

3.1 Development-induced Destruction: A Consequence of Neglect Environmental Impact Evaluation

Environment Protection Act, 1997 makes Environment Impact Evaluation (EIA) compulsory for any development activity related to the environment. EIA, environmental rules and laws are not against development; they are for the promotion of environmentally sustainable development. Here, one may ask: What is an EIA? An EIA is a process of scientifically addressing the environment in the course of physical development. An EIA defines the systems, from biological to ecological, in the course of development that protects the sustainable development and ownership of offspring. This focuses on sustainable and environment-friendly development.

There are enough laws and rules regarding EIA in Nepal. Development activities carried out by the developed countries have shown the destruction caused by such activities when these laws are not implemented effectively. Three Gorges Dam of China is a classic example of the consequences a country has to face when development activities are undertaken without carrying out an EIA. Considered as the world's largest hydropower station in terms of the installed capacity, the dam was envisioned in 1919. Mao Zedong even wrote a poem about the dam in 1956.

Construction of the dam began in 1994. Its completion in 2006 was taken as a huge achievement and celebrated with much fanfare. However, more than 1.3 million people were displaced even before

the dam was filled with water. Thousands of villages were inundated and flooded. Physical and biological destruction caused a biological crisis. Three Gorges Dam has caused a serious problem for the Chinese government, just like Tibet and Taiwan. The dam was constructed without considering the environmental impact and neglecting the recommendations of environmental experts. This example is representative of the recent physical development taking place in Nepal. Nepal will have to pay a heavy price in terms of the environment in the future if this issue is not timely addressed.

Ministry of Forest and Environment and Environment Protection Council was established in Nepal in 2048 BS and 2049 respectively. The Government of Nepal issued the National Environmental Impact Assessment Guideline in 1993 and the Environment Protection Act and the Environment Protection Rules in 1997.

Article 30 of the Constitution of Nepal, 2015 guarantees the right to live in a clean and healthy environment. Sub-article 2 of the same Article ensures the right to obtain compensation, in accordance with the law, for any injury caused by environmental pollution or degradation. Further, Article 37, under the Fundamental Rights section, guarantees the citizen's right to housing. Article 37 (1) provides for the citizen's rights to adequate housing while Article 37 (2) pro-

hibits eviction of citizens from their residence except in accordance with the law.

Background

Udaypur district falls under Province 1. Covering the Inner Madhes area from the Mahabharat Hill

Range in the north to the Chure Range in the south, Sunkoshi River separates this district from Okhaldhunga, Khotang, Bhojpur, and Dhankuta district in the north and the east. The Chure Range separates Udaypur from Siraha and Saptari district. Divided into hills and Inner Madhes region, the district has a rugged topography. The district is covered by hills with a steep slope and has settlements with a low population. Plainland lies between the foothills of the Mahabharat Range and the Churiya Range whereas dense forests cover the southern boundary. The district covers an area of 2063 square kilometers. In terms of topography, the district consists of high hills, low valleys, small valleys (plateau), and Tarai plainland. The district comes at the 20th place in terms of area in the whole of Nepal and is the fourth largest district in the Province 1.

Tarai and Chure region cover six percent of the district with elevations up to 360 meter, Inner Tarai 52 percent and Mid-hill 42 percent with Chittretham peak as the highest point at an altitude of 2310 meter. More than 60 percent of the high and middle hills, which have a complex and weak physical structure, consists of at least 30 steep slopes. These slopes are prone to landslides. Earthquakes of 1934, 1988 and 2015 left cracks in these slopes. They are at risk of collapse at any time due to the pressure created by water that seeped inside these cracks and road construction. People living at the settlements below areas are also at high risk because of this.

Steep slopes of the hilly areas of the district are prone to flood and land-

slide. Among these, Tamlichha, Dumre, Baraha, Pokhari, Iname, Siddhipur, Aaptar and settlements around these areas are more at risk. At the national ranking of risks, Udaypur stands at 42nd place in terms of the landslide, 16th in terms of flood and 36th in terms of overall disaster. The district is surrounded mainly by Bhojpur and Khotang and some parts of Okhaldhunga from the north, mostly Sindhuli from the west, Siraha and Saptari from the south and mostly Sindhuli and some parts of Dhankuta from the east. These nine districts form borders of Udaypur district, which is the second highest in terms of maximum districts surrounding a district in Nepal. Currently, there are four municipalities (Triyuga, Chaudandigadi, Belaka, and Katari) and for rural municipalities (Rautamai, Udaypurgadhi, Tapli, and Limchungbung) in this district.¹

Potential Land-erosion Area

Since almost 60 percent of the area of the district is covered by hills, there are mostly steep slopes. Much of the area of the district is landslide prone as the land-conservation and structure are complex and weak. Moreover, the haphazard road construction carried out in the name of development without conducting an EIA is making the situation worse every year. As much of the area is hilly, the loose soil from the top surface flows towards the lower areas. This has caused flooding, washing away of land by the river, and rapid increase of the riverbed.

