m);
- Priority to local communities while usefully and gainfully mobilising natural resources and heritage of the country in favour of national interests 35-(4);
- Priority of the state to avoid adverse effects on the environment likely to be caused by physical development activities and to special conservation of the environment and rare wildlife; and
- Conservation and sustainable use of forests, vegetation and biodiversity, and equitable distribution of the benefits obtained from this practice 35-(5).

## Environment Related Rights

Environment-related rights are found in most of the constitutions drafted recently. Generally, to describe these rights, the following terms have been used: the right to human development, favourable, healthy and balanced environment, and the duty to conserve it.

Environment-related rights in different constitutions have been described as follows:

- Right to live in a healthy environment;<sup>1</sup>
- Right to a pleasant environment;<sup>2</sup>
- Everyone shall have the right to live a life with self-respect and prestige and this right, among others, shall also include the right to conserve and use a healthy environment and to fulfill cultural and social needs;<sup>3</sup>
- Right to a healthy and favourable environment in accordance with established standards;<sup>4</sup>
- Article 55 – Right to a healthy life, balanced environment;<sup>5</sup>
- Article 69 – Guarantee of the right to live in a pollution-free environment;<sup>6</sup>
- Right to a human, healthy, balanced environment;<sup>7</sup>

<sup>1</sup> Constitution of the Republic of Azerbaijan, 1995 Article 39

<sup>2</sup> Constitution of the Republic of Belarus, 1994 Article 46

<sup>3</sup> Constitution of the Kingdom of Belgium, 1994 Article 23

<sup>4</sup> Constitution of the Republic of Bulgaria, 1991

<sup>5</sup> Constitution of Cape Verde, 1992

<sup>6</sup> Constitution of the Republic of Chile, 1980

<sup>7</sup> Constitution of the Republic of East Timor, 2002 Article 61

- Right to a clean, healthy environment;<sup>8</sup>
- Right to a safe environment for health and life;<sup>9</sup>
- Right to a healthy, pleasant environment; the state and all citizens have to make efforts to conserve the environment;<sup>10</sup>
- Shall have the right to a healthy, safe environment;<sup>11</sup>
- Right to a healthy, balanced, human environment;<sup>12</sup>
- Right to an appropriate environment;<sup>13</sup>
- All have the right to an environment not detrimental to health;<sup>14</sup>
- Right to an auspicious environment;<sup>15</sup>
- All have the right to use an environment for individual development;<sup>16</sup>
- Right to live in a healthy, balanced environment;<sup>17</sup>
- Right to a safe environment for health and life;<sup>18</sup> and
- Right to a healthy environment.<sup>19</sup>

Some constitutions provide road maps to implement the above rights. Some examples are as follows:



**Constitution of the Republic of Angola, 1992:** Article 24 - All citizens shall have the right to live in a healthy and unpolluted environment. The state takes the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance. Acts that damage or directly or indirectly

jeopardize conservation of the environment is punishable by law.



**Constitution of Argentina, 1853:** Article 41 - All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law. The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education. The Nation shall regulate the minimum protection standards and the provinces those necessary to reinforce them, without altering their local jurisdictions. The entry into the national territory of present or potential dangerous wastes, and of radioactive ones, is forbidden.



**Constitution of Colombia, 1991:** Article 49 - Public health and environment protection are public services for which the state is responsible. All individuals are guaranteed access to services that promote, protect, and rehabilitate public health. Article 79 - Every person has the right to enjoy a healthy environment.



**Constitution of the Republic of the Congo, 1992:** Article 46 - Every citizen has the right to a healthy, satisfactory, and enduring environment and the duty to defend it. The state shall strive for the protection and the conservation of the environment.



**Constitution of Costa Rica, 1949:** Article 50 - The state shall procure the greatest welfare of all the inhabitants of the country, organising and promoting production and the most adequate distribution of wealth. Every person has the right to a healthy and ecologically

<sup>8</sup> Constitution of the Federal Republic of Ethiopia, 1994 Article 44

<sup>9</sup> Constitution of Kenya, 2005 Article 30

<sup>10</sup> Constitution of South Korea, 1948 Article 35

<sup>11</sup> Constitution of the Republic of Kyrgyz, 1993 Article 35

<sup>12</sup> Constitution of the Republic of Portugal, 1976 Article 66

<sup>13</sup> Constitution of the Russian Federation, 1993 Article 42

<sup>14</sup> Constitution of the Republic of South Africa, 1997 Article 24

<sup>15</sup> Constitution of the Republic of Slovak, 1992 Article 44

<sup>16</sup> Constitution of the Kingdom Of Spain, 1978 Article 45

<sup>17</sup> Constitution of the Republic of Turkey, 1982 Article 56

<sup>18</sup> Constitution of Ukraine, 1996 Article 50

<sup>19</sup> Constitution of the Republic of Yugoslavia, 1992 Article 52

balanced environment, being therefore entitled to denounce any act that may infringe said right and claim redress for the damage caused. The state shall guarantee, defend and preserve that right. The Law shall establish the appropriate responsibilities and penalties.



