Environmental law and Justice: Perspective from Nepal

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Outline

• Nepal and its location
• Environmental Challenges facing Nepal
• Legal Framework on Environment
• Role of the Judiciary
• Major Environmental Decisions
• Gaps
• Way forward
Schematic Cross Section of Nepal

- High Himalayas
- Tibetan Plateau
- High Mountains
- Middle Mountains
- Siwaliks
- Terai
- Eurasia Plate
- Indian Plate

Source: WWF 2000
Design: RAConline
Why Nepal is Important?

- Its location in Central Himalaya
- Its rich history and civilization
- Transitional Belt:
  - From cold and near desert conditions in western part to moist conditions prevailing in the east
  - From near tropical condition in the south to cold dry Tibetan plateau in the north
  - From vertical gradient in the south to north - giving altitudinal variation and
- Rich biological diversity and endemism
- Prevalence of biological hotspots
Environmental Challenges

- Climate Change- extreme weather events
- Sustainable management of natural resources
- Rapid Urbanization
- Associated problems including solid waste management
- Natural events such as earthquake, floods etc.
Legal Framework on Environment

• New constitution and environmental rights
• Environmental Protection Act
• Sectoral laws on
• Forest and wildlife
• Agriculture
• Water
• Sanitation
• Soft laws on climate change
• Word file
Constitution and Rights

• Right to live in a clean and healthy environment
• Victim’s right to obtain compensation for any injury caused from environmental pollution and degradation.
• Right to food, right to be safe from scarcity of food, right to appropriate housing.
• Right to health, clean drinking water and sanitation
• Consumer’s right to obtain quality good and services
• DPSP: Focus on Sustainable development,
Role of the Judiciary

• Determined by
  – Constitutional position: Power of Judicial Review and power to entertain PIL
  – Constitutional culture in South Asia and the Nepali Judiciary
Major Decisions

• Can be analyzed by:
  – Areas Covered
  – Order Issued
  – Principles Invoked
  – Strategies adopted
Areas Covered

- Mining/Quarrying in Godavari region
- Protection of Churia Range
- Industrial pollution/discharge of effluent
- Heritage protection
- Protection of trust property
- Development and abidance to pollution standard
- Use of plastic bags
- EIA studies
- Closing and regulation of brick industries
- Dumping and management of insecticide/pesticide
- Starvation and supply of food
- Protection of national parks
- Community forest
- Development of hydropower project and sale of electricity
Declarations and Order Issued

- Enactment of EP ACT
- Declaration of Right to environment as fundamental rights
- Directives issued to develop pollution tolerance standard for air, water, and vehicular pollution
- Conduct of EIA
- Development of master plan for the protection of wetland
- Phasing out of diesel run two stroke auto rickshaws
- Banning of plastic
- Location of solid waste management sites
- Establishment of effluent treatment plant
- Protection of heritage site
- Appointment of inspectors
• Closure of brick factories near to resort, schools and dense settlement, installation of technology
• Compensation and free treatment of affected persons
• Supply of food and medicine in areas of mass starvation
• Stopping of quarrying and mining
• Protection of trust property
• EIA study on the construction of road that dissected the park
Principles invoked

- Polluter pays principle
- Precautionary principle
- Public trust principle
- No fault liability
- Principle of intergenerational equity
- Principle of sustainable development
- Invocation of Stockholm Declaration, Rio Instruments, Agenda 21, Convention on Biological Diversity,
- Human rights instruments
Strategies employed

- Issuance of Directives
- Fact finding commission/committee
- Constitution of Expert Committee
- Order for raising awareness
- Appointment of inspectors
- Issuance of continuing mandamus
- Balancing of competing interest
Gaps

- Hard cases and soft approach - hydropower projects
- Displacement issues
- EIA/SIA
- Infrastructure Development project
- Updating on Environmental matters
- Execution of judgment and follow up
- Punishment on Contempt may not be the right approach
- Continuing mandamus and governance issue
- Harmonizing environmental rights and other rights
Way Forward

• Environmental governance Judicial redressability issue
• Capacity building challenges
  – Comprehensive environmental planning of the country
  – Conservation of natural resource for sustainable development- land, water, and forest through harmonized laws
  – Regional approach on regional issues- conservation of the Himalaya system
  – Common approach to unresolved international issues
• Recognizing candidate principles- Payment for the ecosystem service, common but differentiated responsibilities
• Giving restorative orientation to environmental justice- mitigation and adaptation measures
• Addressing Causal relation issue in climate change adjudication and the need for anti-actus approach
• Evolving regional approach to environmental justice
Way Towards Evolving Regional Approach on Environmental Justice

• Patronizing community initiatives. Support community, its identity and focus on community empowerment
• Focus on prevention
• Micro view helps to find solution: Local people know more than outsiders/donors
• Hostile the terrain the more complicated the problems and challenges- call for multiple solutions
• Conflict is the result of marginalization in inequity in resource distribution