According to statistics, riverbeds in the Tarai region of Nepal increase by 15 cm on an average every year. However, it is estimated that the riverbeds are rising by 1 m in Udaypur. If the riverbeds continue to rise by this level, in a few years the rivers will make their way to areas of human settlement, farming land and mounds may be seen in areas where the river flowed before. Land productivity of

1. The article "Udaypur District and Natural Disasters" written by Chief District Officer Dhruba Bahadur Khadka and published in the "Milan Smarika: 2019" by Karmachari Milan Kendra

the district has been decreasing because of the gorges formed in many places by the flow of the topsoil from the hills and the landslides. This is adversely affecting the livelihood of the local people. The lower belt of the Chure region suffers the most from landslide and burying of lower areas by the accumulation of soil deposit. Every year, many tons of sand soil flow downhill from the Chure hills and bury nearby lower areas. Similar problems have been created by the soil flowing from the Mahabharat hills.²

Road Condition in the District³

The total length of road: 1689 km

1. Belaka Municipality has road length of 257 km, of which 20 km is black-topped, 147 is earthen and 90 km is graveled.
2. Chaudandigadhi Municipality has 220 km road, of which 42 km is black-topped, 102 km graveled and 76 km is earthen.
3. Triyuga Municipality has 370 km road, of which 45 km is black-topped, 77 km graveled and 248 km is earthen.
4. Katari Municipality has 281 km road, of which 50 km is black-topped, 58 km graveled and 173 km is earthen.
5. Udaypurgadhi Rural Municipality has 312 km road, of which 22 km is black-topped, 192 km graveled and 120 km is earthen.
6. Tapli Rural Municipality has 69 km road, of which 2 km is graveled and 67 km is earthen.
7. Rautamai Rural Municipality has 416 km road, of which 9 km is graveled and 407 km is earthen.
8. Limchungbung Rural Municipality has 68 km road, of which 20 km is graveled and 48 km is earthen.

Objective of the Study

1. Publicize the condition of the road network of the district

2. Seek vigilance and legal measures to be adopted while expanding the road network
3. Bring out the implementation status of the provision to compulsorily conduct EIA in development activities
4. Explore the implementation status of existing laws regarding environment protection
5. Support the government to be accountable for the situation of families displaced by road and help to find solutions
6. Inform about the government's investment in roads and their use
7. Discourage the irresponsible activities taking place in the name of development

Significance of the Study

Nepal's laws make it mandatory to conduct an EIA before carrying out development activities. Additionally, the Council of Ministers prohibited using machines in the construction of small roads, except in the Projects of National Pride, and decided to handover the construction of these roads to local people. The government seems to have taken this decision to minimize the damage caused by the shaking of the ground when operating the heavy machinery in the hilly areas the subsequent soil erosion and also to create employment opportunities. It is also incumbent upon the government to implement this decision.

The haphazard use of bulldozer in road construction has put village/settlement at high risk of landslide. Some have already been displaced. Despite such a situation, the government agencies have not been accountable. Failure to find a solution to this problem is reflective of the government's irresponsibility. This study attempts to make the concerned agencies accountable to conduct EIA on a mandatory basis in the future.

2. Profile of Local Levels: 2017 published by District Office of Central Bureau of Statistics, Udaypur
3. Profile of Local Levels: 2017 published by District Office of Central Bureau of Statistics, Udaypur, and dialogue with the planning section of all concerned local levels

Methodology of the Study

1. On-site Visitation, Observation, and Monitoring
2. Interview (Families displaced by landslides, local representatives of concerned local level, and concerned agency)
3. Resource Materials (Development of EIA Process in Nepal, news, articles, op-eds, photographs related to landslide, and laws and commitments made by the State)
4. Observation/Collection by the concerned agency
5. Study of secondary resources

Limitations of the Study

1. This study focuses on the use of bulldozers during the development activities in Udaypur and the situation led by it.
2. The study seeks solutions to the misuse taking place in the name of a road network.
3. It is related to the damage caused by the expansion of road networks to people's land and house.
4. An effort has been taken to analyze the implementation status of laws, policies, and programs made by the government.
5. Information was received from both primary and secondary sources for the study.
6. Statements of concerned agency and stakeholders have been included to further clarify the condition of roads.