**Constitution of the Republic of Croatia, 2001:** Article 69 - Everyone has the right to a healthy life. The state shall ensure conditions for a healthy environment. Everyone is bound, within their powers and activities, to pay special attention to the protection of public health, nature and environment.



**Constitution of the Republic of Chechen, 2003:** Article 39 - Everyone has the right to favorable environmental surroundings, reliable information about its condition and to compensation for damage caused to his/her health or property through ecological violations of the law.



**Constitution of Finland, 1999:** Article 20 - Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment.



**Constitution of Greece, 2001:** Article 24 - The protection of the natural and cultural environment constitutes a duty of the State and a right of every person. The State is bound to adopt special preventive or repressive measures for the preservation of the environment in the context of the principle of sustainability.



**Constitution of the Republic of Latvia, 1922:** Article 115 - The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.



**Constitution of Macedonia, 1991:** Article 43 - Everyone has the right to a healthy environment to live in. Everyone is obliged to promote and protect the environment. The Republic provides conditions for the exercise of the right of citizens to a healthy environment.



**Constitution of the Republic of Mali, 1992:** Article 15 - Every person has a right to a healthy environment. The protection and defense of the environment and the promotion of the quality of life is a duty of everyone and of the State.



**Constitution of the Republic of Moldova, 1994:** Article 37 - Every human being has the right to live in an environment that is ecologically safe for life and health, to obtain healthy food products and harmless household appliance. The State guarantees every citizen the right of free access to truthful information regarding the state of the natural environment, the living and working conditions, and the quality of food products and household appliances.



**Constitution of the Netherlands, 1983:** Article 21 - It is the concern of authorities to keep the country habitable and to protect and improve the environment.



**Constitution of the Republic of Thailand, 2007:** Article 67 - The right of person to participate with State and communities in the preservation and exploitation of natural resources and biological diversity and in the protection, promotion and conservation of the quality of the environment for usual and consistent survival in the environment which is not hazardous to his health and sanitary condition, welfare or quality of life, shall be protected appropriately.

### 3. Duties

In the constitutions of most of the countries it has been mentioned that it shall be the duty of all to abide by the constitution. In almost all constitutions with the guarantee of environment related rights, duties of the state and citizens concerned about these rights have also been specified. Most of the constitutions have used the following terms: All shall have the right to a healthy, balanced environment, as well as the duty to

defend and conserve it. Some constitutions have specified the state's duty to guarantee environment-related rights. For example, the constitutions of the Republic of Portugal and the Republic of Ecuador have even drawn duty road maps.

Environment-related duties in different constitutions have been described as follows:

- It shall be the duty of all to defend and conserve a healthy, balanced environment;<sup>20</sup>
- It shall be the duty of the state to conserve natural diversity and integrity as well as sites of environmental importance;<sup>21</sup>
- It shall be the duty of all citizens to defend the environment;<sup>22</sup>
- While using rights and carrying activities, all shall be bound to pay special attention to public health, nature and the environment;<sup>23</sup>
- It shall be the duty of all to be careful while conserving nature, preventing environmental loss, and removing natural heritage;<sup>24</sup>
- Article 55 - It shall be the duty of the state to protect the right to live in a pollution-free environment, and to promote nature;<sup>25</sup>
- It shall be the duty of all to conserve the environment for the future generation;<sup>26</sup>
- It shall be the responsibility of all to conserve nature and its diversity, environment and national heritage;<sup>27</sup>
- It shall be the duty of all to conserve the environment for present and future generations;<sup>28</sup>
- It shall be the duty of the state and of all citizens to make efforts to conserve the environment;<sup>29</sup>
- It shall be the duty of all citizens as well as of the state to conserve the environment and promote the standard of life;<sup>30</sup>
- It shall be the duty of all to conserve nature and the environment, and take care of natural heritage;<sup>31</sup>
- The environment shall have to be conserved for the benefit of present and future posterity;<sup>32</sup>
- It shall be the responsibility of all to conserve and promote the environment and cultural heritage;<sup>33</sup> and
- It shall be the duty of all to conserve the environment.<sup>34</sup>

Some constitutions have provisions that it shall be the duty of all to conserve a healthy environment and use discretionarily natural resources<sup>35</sup>, whereas other constitutions have provision that the state shall conserve nature.<sup>36</sup> Some constitutions also have outlines on the duties of the state and citizens. Some of these provisions are:



**Constitution of Argentina, 1853:** Article 41 - All inhabitants are entitled to the right to a healthy and balanced environment fit for human development in order that productive activities shall meet present needs without endangering those of future generations; and have the duty to preserve it. As a first priority, environmental damage shall bring about the obligation to repair it according to law. The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education.

