



BRIEF REVIEW ON Climate Change RELATED LAWS AND POLICIES IN RELATION WITH MARGINALISED COMMUNITIES



Nepal entered the global environmental debates from the Stockholm conference of 1972. It joined the climate change policy discourse through its participation in the United Nations Conference on Environment and Development (UNCED) in Rio in 1992 and subsequent conference of party (COP) meetings. Nepal's environmental policy-making process has always been top-down and directed with international agreements and led by experts. Local people's needs barely matter while formulating policies and institutions in environment and climate change.¹

Nepalese Supreme Court has performed a significant role since 1954 (2010 B.S.) and the Supreme Court of Nepal has made several decisions and directive orders regarding the environmental justice. Nepal has largely taken a policy-based approach in addressing climate change and has not yet passed any binding climate legislation. In 2018, the Supreme Court of Nepal directed the government to pass a national climate law.²

Generic highlight of prevailing laws and policies related to climate justice is mentioned hereunder:

Constitution of Nepal 2015 The article 30 (1) of constitution has provisioned 'every person shall have the right to live in a clean and healthy environment' as a fundamental right for the people. The victim shall have the right to obtain compensation, in accordance with law, for any injury caused from environmental pollution or degradation and the article shall not be deemed to prevent the making of necessary legal provisions for a proper balance between the environment and development, in development works of the nation.

Environment Protection Act, 2019 This Act includes provision for Climate Change Adaptation (CCA), and mitigation planning (Article 23-28). The adaptation plan must prioritize vulnerable group such as women,

person with disabilities, children, senior citizen, economically disadvantage communities, and those in vulnerable geographical areas. However, making adaptation plan is not mandatory.

The Act has the provision of an environmental protection fund to manage climate change and other environmental issues and also an arrangement for environmental protection and a climate change management national council. While the EPA 2019 aims to protect the environment for all citizens, it does not explicitly and adequately address environmental justice. To some extent, it respects the essence of environmental justice by applying penalties for environmental polluters and compensating the victims however,

it is rarely found implemented where polluters are made to take responsibility for the damages caused and to make payments for the negative consequences. For instance, Chure Rivers has been subject to rampant extraction of sand and boulders. This excessive extraction and mining have had adverse impacts on the river ecosystem and the communities residing along its banks. The poor and marginalized people were severely affected by the flooding as the river course changes due to the excessive extraction. There have been instances where fines and penalties have been imposed on individuals and companies who have been found to be guilty of illegal extraction. However, the slow judicial process and nexus of those individuals and companies with political powers have made the legal action ineffective³

Forest Act, 2019 Primarily this act was formulated and enacted to guide the management of the various regimes of Nepal's forests. Provisions of the Article 44 are related with climate change as the Act describes the use and distribution of dividends derived from Climate Change Adaptation and, storage and mitigation of carbon emission; the management shall be made as determined by the Government of Nepal.

¹ Ghimire, S. (2011). Climate Justice: Bottlenecks and opportunities for policy making in Nepal. Kathmandu: South Asia Institute of Advanced Studies

² Advocate Padam Bahadur Shrestha vs Prime Minister and Office of Council of Ministers and Others, Case No. 074-WO-0283, Supreme Court of Nepal, 25 December 2018 (2075/09/10 BS).

³ <https://nepalitimes.com/multimedia/hiding-their-head-in-the-sand>

Local Government Operation Act, 2017

The Act has an explicit disaster management provision, environment conservation and protection, land management, and natural resource management in joint responsibility of the federal and provincial government. However, special attention to climate change risk, and required adaptation intervention measures are overlooked by the Act. Local Governments (rural municipality/municipality) have an environment and disaster management unit but due poor capacity, timely and effective response for the vulnerable communities (poor, dalit, marginalized, and indigenous people) during the disasters are challenging.

Disaster Risk Reduction and Management Act, 2017

is a legislative framework for managing disaster risks, including those exacerbated by climate change. It emphasizes preparedness, response, and recovery strategies. Components of climate-fragility resilience are not coded in the Act; however, provision of disaster and emergency fund and committee can resolve the crisis of post disaster relief and response activities.