Introduction to the Problem

Locals of Khanbu of Triyuga Municipality, Siddhipur of Chaudandigadhi Municipality, Mainamaini of Belaka, Lipatar, Mayankhu, Sirese of Katari always worry about the disaster brought by heavy rains. The situation of locals of Aaptar, Dilbir of Rautamai Rural Municipality, Dumre, Berrai, of Udaypur, Okhne, Thanagau of Tapli and Baraha, Balmata of Limchunbung is no different. That is why they wish for light rainfall

that is just enough for irrigation. Pushpraj Khadka of Khanbu, Triyuga Municipality-15 says he fears that a heavy rainfall might sweep away his house. After his house was hit by a landslide caused by the Gaighat-Diktel Road Project, he sends his children to his relatives even if there is a slight rainfall. All 24 households in the area face the same problem.

Due to competition in development activities, roads of rural areas in Udaypur have reached such a situation that they cannot be used anymore. The local people are the ones bearing the brunt. The tendency of the representatives of the local governments to work for the immediate results without considering the long-term effects have rendered these roads useless. Moreover, road construction by haphazardly using bulldozers under the influence of financial gains, nepotism, and favoritism has severely affected the environment. Furthermore, road constructions displacing people in the hilly areas in on the rise. If this problem is not identified and addressed timely, it will destroy houses, lands and displace people; there is also a possibility of human lives being lost.

Lives of people have been devastated after their house was hit by landslide brought by the roads constructed both below and above their house. The locals seek safe refuge fearing rain when they see gloomy skies and dark clouds. When there is rainfall, they run to their neighbors and relatives to save their lives while some are compelled to stay at their house risking their lives.

Severe effects of haphazard road construction using bulldozer are being seen. The local levels have been using heavy machinery everywhere in the name of development activities. Though road construction should pass through various levels and sectors according to provisions, the locals are suffering as the projects are accessible only to civil employees, powerful and local representatives. The roads constructed without any prior study and

plans are slowly heading towards destruction. Many have lost their lives because of these dangerous roads.

The government has made provisions requiring feasibility study, EIA, followed by the Detail Project Report (DPR) to be conducted during road construction. However, the local level representatives have neglected these provisions and haphazardly bulldozed the hills. As a result, roads of all eight local levels in Udaypur have been rendered useless while the settlements nearby the roads are also at risk of landslides. Many have been displaced. The number of people getting displaced and losing lives due to floods and landslides is also increasing.

Siddhipur, Chaudandigadhi of Chaudandigadhi Municipality, Mainamaini, Katunje Babala of Belaka, Jalpa Chilaune, Saune, Khanbu of Triyuga, and Limputar, Hardeni, Mayankhu, Sirese, Lekhani of Katari are at risk of landslide due to the road built without conducting an EIA. Similarly, Aaptar, Pokhari, Bhuttar of Rautamai Rural Municipality, Dumre, Barre, Tabashree of Udaypur-gadhi, Okhle, Thanagaun, Iname of Tapli, and Balamta, Tamlichha, Banshbote, Jate of Limchungbung are also highly prone to landslides.

Number of Displaced People

The development activities conducted without an EIA have displaced many people in Udaypur district. 411 households were displaced by the flood/ landslide induced by the incessant rainfall of July 9, 2019 in the district. Property worth millions of rupees were lost. Three people died while 13 people were injured. Rana Maya Magar, 55, of Rautamai Rural Municipality died while she was sleeping when a landslide buried her house on July 15, 2019. Data of District Administration Office, Udaypur shows that Aryan Sunuwar, 14, of Rautamai-7 died

when the lake formed by the blockage of Chaudiya River of Murkuchi was drained. The road above the river had caved in and blocked the river. Floods/landslides had completely damaged 428 houses in the district while 541 houses suffered minor damage. 345 houses are still at risk. Likewise, data shows that there was a loss of 3172 cattle, 21 fishponds, and crops belonging to 546 households.

Floods/landslides have caused major damages to the public physical infrastructures in the district. 41 schools were completely damaged while 16 are at risk. Similarly, 121 road and culverts, five bridges and suspension bridges, 41 drinking water sources, four health posts, five community buildings, two ward office buildings, one police beat, 37 irrigation canals, five peltric sets and hydropower, dams in 48 places also suffered damages. Likewise, the washing away of land by flood occurred in 32 places whereas two places were inundated. One telephone tower and nine other towers also suffered damages.⁴

Road Damage at Local Level

The Four Rural Municipalities have suffered the most road damage. It has been estimated that 110 million rupees is required to make the 27 rural roads operational. 522 km of various rural roads, except the three main highways (Madan Bhandari, Siddhicharan and Sagarmatha), can only be used after repair since they were constructed without conducting an EIA. The repair cost is estimated to come around 106 million rupees.