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<sup>20</sup> Constitution of the Republic of Cape Verde, 1992 Article 69

<sup>21</sup> Constitution of Colombia, 1991 Article 79

<sup>22</sup> Constitution of the Republic of the Congo, 1992 Article 46

<sup>23</sup> Constitution of the Republic of Croatia, 2001 Article 69

<sup>24</sup> Constitution of the Republic of Chechen, 2003

<sup>25</sup> Constitution of the Republic of Chile, 1980

<sup>26</sup> Constitution of the Republic of East Timor, 2002 Article 61

<sup>27</sup> Constitution of Finland, 1999 Article 20

<sup>28</sup> Constitution of Kenya, 2005 Article 30

<sup>29</sup> Constitution of South Korea, 1948 Article 35

<sup>30</sup> Constitution of the Republic of Mali, 1992 Article 15

<sup>31</sup> Constitution of the Russian Federation, 1993 Article 58

<sup>32</sup> Constitution of the Republic of South Africa, 1997 Article 24

<sup>33</sup> Constitution of the Republic of Slovak, 1992 Article 44

<sup>34</sup> Constitution of the Kingdom of Spain, 1978 Article 45

<sup>35</sup> Constitution of the Republic of Yugoslavia, 1992 Article 52

<sup>36</sup> Constitution of the Republic of Uganda, 1995 Article 13



**Constitution of Poland, 1997:** Article 74 - Public authorities shall pursue policies ensuring the ecological security of current and future generations. Protection of environment is the duty of public authorities. Everyone has the right to be informed of the quality of the environment and its protection. Public authorities shall support the activities of citizens to protect and improve the quality of the environment.



**Constitution of the Portuguese Republic, 1976:** Article 66 - Everyone has the right to a healthy and ecologically balanced human environment and the duty to defend it. In order to guarantee the right to such an environment, within the context of sustainable development, it is the duty of the State, acting through appropriate bodies and with the involvement and participation of the citizens:

1. To prevent and control pollution, and its effects, and the harmful forms of erosion;
2. To organize and promote national planning with the objectives of establishing proper locations for activities and a balance between economic and social development, while enhancing the landscapes;
3. To establish and develop natural reserves and parks and recreation areas, and classify and protect the countryside in order to guarantee nature conservation and the preservation of cultural assets of historic or artistic interest;
4. To promote the rational use of natural resources, while safeguarding their capacity for renewal and ecological stability, respecting the principle of solidarity between generations;
5. To promote, in conjunction with the local authorities, the environmental quality of populated areas and urban life specifically with regard to architecture and the protection of historical zones;
6. To promote the inclusion of environmental objectives in the various sectors of policy;
7. To promote environmental education and respect for environmental values; and
8. To ensure that tax policy achieves compatibility between development and protection of the environment and quality of life.



**Constitution of the Republic of Turkey, 1982:** Article 56 - Everyone has the right to live in a healthy, balanced environment. It is the duty of the state and citizens to improve the natural environment, and to prevent environmental pollution. Similarly, Article 63 states that- the State shall ensure the conservation of the historical, cultural and natural assets and wealth, and shall take supportive and promotive measures towards that end.

## 4. Right to Information

It appears that every society has accepted the importance of information. Information is an important medium to mobilise and manage link between people of a human community. Information is also a source of knowledge and a base of power. Therefore, neither a progressive person nor society can avoid accepting the importance of information. It is the right of every citizen to obtain information on subjects like why the government has adopted certain policies and programmes, how they are being adopted and carried out, and what their impact is. The result of information is knowledge and its full flow. As the use of rights available to the government has to be confined to people's interests, the right of citizens to be informed about every programme to be carried out for people is ensured. It is the fundamental right of everyone to express their view on any subject of public concerns. It is the right to information that protects the freedom of expression. Therefore, the right to information has been accepted as an important right to ensure the governance system expected by the constitution, protect people's rights, and raise awareness among citizens about government work and policies.

Studies of information right-related theoretical provisions as well as of different constitutional and legal provisions suggest the same background of access to environment-related information. However, since some special elements have been included in the concept of access to environment-related information, the right to information is viewed differently.

Environmental information helps achieve the goal of sustainable development by impacting the behaviour and decisions of individuals and companies. The flow of detailed information not only brings about positive changes in behaviour, but also enhances the effectiveness of machines.

Most of the environmental crimes include unauthorised activities. Such crimes mean the violation of authorised conditions, or unauthorised work. To assess the observance of the level of conditions and

instructions, people in general should have access not only to the detailed information on someone's authenticity, but also to the monitoring of such information.

Information should also be viewed as a tool for informing people in general about environmental threats or risks. Risks associated with any work are perceived wrongly in places where it is difficult to receive information. This is equally relevant to both human health and the environment. Therefore, it is necessary that people be informed not only about the threats of the environment, but also about measures or steps that can be taken to minimize risks involved. Information and its explanation are important for risk assessment.

International law has laid a great emphasis on the importance of the right of access to environmental information at all levels. In order to achieve the goal of sustainable development, the role of information has been taken as a subject matter of Agenda 21. Agenda 21 was accepted in the 1992 Earth Summit. This agenda lays emphasis on the fact that all those concerned about the environment should be assured that they will have access to all environmental information related to production or activities affecting the environment.