Environment Protection Regulations, 2020

provides a comprehensive framework for environmental management and protection, aligned with the EPA Act, 2019. Key features include Environmental Impact Assessment (EIA), Public Participation (public hearings) and Environment Protection Fund (including climate change). Gender perspective has been integrated in the regulations but lacks the intersectionality (that acknowledge that discrimination occurs in the multiple layers) perspective. This linear perspective mostly encourages the participants of the higher/middle class women and excludes the Dalit, indigenous and landless women. The regulation is silent about the mobilization of funds in climate change related issues.

Solid Waste Management Rule 2013

deals with promoting proper waste segregation, management, sustainability,

and disposal practices contributing to the reduction of Greenhouse Gas (GHGs) emissions for mitigation of climate change.

National Climate Change Policy, 2019

represents Nepal's primary climate change document (which repealed the National Climate Change Policy, 2011) that aims to integrate climate change considerations into all policies, strategies, plan and programs at levels and sectors of government in order to adopt low-carbon development and promote a green economy. This policy mentions that the concerns of women and indigenous people shall be addressed in climate-related matters. It further specifies agriculture based adaptation programs will be conducted by targeting poor, marginalized, landless, indigenous people and vulnerable households, women, and persons with disability. It also mentions the appropriation of budget targeted to women, minorities, backward class, climate change affected area and vulnerable community will be ensured.

However, the policy is not informed by the specific problems, challenges and opportunities faced by different groups of women and men in the context of climate change. Even though the GESI policy (inter-thematic area), mentions the different vulnerable groups to be addressed, the sectoral policies within it considers the community/citizens as a monolithic group and does not take into consideration their historical discrimination, situational vulnerabilities, and hence the differential impacts of climate change on these groups. This can pose problems in addressing the GESI issues and opportunities within/



and through the sectoral policies which might further isolate the GESI policy and strategies. The policy (GESI chapter) focuses on addressing the vulnerabilities of women and marginalized groups but does not consider these groups as contributors and agents of change⁴

National Forest Policy, 2019 envisions managing the forest, conservation areas, watersheds, biodiversity, flora, and fauna in a sustainable and participatory approach. The goal and objectives of this policy have not prioritized the issues of climate change. However, forestry sector is one of the first sectors in Nepal to have formulated sectoral GESI policies. Key forest policies such as the Forest Sector Gender and Social Inclusion Strategy 2008; Community Forestry Development Program Guidelines 2014; Forest Sector Strategy 2016–2025; the most recently amended National Forestry Policy 2019; Gender and Climate Strategy; and Gender Equality and Social Inclusion Strategy and Action Plan of Forest and Environment Sector 2020–2030 all integrate GESI to some degree and have explicitly defined the beneficiary groups in terms of gender, caste, ethnicity, and geography.⁵

Nepal National REDD+ Strategy 2018

mentions GESI in two of its objectives; to increase livelihood assets and diversify employment opportunities of women and indigenous peoples, Madhesis, Dalits, local communities and forest-dependent poor and strengthen governance, gender equality and social inclusion of the forestry sector to improve and harmonize policy and legal frameworks, in line with national and international requirements

⁴ Shrestha, S., & Gurung, D. D. Gender and Social Inclusion in Climate Change

⁵ Goodrich, C. G., Gurung, D. D., & Bastola, A. (2021). State of gender equality and climate change in Nepal.

and standards, to harness carbon and non-carbon benefits. But it does not mention how the social position of women and socially excluded groups can be strengthened to benefit from REDD.⁶

National Land Policy, 2019 is a milestone in addressing longstanding problems such as recognition of informal tenure and equitable access to land for landless, small-holders and informal settlers in Nepalese society. The policy has recognized environmental preservation and climate change risk mitigation as an approach for enacting the policy, but it does not clarify how the implementation will help to minimize the risk of climate change.

National Environment Policy, 2019 aims to mainstream pollution control and other environmental issues. It prioritizes environmental justice by applying penalties for environmental polluters (principal polluters must pay) and compensating the victims. However, provisions on climate change and interrelated issues of vulnerability are lacking in the policy.

Second Nationally Determined Contribution (NDC) 2020 The second NDC of 2020 addressed the shortcomings of the Intended Nationally Determined Contribution (INDC) 2016 as it made specific reference to gender and further made explicitly gender sensitive targets both in the mitigation and adaptation components by identifying GESI as a crosscutting area. Nepal's Second Nationally Determined Contribution mandates "equal access to women, children, youth, Indigenous Peoples and marginalized groups during participation, decision-making and benefit-sharing," and that by 2030 all local governments prepare and implement climate adaptation plans "focusing on women, differently abled, children, senior citizens, youth, and Indigenous Peoples.