The estimation of the repair cost of the damaged roads was taken following a joint monitoring of the District Disaster Management Committee, representative and chief of the concerned Municipality, media persons, and a technical team. Among those damaged roads, six roads with a stretch of 172 km connecting Tapli

4. Profile of Local Levels: 2017 published by District Office of Central Bureau of Statistics, Udaypur, and dialogue with the planning section of all concerned local levels

Rural Municipality to other areas require 51.5 million rupees. Six roads with a total length of 125 km connecting Limchungbung Rural Municipality to other areas require 40.5 million rupees for repair.

Similarly, the repair work of eight roads with a distance of 133 km in Rautamai Rural Municipality is expected to cost 8.5 million rupees. Among the Rural Municipalities, Udaypurgadhi requires the least repair cost of 2 million rupees to make eight roads with a distance of 92 km operational again.

70 km stretch of the Gaighat-Murkuchi-Khamare-Kolbote-Puwarebhanjuang-Majhkharka-Baraha section of Limchungbung and Rautamai Rural Municipality that connects to the district headquarters is in the worst condition. 30.5 million rupees is estimated to repair this section. Preliminary estimation showed that 20 million rupees is required to repair the 40 km stretch of Beteni-Rupatar road section that connects to Rupatar of Rapli Rural Municipality. Likewise, the repair of Beteni-Sorong-Rupatar (40 km) section and Nunthali-Okhle (30 km) section of the same municipality is expected to cost 5 million and 10 million respectively.

Likewise, the repair of Majhkharka-Jaate (19 km) that connects to Limchungbung Rural Municipality is expected to cost three million rupees, Balamta-Saborte (17 km) three million rupees, Puware-Dilwir-Majhkharka (30 km) five million rupees, Bhuitar-Lafagaun (16 km) two million rupees, Puware-Khyatung-Ghotlighari one and a half million rupees and the repair cost of Nepaltar-Swarge (10 km) that connects to Udaypurgadhi is estimated to come around 500,000 rupees while the repair of Katar-Jaruwa (15 km) is estimated 300,000 rupees. There are landslides in at least 100 places along the Beteni-Nunthala-Rupatar road section of the Tapli Municipality. The main reason

for these landslides is road construction without carrying out an EIA. A large amount is expected to cost for the repair since foundations need to be made from the base at these places.

Among the municipalities, nine roads in Belaka, seven in Katari, 54 in Triyuga, and nine in Chaudandigadhi require repair. The estimated cost for the repair of these roads is 35.5 million rupees.⁵

Damage Caused by Flood/Landslide

Two people were killed and four injured by the flood/landslide of July 15, 2019. The incessant rainfall from July 9, 2019 to August 19, 2019 caused complete damage to 113 houses, partial damage to 40 houses while 92 houses are at risk, according to the data prepared by the District Disaster Management Committee. The same statistics showed that cattle belonging to 62 households died.

Similarly, 71 houses suffered complete damage in Katari Municipality, 168 houses suffered partial damage, 53 households were partially displaced, cattle belonging to 42 households died, fishponds of three households suffered damage, and crops of 285 households suffered a loss. The statistics also show that four houses suffered complete damage in Tapli Rural Municipality, three houses were partially damaged, 104 houses were at risk, cattle of 24 households died, and crops of 79 households suffered damage.

One person died while four people were injured by flood/landslide in Belaka Municipality. 32 houses suffered complete damage, 114 houses were partially damaged, 386 households were partially displaced, 2241 cattle died, 16 fishponds were damaged, and crops of 112 households were also damaged, according to government statistics.

Seven houses were completely damaged in Limchungbung Rural Mu-

5. The Record of the District Administration Office, Udaypur prepared on the statistics provided by the District Disaster Management Committee, 2019

nicipality, 38 houses were partially damaged, and 58 houses were at risk. One person was injured in Chaudandigadhi Municipality while nine houses suffered completed damage, 31 houses were partially damaged, and 803 cattle died. Likewise, one person was injured in Triyuga Municipality. The flood/landslide caused completed damage to 78 houses, 98 houses were partially damaged, 21 households were partially displaced, 90 houses were in danger, two fishponds were damaged, and 70 cattle died. Udaypurgadhi also suffered damages. Three persons were injured while 115 houses were completed damaged and 81 households were partially displaced, according to statistics.⁶

Damage to Public Property

The severe effects of climate change are being seen. There is incessant rainfall for a week during the rainy season while the rest of the period the weather is dry. This pattern is on the rise. Haphazard road construction without an EIA, stone quarrying, deforestation, along with natural disasters have increased landslides in the hilly areas. Roads constructed by digging hills in the name of development has added more risks.