Studies of the constitutions of different countries show two types of provision. The first type deals with constitutional provisions that don't mention about environmental information, but mention about the right to information. The second type, on the other hand, mentions about provisions of the right to both information and environmental information. Constitutional provisions of the constitutions of different countries which have granted the right to information without mentioning environmental information describe rights as follows:

- The right to information unlimited to the extent it doesn't violate others' rights;<sup>37</sup>
- The right to information on government organs' activities;<sup>38</sup>
- The right to obtain public information;<sup>39</sup>
- The right to receive and disseminate information;<sup>40</sup>
- The right of access to information;<sup>41</sup>
- The right of access to information on public documents;<sup>42</sup>
- Access to administrative bodies for the information of public interests guaranteed;<sup>43</sup>
- The right to unrestrictedly obtain and disseminate information;<sup>44</sup> and
- The right to information.<sup>45</sup>

But most of the constitutions relatively recently drafted have provisions of rights to both information and environmental information. Some constitutional provisions are as follows:



**Constitution of Argentina, 1853:** Article 41 - The authorities shall provide for the protection of this right, the rational use of natural resources, the preservation of natural and cultural heritage and of the biological diversity, and shall also provide for environmental information and education.



**Constitution of the Republic of Azerbaijan, 1995:** Article 39 - Every person has the right to collect information on environmental situation. Article 49 - Every person has the right, upon notification of corresponding government bodies in advance, to peaceful, unarmed gatherings, meetings, demonstrations, rallies, street processions, pickets together with others.



**Constitution of the Republic of Belarus, 1994:** Article 34 - Citizens are guaranteed to receive, store, and disseminate complete, reliable, and timely information on the activities of state bodies and public associations, on political, economic, and international life, and on the state of the environment.

<sup>37</sup> Constitution of the Republic of Afghanistan, 2004

<sup>38</sup> Constitution of the Republic of Albania, 1998 Article 23

<sup>39</sup> Constitution of the Kingdom of Belgium, 1994 Article 32

<sup>40</sup> Constitution of the Republic of Bulgaria, 1991 Article 41

<sup>41</sup> Constitution of the Republic of Cape Verde, 1992 Article 20

<sup>42</sup> Constitution of Colombia, 1991 Article 74

<sup>43</sup> Constitution of Costa Rica, 1949 Article 30

<sup>44</sup> Constitution of the Republic of East Timor, 2002 Article 40

<sup>45</sup> Constitution of the Republic of Egypt, 1971 Article 52





**Constitution of the Republic of Chechen, 2003:** Article 39 - Everyone has the right to favorable environmental surroundings, reliable information about its condition and to compensation for damage caused to his/her health or property through ecological violations of the law .



**Constitution of Kenya, 2005:** Article 47 - Every citizen has the right to access to - information held by the state; and any information that is held by another person and that is required for the exercise or protection of any right or freedom.



**Constitution of the Republic of Latvia, 1922:** Article 115 - The State shall protect the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment.



**Constitution of the Republic of Moldova, 1994:** Article 37 - The State guarantees every citizen the right of free access to truthful information regarding the state of the natural environment, the living and working conditions, and the quality of food products and household appliances.



**Constitution of Poland, 1997:** Article 74 - Everyone has the right to be informed of the quality of the environment and its protection.



**Constitution of the Russian Federation, 1993:** Article 42 - Everyone has the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.



**Constitution of the Republic of South Africa, 1997:** Article 32 - Everyone has the right to access to - any information held by the state; and any information that is held by another person and that is required for the exercise or protection of any rights.



**Constitution of the Republic of Slovakia, 1992:** Article 45 - Everyone has the right to timely and complete information about the state of the environment and the causes and consequences of its condition.



**Constitution of Thailand, 2007:** Article 57 - A person shall have the right to receive information, explanation and justification from a government agency, State agency, State enterprise or local government organization before permission is given for the operation of any project or activity which may affect the quality of the environment, health and sanitary conditions, the quality of life or any other material interest concerning him or a local community and shall have the right to express his opinions on such matters to the concerned agencies of their consideration.



**Constitution of Ukraine, 1996:** Article 50 - Everyone is guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information.