Not only the villages/settlements in the slopes, but also drinking water projects, health posts, schools, and other physical structures that have been constructed with proper plans are at high risks of a landslide. The road constructed by Gaighat-Diktel Road Project has caused damage to two buildings of Sangkali Basic School Ratmate in Triyuga Municipality-15. The road constructed by the project below the school building has rendered two buildings and a toilet prepared at the cost of 2.35 million rupees useless. The walls of the school building have started caving in. despite the impending

danger, the students are compelled to study in the school for lack of another building.

Similarly, Pashupati Secondary School of Dandagaun in Rautamai-5 suffers the same situation. The road constructed below the school has caused landslide damaging a building.⁷

Flood/Landslide Causes Limchungbung to be Declared Food Crisis Zone

The incessant rainfall in the second week of July, 2019 inflicted huge losses. Already suffering from the damage caused by flood/landslide, the Limchungbung Rural Municipality was declared a food crisis zone. A meeting of the rural municipality, on 2076 Asar 31, made the announcement stating that the area was severely hit by natural disasters. Major Kumar Rai, Chairperson of the rural municipality, said that the decision to declare a food crisis zone came as the normal life in the area was affected by the damaging of the roads and the food shortage.

Two roads connecting the rural municipality to the bazaar were severely damaged, causing a food crisis in the area. There were landslides in four dozen places along the Gaighat-Mukurchi-Limchungbung-Halesi road section that connects Limchungbung to Gaighat bazaar and the Katari-Beteni-Tapli-Limchungbung road section that connects Katari bazaar to Limchungbung was also damaged by many landslides. There was a disruption in the transportation of food supplies due to the severe condition of the roads. The roads constructed without carrying out an EIA were washed away by the rainfall and hit by landslides.

Community Forest also a Factor

The over-exploitation of resources of the community forest is also a reason

6. Record of the damage caused by the incessant rainfall from July 9, 2019 to August 19, 2019, District Administration Office, Udaypur

7. Record of the damage caused by the incessant rainfall from July 9, 2019 to August 19, 2019, District Administration Office, Udaypur

for flood/landslide. The forest area has been decreasing day-by-day due to the motives of the community forest user groups to extract the natural resources rather than protecting the forest. The concept of community forest users group is good in itself. The government has been implementing the concept of community forest users group saying that handing over the responsibility of protecting the forest to locals is more effective. However, the activities of members of the users' group are leading to the loss of Nepal's forests. For example, Kung River Community Forest Users Group and Motiyahi Community Forest Users Group of Triyuga Municipality-2 have provided 156.1 hectares of forest area for the construction of Sagar-matha Airport. The District Forest Office estimated the felling of 35,541 small and large trees for the construction of the airport. The Department of Forest has asked for a detail record and study on July 30, 2019 following the preliminary report of the District Forest Office.

It is mandatory to conduct an EIA if a forest lies in the Project of National Pride. The Forest Office blocks the project if it finds it inappropriate. However, there have been no checks or whatsoever even when there is a road being constructed to collect timber from the forest and tractors are entering inside the forest. Over-exploitation of natural resources is taking place by constructing a road without conducting an EIA, geographical tests, and engineering survey.

Officials of users' groups have misused their power in some places. A dispute took place among the users' group after Chet Bahadur Karki, Chairperson of the Gaijeshwor Community Forest User Group of Bhalayadanda-1 constructed houses and huts encroaching the area of the community forest. Forest users accused Karki of taking money from 11 persons and allowing them to make settle-

ments inside the forest area.⁸

A local Yadav Raut said that they had planted trees in the same area just a few years before according to the yearly workplan of the community forest users group in a bid to stop landslides in the area. The locals have accused the users' committee of collaborating with the encroachers after their complaints remained unheard.