## 5. Right to Development

Some constitutions guarantee development rights for people. These rights also include the right for citizens to their personal development,<sup>46</sup> prestige,<sup>47</sup> and economic, cultural and social development.<sup>48</sup> In other constitutions the right to development also includes the right to raise the standard of life, do sustainable development and national development, and participate in the decision-making of issues of own community.<sup>49</sup>

<sup>46</sup> Constitution of Colombia, 1991 Article 16; Constitution of Georgia, 1995 Article 16; Constitution of the Republic of Malawi, 1994 Article 30; Constitution of the Republic of Uganda, 1995 Article 9

<sup>47</sup> Constitution of Colombia, 1991 Article 21

<sup>48</sup> Constitution of the Republic of the Congo, 1992 Article 55

<sup>49</sup> Constitution of the Federal Republic of Ethiopia, 1994 Article 43

## 6. Right to Participation

While discussing environmental information it is necessary that participation also be covered as its main part. In the context of environment conservation the importance of participation has indisputably been accepted. Citizens' participation in environment conservation seems to be recognized by the European community and several other countries. More than 150 countries, including the European community, participating in the international-level Rio Conference in 1992 accepted Principle 10 of the Rio Declaration. This principle says that environmental issues can be solved effectively only with the participation of stakeholder citizens at the level concerned. Citizens' intervention is an essential part of the administrative process.

The constitutions of several countries have guaranteed the right of citizens to participate in the work of the state.<sup>50</sup> Some constitutions state that law shall guarantee the community's participation in decisions affecting the environment<sup>51</sup> and other constitutions guarantee the right to participate in raising the standard of life, creating sustainable development, and making decisions that affect national development and local communities.<sup>52</sup>

## 7. Right to Compensation

The constitutions of several countries have guaranteed the right to compensation for those who are affected by the work of the government. There are two dimensions: first, the right to compensation for the violation of any fundamental right and freedom; and second, the right to compensation for a loss caused by an effect on the environment. Provisions made in some constitutions are as follows:



**Constitution of the Republic of Albania, 1998:** Article 44 - Everyone has the right to be rehabilitated and/or indemnified in compliance with law if he is damaged because of an unlawful act, action, or failure to act of the state organs.



**Constitution of the Azerbaijan Republic, 1995:** Article 39 - Every person has the right to collect information on environmental situation and to get compensation for damage rendered to the health and property due to the violation of ecological rights.



**Constitution of the Republic of Belarus, 1994:** Article 46 - Everyone is entitled to a pleasant environment and to compensation for loss or damage caused by the violation of this right. Article 61 - To defend their rights, liberties, honor and dignity, citizens are entitled to recover, through the courts, both property damage and financial compensation for moral injury.



**Constitution of the Republic of Cape Verde, 1992:** Article 15 - Everyone has the right to request compensation for the damages caused to him by the violation of his fundamental rights and liberties.



**Constitution of Colombia, 1991:** Article 6 - Each person is individually responsible before the authorities for violations of the Constitution and the laws. Civil servants are responsible for the same reason, and likewise for omission or acting "ultra vires" in the exercise of their functions. Article 90 - The State will answer materially for any type of damages that can be attributed to an illegal action, or caused by deeds of commission or omission by the public authorities. In the event that the state is ordered to compensate damage which may have been the consequence of the fraudulent or seriously criminal behavior of one of its agents, the former will have to claim restitution from the latter.



**Constitution of the Republic of the Congo, 1992:** Article 47 - Storing, manipulating, incinerating, and discharging toxic, polluting or radio-active wastes originating in factories and other industrial or artisan units installed on the national territory is regulated by law. All pollution resulting from an economic activity shall give compensation for the benefit of the

<sup>50</sup> Constitution of the Republic of Paraguay, 1992 Article 63; Constitution of the Russian Federation, 1993 Article 32; Constitution of the Republic of Slovenia, 2000 Article 44

<sup>51</sup> Constitution of Colombia, 1991 Article 79

<sup>52</sup> Constitution of the Federal Republic of Ethiopia, 1994 Article 43

populations of the exploited zones. The law shall determine the nature of compensatory measures and the forms of their execution.



**Constitution of Estonia, 1992:** Article 25 - Everyone has the right to compensate for moral and material injuries caused by anyone's unlawful action.



**Constitution of the Federal Republic of Indonesia, 1994:** Article 44 - Those displaced in the process of conducting government programmes shall have the right to obtain monetary compensation, whereas those shifted from their residence to another place shall have the right to non-monetary compensation.



**Constitution of Japan, 1946:** Article 17 - Every person sue for redress a provided by law from the state or a public entity, in case he has suffered damage through illegal act of any public officials.



**Constitution of Kenya, 2005:** Article 30 - Everyone has the right - to an environment that is safe for life and health; to have the environment protected, for the benefit of present and future generations, through reasonable legislative and the other measures that- prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting economic and social development; to free access to information about the environmental situation; and to compensate for damage arising from the violation of the rights recognized under the Article.



**Constitution of the Republic of Kyrgyz, 1993:** Article 35 - Citizens have the right to a healthy, safe environment and to compensate for damage caused to one's health or property by activities utilizing nature.



**Constitution of the Republic of Moldova, 1994:** Article 37 - The person or legal body concerned shall be responsible for a loss to someone's health or property caused by committing environmental offences.



**Constitution of the Russian Federation, 1993:** Article 42 - Everyone has the right to a favorable environment, reliable information about its condition and to compensation for the damage caused to his or her health or property by ecological violations.