There is another example of how forest encroachment takes place under political protection. More than 10, 000 hectares of forest in Udaypur have been encroached. Out of 120,705 hectares of forest in the district, 10,279 hectares is encroached. According to the District Forest Office, Udaypur, migrants, landless squatters, victims of natural disasters have encroached the forest land taking advantage of the unstable political situation. Construction of physical infrastructure like drinking water, schools, temples, the road inside the forest area has also impacted the forest.⁹

Consequences of Unplanned Development

Nain Bahadur Rikham Magar of Rautamai Rural Municipality-8 left for Koilakhath, India. His two sons headed for Kathmandu. Family of Rikham were displaced after his wife Rana Maya Rikham Magar, 55, was buried inside his house in a landslide. A neighbor Lalit Magar said that Nain Bahadur had no other choice after the landslide buried his house. Lalit added that the landslide that occurred during the rainy season was triggered by the road constructed with an excavator above his house. Already 20-22 households of Nigale ward no. 5 were displaced by landslides earlier.

Hit Bahadur Katuwal said that his house was in danger of landslide since a driver, acting as if he was an engineer, used an excavator above his house to con-

8. Naya Patrika Daily, July 13, 2012

9. March 19, 2018, Annaupurna Post Daily

struct a road. “How can I live there when the mudslide coming from the upper road is burying my house while the road downwards is also pulling it down,” Katuwal said, “They brought the bulldozer to expand the mule track to a wide road, that caused a landslide and displaced me.” The road constructed in the discretion of the bulldozer driver, without any technician’s advice, has jeopardized the village situated above the road.

Bhupadhoj Magar of Triyuga Municipality-15 said that the local representatives have conceived the idea that development means construction of roads and dozer drivers are the engineers who can open road tracks anywhere. “The road construction gets approved even after opening tracks if the engineers are bribed.”

Constructed against the wish of the locals and in an unscientific manner, the roads built by dozer drivers, consumers committee, and contractors in Udaypur have turned into landslides. “The road construction takes place in the agreement between the consumer’s committee, contractors, and local representatives since the local’s attempt to block the construction failed. They used bulldozer without conducting any technical studies amidst the dispute whether to construct the road or not, which has ultimately resulted in burying of the village by landslides.” The Principal of the Sangkali School Bishnu KC said that the preference for road construction by all rural municipalities of the district, coupled with the use of bulldozer in road construction, has caused landslides in the village.

The roads build by using dozer are not scientific. The risk has increased since the municipalities and locals construct roads without taking the help of a technical person. There is comparatively more risk in Hills than Tarai as there is a tendency to buy a dozer if some amount is collected, haphazardly opening tracks, and ignore the directions of the local government. Gajendra Bahadur Khadka,

Chairperson of Rautamai Rural Municipality said that the bulldozer makes work quicker and should be utilized in a proper place and that the highhandedness of the contractors should be stopped.

Stakeholder’s Statements

Baldev Chaudhary, Mayor of Triyuga Municipality said that they carry out development works without conducting an EIA as it is a costly process. Mayor Gyanendra Shrestha of Katari Municipality expressed commitment to ban the use of bulldozers. He added that he would stop the trend of constructing roads at the end of the fiscal year and prohibit haphazard use of dozers. Chairperson of Rautamai Rural Municipality Gendra Bahadur Khadka said that the cost for an EIA would be enough to carry out large development work. He stressed that the locals wanted development and carrying out an EIA would reduce the budget for the locals.

“The budget of a rural municipality is already nominal, so carrying out an EIA with that amount means that no development work will take place,” Udhav Singh Thapa, Chairperson of the Tapli Rural Municipality said. Chairperson Man Bahadur Magar of Udaypurgadhi Rural Municipality said that the EIA process is only possible if the government provides a separate budget on the topic. Mayor Khagendra Rai of Chaudandigadhi Municipality said that there was no budget for road construction. He said that the EIA was not needed since the budget ran out on repairing and upgrading old roads.

Chief of the District Coordination Committee Khadga Bahadur Pariyar promised that new projects would be brought making EIA mandatory. He said that this policy would be made since local people faced many problems because of the effects of development works carried out without an EIA. Chief District Officer Dhruba Bahadur Khadka said that it is the duty of all levels of government to implement the provision brought by the



government as a State policy. Maheswori Rai, Central Member of the NGO Federation said that destruction in the name of development could not be accepted. She emphasized the implementation of the standards while carrying out development works.

What is an EIA?

Environmental Protection Act, 1997 defines “Environmental Impact Assessment” as a report on detailed study and evaluation to be prepared to ascertain as to whether, in implementing a proposal, the proposal does have significant adverse impacts on the environment or not, whether such impacts could be avoided or mitigated by any means or not. Section 4 of the Act prohibits implementation of the proposal without approval while Section 5 requires submission of proposals, accompanied by the EIA of such proposal, to the concerned agency for approval. Section 6 of the Act states, “On receipt of any proposal pursuant to Section 5, and while examining the Initial Environmental Examination or Environmental Impact Assessment report submitted with a proposal, if such a proposal does not appear to have significant adverse impacts on the environment, the concerned agency shall itself grant approval in respect of the proposal with the Initial Environmental Examination, and shall forward the proposal along with its opinion thereon to the Ministry, in respect of the Environmental Impact Assessment report.” The Ministry may grant approval to implement the proposal if the experts of the committee formed by the Ministry suggest that the proposal appears not to cause significant adverse impacts on the environment.

Power to Stop Implementation of Proposal

Section 18 (1) of the Environmental Protection Act, 1997 states, “In case any person carries out any act without getting a proposal approved under Sec-

tion 6 or any act contrary to the approved proposal, the prescribed authority may stop such act immediately.” Section 18 (2) prohibits any person or organization being stopped from implementing their proposal pursuant to Section 18 (1) from receiving any kind of compensation. Likewise, Section 18 (3(1)) provides for the release of such restriction if the proposal is submitted again following the steps laid out in Section 6.

Development of the EIA Process in Nepal

Physical development with financial growth and environmental degradation are issues that directly affect each other. Though activities of social, economic development brought financial growth and an increase in the quality of human life, over-exploitation of natural resources and a rise in pollution made human lives difficult. This made them feel the significance and necessity of environmental management. As a result, the United States of America enacted the National Environmental Policy Act in 1970 and made it mandatory to carry out Environmental Assessment before implementing development projects. Affirming that the use of this tool helped to keep a balance between development and environment, countries with high incomes included this tool in their national policies and laws in the 1970s and 1980s and used it widely.

Decisions made by various conventions, meetings and workshops at international and regional level this decade and agreements like Global Protection Strategy, Rio Declaration on Environment and Development, Agenda 21 – Global Program of Action on Sustainable Development, Johannesburg Plan of Implementation have also prioritized environmental protection and called upon countries to widely use this tool through laws and policies. Likewise, the World Bank and Asian Development Bank have been using this tool in development activities.

The trend of using EIA in development activities began in the 1980s in Nepal. Measures were adopted to reduce the adverse effects of development projects supported by donor agencies by assessing whether such projects may cause significant adverse impacts on the physical, biological, socio-economic and cultural environment. The Environmental Effect Study Project conducted by the Department of Soil Conservation and Watershed Management of the Ministry of Forest and Soil Conservation from 1981 to 1989 played a leading role in using this tool in Nepal.

This project helped to raise public awareness on the necessity, importance, and usefulness of environmental management and EIA. It also helped to internalize and institutionalize the EIA process in the Infrastructure Development Projects. Following the establishment of the Ministry of Forest and Environment in 1991 and the Environment Protection Council in 2049 BS, the Ministry of Forest and Soil Conservation was active in developing and implementing mechanisms that oversaw the environmental aspect before the implementation of any infrastructure development programs conducted in the forest area or passing through the forest area.

The EIA study reports have not been able to reach the implementation phase after getting approval in a timely manner. Not only does this increase the cost for implementation of the proposal, but it also adds managerial complexity, delaying the development activity. Considering the need for an EIA guideline to support the proponent, the reviewer and the decision-maker in integrating the environmental aspect, the Government of Nepal prepared and implemented the National Environmental Impact Assessment Guideline from 1993.

Sustainable development is possible through the interdependent relationship between economic development and environmental protection. The Govern-

ment of Nepal enacted the Environment Protection Act, 1997 and Environment Protection Rules, 1997 with the objective of maintaining a clean environment by reducing the adverse effects of environmental degradation on humankind, animals, plants, nature and physical objects. The government also aimed to protect the environment through proper use and management of natural resources. According to the Act and Rules, Initial Environmental Examination or Environmental Impact Assessment (IEE) needs to be carried out on the basis of the nature, capacity, and investment of the proposals (projects).

Schedule 1 and Schedule 2 of the Rules present the list of proposals that require IEE and EIA respectively. Section 4 of the Act provides that proposals requiring IEE and EIA should not implement/cause to be implemented without getting the proposals approved. Section 5 states, "A proponent who is desirous of implementing any proposal shall have to submit such a proposal, accompanied by the report on Initial Environmental Examination or Environmental Impact Assessment of the proposal, to the concerned agency for the approval of such a proposal."