**Constitution of the Republic of Slovenia, 2000:** Article 26 - Any person suffering any damage has the right to demand, in accordance with the law, compensation also directly from the person or body that has caused damage.

## 8. Right to Resistance

The constitutions of some countries have guaranteed people the right to challenge illegal orders,<sup>53</sup> whereas the constitutions of the other countries have guaranteed the right to resist such orders. Provisions related to this in some constitutions are as follows:



**Constitution of the Republic of Cape Verde, 1992:** Article 18 - Any citizen has the right not to obey any order that offends his right, liberties and guarantees and to resist by force any illegal aggression, when the recourse to the public authority is not possible.



**Constitution of the Republic of the Congo, 1992:** Article 17 - Any citizen may oppose the execution of an order received when it touches the rights and liberties contained in the present Constitution.



**Constitution of the Republic of East Timor, 2002:** Article 28 - Every citizen has the right to disobey and to resist illegal orders or orders that affect their fundamental rights, freedoms and guarantees. The right to self-defense is guaranteed to all, in accordance with the law.

<sup>53</sup> Constitution of Kenya, 2005 Article 30, Constitution of Mozambique 1990 Article 90



**Constitution of the Republic of Slovakia, 1992:** Article 32 - Citizens have right to put up resistance to anyone who would eliminate the democratic order of human rights and basic liberties listed in this Constitution, if the activity of Constitutional bodies and the effective use of legal means are rendered impossible.

## 9. Access to Environmental Resources

The constitutions of some countries have the following provisions regarding access to environmental resources:



**Constitution of the Republic of the Congo, 1992:** Article 54 - The Congolese People has the inalienable imprescriptible right to possess their riches and natural resources.



**Constitution of the Republic of Chechen, 2003:** Article 33 - The ownership, usage and disposition of land and other natural resources is to be realized freely if it does not inflict damage on the surrounding environment and does not violate the law and legal interests of other people.



**Constitution of the Republic of East Timor, 2002:** Article 61 - The state recognizes the need to preserve and rationalize natural resources.



**Constitution of the Kingdom of Spain, 1978:** Article 45 - Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it. The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity.



**Constitution of the Kingdom of Belgium, 1994:** Article 23 - Everyone has the right to lead a life in conformity with human dignity. Furthermore the Article also guarantees the right to enjoy the protection of a healthy environment and the right to enjoy cultural and social fulfillment along with other rights.

## 10. Environmental Education



**Constitution of Colombia, 1991:** Article 79 - It is the duty of the State to protect the diversity and integrity of the environment, to conserve areas of special ecological importance, and to foster education for the achievement of these ends.

## 11. Observing International Law



**Constitution of Costa Rica, 1949:** Article 7 - Public treaties, international agreements and concordats duly approved by the Legislative Assembly has a higher authority than the laws upon their enactment or from the day that they designate.



**Constitution of the Republic of South Africa, 1997:** Article 39 - When interpreting the Bill of Rights, a court, tribunal or forum- must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; must consider international law; and may consider foreign law.

## 12. Responsibilities, Guiding Principles and Policies of the State



**Constitution of the Republic of Angola, 1992:** Article 24 - All citizens shall have the right to live in a healthy and unpolluted environment. The state takes the requisite measures to protect the environment and national species of flora and fauna throughout the national territory and maintain ecological balance. Acts that damage or directly or indirectly jeopardize conservation of the environment is punishable by law.



**Constitution of Argentina, 1853:** Article 41 - The Nation shall regulate the minimum protection standards and the provinces those necessary to reinforce them, without altering their local jurisdictions. The entry into the national territory of present or potential dangerous wastes, and of radioactive ones, is forbidden.



**Constitution of the Republic of Cape Verde, 1992:** Article 69 - Everyone has the right to a dwelling which should have a minimum of dignity and, for this purpose, the State shall undertake to promote, gradually and in conformity with the national economic development, the creation of the appropriate institutional, legal and infrastructural conditions, foment and support the initiatives of the local communities and of the population and stimulate private housing development and the access to privately owned housing.



**Constitution of Colombia, 1991:** Article 80 - The state will plan the handling and use of natural resources in order to guarantee their sustainable development, conservation or replacement. Additionally, it will have to prevent and control the factors of environmental deterioration, impose legal sanctions and demand their repair of any damage caused. In the same way, it will cooperate with other nations in the protection of the ecosystems located in the border areas.



**Constitution of the Republic of Croatia, 2001:** Article 52 - The sea, seashore and islands, waters, air space, mineral wealth and other natural resources, as well as land, forests, fauna and flora, other parts of nature, real estate and goods of special cultural, historic, economic or ecological significance which are specified by law to be of interest to the Republic of Croatia shall enjoy its special protection.



**Constitution of the Republic of East Timor, 2002:** Article 61 - The state recognizes the need to preserve and rationalize natural resources. The State should promote actions aimed at protecting the environment and safeguarding the sustainable development of the country.



**Constitution of Kenya, 2005:** Article 30 - Everyone has the right - to an environment that is safe for life and health; to have the environment protected, for the benefit of present and future generations, through reasonable legislative and the other measures that - prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting economic and social development; to free access to information about the environmental situation; and to compensate for damage arising from the violation of the rights recognized under the Article.



**Constitution of the Republic of Paraguay, 1992:** Article 8 - Those activities that are likely to cause environmental changes will be regulated by law. The law may also restrict or prohibit those activities that are considered hazardous. The manufacturing, assembly, import, commerce, possession or use of nuclear, chemical, or biological weapons, as well as the introduction of toxic waste into the country are hereby prohibited. The law may be extended to other hazardous elements. It will also regulate the trafficking of genetic resources and related technologies to protect national interests. The law will define and establish sanctions for ecological crimes. Any damage to the environment will entail an obligation to restore and to pay for damages. Article 81 - Necessary measures will be adopted for the preservation, salvage, and restoration of objects, documents, or places having a historical, archeological, which are part of the cultural heritage of the nation.



**Constitution of the Republic of South Africa, 1997:** Article 24 - Everyone has the right - to an environment that is not harmful to their health or well-being; and to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that - prevent pollution and ecological degradation; promote conservation; and secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.



**Constitution of Saudi Arabia, 1992:** Article 32 - The State works for the preservation, protection, and improvement of the environment, and for the prevention of pollution.



**Constitution of the Republic of Slovakia, 1992:** Article 44 - The State looks after an economical use of natural resources, ecological balance, and effective environmental care.



**Constitution of the Kingdom of Spain, 1978:** Article 45 - Everyone has the right to enjoy an environment suitable for the development of the person as well as the duty to preserve it. The public authorities shall concern themselves with the rational use of all natural resources for the purpose of protecting and improving the quality of life and protecting and restoring the environment, supporting themselves on an indispensable collective solidarity.

### 13. Right to Procedures

The constitutions of some countries guarantee procedures to file applications, challenges and proposals, obtain replies and solutions, and represent, while in the constitutions of other countries rights have been granted to apply to government bodies for public or individual actions<sup>54</sup>. In the constitutions of other countries, the right to have solutions or timely reply has been guaranteed<sup>55</sup>. Besides the above arrangements, some countries also have the following provisions:



**Constitution of the Kingdom of Cambodia, 1993:** Article 39 - Khmer citizens have the right to denounce, make complaints, or file claims against any breach of the law by the State and social organs or by members of such organs committed during the course of their duties.



**Constitution of Korea-South, 1948:** Article 26 - All citizens have the right to petition in writing to any governmental agency under the conditions prescribed by law. The State is obliged to examine all such petitions.

### 14. Right to Remedy

The right to turn to court has been guaranteed in the constitutions of almost all countries. Following are some examples of constitutions with provisions of the right to remedy in case of the violation of environment-related rights:



**Constitution of the Republic of Albania, 1998:** Article 44 - Everyone has the right to be rehabilitated and/or indemnified in compliance with law if he is damaged because of an unlawful act, action, or failure to act of the state organs.



**Constitution of Argentina, 1853:** Article 43 - Any person shall file a prompt and summary proceeding regarding Constitutional guarantees, provided there is no other legal remedy, against any act or omission of the public authorities or individuals which currently or imminently may damage, limit, modify or threaten rights and guarantees recognized by this Constitution, treaties or laws, with open arbitrariness or illegality.



**Constitution of the Republic of Azerbaijan, 1995:** Article 60 - Every person can complain in the court of actions (or inaction) of State bodies, political parties, trade unions, other public unions and officials.



**Constitution of the Republic of Belarus, 1994:** Article 61 - Everyone is guaranteed protection of his rights and liberties by a competent, independent, and impartial court of law within time periods specified in law.

<sup>54</sup> Constitution of the Republic of Azerbaijan, 1995 Article 57, Constitution of Republic of Bulgaria, 1991 Article 45, Constitution of the Republic of Congo, 1992 Article 18, Constitution of the Republic of Croatia, 2001 Article 46, Constitution of the Republic of Chechen, 2003 Article 30, Constitution of the Republic of Chile, 1980, Constitution of the Republic of Egypt, 1971 Article 63, Constitution of Estonia, 1992 Article 46, Constitution of Greece 2001, Article 10, Constitution of the Republic of Hungary, 1949, Article 63, Constitution of Japan, 1946 Article 16, Constitution of the Mozambique, 1990 Article 80, Constitution of the Republic of Russia, 1993 Article 33, Constitution of the Republic of Slovakia, 1992 Article 27, Constitution of the Republic of Slovenia, 2000 Article 45, Constitution of the Kingdom of Spain, 1978 Article 29

<sup>55</sup> Constitution of Colombia, 1991 Article 23 and 87, Constitution of the Kingdom of Thailand, 2007 Article 59, Constitution of Ukraine, 1996 Article 40



**Constitution of Colombia, 1991:** Article 86 - Every person has the right to file a writ of protection before a judge, at any time or place, through a preferential and summary proceeding, for himself/herself or by whomever acts in his/her name for the immediate protection of his/her fundamental Constitutional rights when that person fears the latter may be violated by the action or omission of any public authority.