According to Section 6, "On receipt of any proposal pursuant to Section 5, and while examining the Initial Environmental Examination or Environmental Impact Assessment report submitted with a proposal, if such a proposal does not appear to have significant adverse impacts on the environment, the concerned agency shall itself grant approval in respect of the proposal with the Initial Environmental Examination, and shall forward the proposal along with its opinion thereon to the Ministry of Population and Environment, in respect of the Environmental Impact Assessment report. If it does not appear that such a proposal may have significant adverse impacts on the environment, the Ministry shall grant approval to the proponent to implement such a pro-

posal. Moreover, the Rules has set a time period to approve these proposals.

Despite the enactment of environmental laws in Nepal in 1997, there were hardly any environmental policies. Though the EIA reports of some projects have been approved, most are working haphazardly. There is no integrated list of proposals whose IEE have been approved until now. This may be due to the Section 6 of the Act that gives concerned ministries the power to approve the IEE of the proposals presented before them according to the Schedule 1 of the Rules and also due to the lack of institutional provision to prepare an integrated list of proposals approved by different agencies. For example, Ministry of Forest and Soil Conservation grants approval to the proposals concerning forest and soil conservation, Ministry of Energy grants approval to the proposals related to hydropower production and transmission line projects while Ministry of Physical Infrastructure and Transport grants approval to the projects concerning roads and bridges.

The Environmental Protection Act, 1997 defines a “Proposal” as a proposal prepared in regard to the carrying out of such development work, physical activity that may bring about change in the existing environmental conditions or any plan, project or program which changes the land uses and states, “Proponent” means a person, governmental, semi-governmental or non-governmental agency or institution applying for approval of a proposal and getting approval for the implementation of such a proposal.” Despite the laws giving clear definition, specifying the time period required for the approval of a proposal, and delineating jurisdiction, EIAs and IEEs have not been timely approved and implemented due to the lack of internal capacity of concerned agencies and inter-agency coordination.

This increases the cost of the implementation of the proposal. Further, it creates managerial complexity, mismanagement in development activities,

makes the lives of normal people difficult and pushes the development further back. Only the development carried out by protecting the environment is sustainable and permanent. Thus, it is necessary to make the laws practical by amending them regularly and make the environment protection everyone’s concern. This will support the slogan of “Developed Nepal, Happy and Prosperous Nepali”.

Court Case and Decision

A joint bench of Justice Balram KC and Bharat Raj Upreti of the Supreme Court issued the following mandamus on August 6, 2010, hearing the case filed by Advocate Narayan Prasad Devkota against the defendants including the Office of the Council of Ministers in 2009 regarding the impacts caused by extractive activities in Baruwa River and Lama River of Udaypur.

1. The proponent and the government should strike a balance between economic development and industrial development and environmental protection while preparing the plan. They should be conscious of the need and importance of the clean environment in today’s 21st century. The economic development achieved at the cost of environmental destruction is unacceptable.
2. According to the Public Trust Doctrine, the Government of Nepal is a trustee only when it comes to the natural resources of Nepal and activities adversely affecting the environment should not be allowed just because one pays a nominal tax to the government without any legal basis regarding the natural resources of Nepal.
3. Environmental pollution actually takes place due to the State’s flawed socio-economic policy. If the Executive delays or falls behind in implementing its constitutional duty, the Court which is the guardian of fundamental rights of citizens will not stay silent. It is incumbent on the Court to complete

and implement its constitutional mandate to protect the environment.

4. Article 16 also creates the right to stay/remain in a noiseless environment while staying in a house or during the studies of the children, except in cases where there is a normal production of sound while enjoying one's right. If anyone creates pollution in a locality or affects another person in the name of carrying out business/profession or in the name of enjoying one's right, such acts become nuisance and violation of Article 16 occurs. Crusher industries cannot operate causing a nuisance.
5. The use and extraction of natural resources should not be viewed only in terms of financial benefits. Extraction and use of natural resources should be carried out by not causing any adverse effects on the environment.
6. The first and important thing to consider while allowing natural resources for business operation is to make sure that the nearby settlements, forest, environment, school, hospital and other sensitive organizations and people are not affected.

Conclusion and Recommendation

1. End the mismanagement going on in the name of development
2. Stop the haphazard use of bulldozers
3. Carry out projects only after conducting Environmental Impact Assessment
4. Implement the legal provisions on Environmental Impact Assessment

5. Strengthen the monitoring mechanism
6. Construct roads to benefit people rather than causing damage to their life and property
7. Start managing the roads
8. Give attention to self-employment and environment by managing for the participation of locals rather than using dozers in road construction

Reference Materials

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