**Constitution of the Republic of Ghana, 1992:** Article 23 - Administrative bodies and administrative officials shall act fairly and reasonably and comply with the requirements imposed on them by law and persons aggrieved by the exercise of such acts and decisions has the right to seek redress before a court or other tribunal. Some Rights may be Restricted



**Constitution of the Republic of Chile, 1980:** For the conservation of the environment, law may be drafted by restricting some rights. People have the freedom to acquire all property other than that provided by nature to all.

## Finally,

There is a provision of fundamental rights in Chapter 2 of the Constitution of the Republic of South Africa, 1996. Treating this provision as a cornerstone of democracy of South Africa, this constitution confirms the protection of human rights, human dignity, equality, freedom and democratic values of all people. It has been said in article 72 of this constitution that the state shall respect, protect, promote and fulfill the rights mentioned in this article.

Article 38 of the Constitution of South Africa has provision that if the above rights are violated or are likely to be violated, one may turn to a court which may declare an appropriate remedy or rights. This article also has a broad provision according to which oneself or someone on their behalf or someone from an interest group or someone working for public interests may turn to the court.

Environment related provisions made in the Constitution of the Republic of Ecuador, 2008 are a new experiment for the world. This constitution has such provisions of rights that many countries have not thought of yet. The constitution provides rights to nature, which have been guaranteed to only human beings to date. For the government, communities and individuals, the constitution has also defined duties related to these rights. It has made the following arrangements for natural communities and ecosystems to exist, flourish and evolve within Ecuador. Natural communities and ecosystems possess the inalienable right to exist, flourish and evolve within Ecuador. Those rights shall be self executing and it shall be the duty and right of all Ecuadorian governments, communities and individuals to enforce those rights.

Similarly, the constitution has provision that individuals affecting the environment or the ecosystem shall have to compensate to the extent they have caused, contrary to the constitutional provision to date that individuals shall have compensation for loss caused by the effect on the environment. Many have perceived this provision as a codified concept of sustainable development. As a result, arrangements are in place to file cases in favour of the ecosystem. While filing a case, according to this provision, individuals or institutions shall not have to complain that they have suffered loss.

While drafting the new constitution of Nepal, therefore, it is necessary for Constituent Assembly members, experts, civil society and individuals to seriously contemplate on where they need to go. Article 16(1) of the Interim Constitution of Nepal, 2063 has provision that everybody shall have the fundamental right to live in a clean environment. Similarly, preliminary drafts of the Fundamental Rights and Guiding Principles Committee and of the Natural Resources, Economic Rights and Revenue Distribution Committee have provisions that all citizens shall have the fundamental right to live in a healthy, clean, sustainable environment. In this case study, provisions of environmental rights made in the constitutions of 35 countries have been presented. Therefore, taking those provisions as a base, the future constitution of Nepal shall have to grant everybody the fundamental right to live in a healthy, clean, sustainable environment.

Similarly, another right that the future constitution has to guarantee is the right of equitable access to natural resources, goods and services, and the equitable distribution of benefits obtained from the use of such environmental resources, goods and services. If the future constitution doesn't provide this right to all citizens as a fundamental right, poor people, women, Dalits, indigenous nationalities, Madhesi, religious minorities and communities will rarely obtain environmental justice<sup>56</sup>.

<sup>56</sup> For details, see Environmental Justice in the New Constitution by Narayan Belbase, Policy Brief 3, IUCN Nepal

In case of environmental depletion or damage, victims of such depletion or damage shall have to be compensated. The draft of the Fundamental Rights and Guiding Principles Committee has proposed that victims of environmental pollution and depletion shall have the right to compensation in accordance with law. This provision is not complete. Therefore, the future constitution should arrange provision under fundamental rights that victims of environmental pollution or depletion shall have the right to full compensation.

Environmental rights and participation rights should also be included under fundamental rights. Some question why separately include the right to environmental information after having included the right to information. If the right to environmental information and the right to participate in the environmental decision-making process are not granted as fundamental rights, the opportunity to use the right to live in a healthy, clean, sustainable environment will be limited. These rights in reality will contribute to the implementation of environmental rights.

Nepal should learn and copy the environmental conservation, environmental rights, equitable access to environmental resources, goods and services, sustainable use and equitable distribution of benefits obtained from such use, access to environmental information and the right to compensation derived from the constitutions of several countries mentioned in the study. We should also be inspired by the good provisions of those countries and their constitutions and Nepali constitution should be made as progressive as possible in terms of environmental conservation and in favour of present and future generations. In doing so, as mentioned above, all the Nepalese people will be ensured of environmental rights, equitable access to environmental resources, goods and services, sustainable use and equitable distribution of benefits obtained from such use, access to environmental information, and the right to participate in the environmental decision-making process as fundamental rights.

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