Further, it also called for the integration of GESI in the NDC targets and development of an action plan for its

integration. Significant efforts are being made to mainstream GESI particularly in areas such as clean energy generation, mini and micro hydropower, sustainable forest management, and promotion of sustainable agriculture. Some actions in this regard include the setting up of quotas for women and marginalized communities in community user groups, including at the executive level, targeting them for training and, in some cases, for financial and in-kind support.⁷

National Adaptation Plan 2021-2050 sets out short-term priority actions to 2025, as well as medium-term priority programs to 2030 and long-term adaptation strategic goals to 2050 that aim to assist Nepal to better integrate actions and strategies to address climate risk and vulnerability in development planning and implementation.

It recognizes women, Indigenous Peoples, and persons with disabilities as "vulnerable to current and projected climate hazards." The objectives reference vulnerable communities, people, populations, and groups, and highlight that reduced access to safe drinking water increases the climate risk of "vulnerable groups," including persons with disabilities. The objectives also reference engaging with Indigenous Peoples in participatory watershed conservation, Indigenous Knowledge-centered tourism, gender equality programs, and people-centered early warning systems.



Nepal long-term Strategy for Net Zero Emission, 2021 states that Nepal aspires to achieve a net-zero emission of greenhouse gases by 2045, with an emphasis on maximization of clean energy (hydropower, solar energy, and biogas, among others); decarbonizing the transportation sector; encouraging sustainable agriculture; increasing and maintaining forest cover; and enhancing international cooperation on climate change mitigation and adaptation, among other things.

Climate Resilient Gender Strategy, 2018 this strategy to ensure that gender considerations are systematically integrated into climate change planning and implementation. Its three objectives include: i) To enhance the resilience of women and marginalized groups to climate impacts ii) Increase women's participation in climate decision-making processes and iii) To Promote gender-responsive climate actions that address the specific needs of women and marginalized groups. However, gaps are reported during practice/implementation. The key factors behind this ineffective implementation are inadequate roll up of the strategy to key stakeholder's primarily provincial government, local government and civil society organizations and lack of systematic collection and analysis of the gender-disaggregated data, which is crucial for monitoring progress and evaluating the impact of the strategy. The former two government agencies are mandated to develop laws and policies. But due to the limited understanding on the deep -rooted patriarchal norms and cultural practices, these agencies will be able to clearly integrate to their laws, policy, and strategy.

⁶ Shrestha, S., & Gurung, D. D. Gender and Social Inclusion in Climate Change

⁷ Goodrich, C. G., Gurung, D. D., & Bastola, A. (2021). State of gender equality and climate change in Nepal.

GAPS IDENTIFIED BASED ON RAPID REVIEW

- Over the past decade changes can be observed in the development of different policies and legal documents relating to climate change. However, the formulated laws and policies are not adequate to ensure climate justice for marginalized people. More specifically no specific provisions are mentioned in existing legal documents which ensure/is legally binding climate justice and hence there is immediate need for a separate act related to climate change.
- There is no policy or legislative documents that ensures compensation for loss and damage resulting from climate change which also demands act that address this issue.
- A clear visible lack of institutional mechanisms is identified in policy or legislative documents mainly for the local level. Local Government Operation Act, 2017- has overlooked issues related to climate change. Existing laws and policies are flexible and don't have mandatory provisions for translating into actions

In summary, these above-mentioned gaps emerged while translating policies into practices at the implementation phase. There is the growing consensus among experts and stakeholders that this could be due to i) low capacity of the government agencies (i.e. human capital) ii) an inadequate knowledge and skill to identify and prioritize programs that tackle the underlying causes of injustice and marginalization iii) weak law enforcement and iv) competing legal provisions among three tiers of the government.

CLIMATE FINANCING STATUS

Nepal faces significant challenges in accessing and implementing climate finance despite having various policies, plans, and guidelines that establish funds and mechanisms to combat climate change. The country relies heavily on mainly international funding, including grants, loans, and technical assistance, to support its climate change initiatives from various sources.

KEY FINANCIAL MECHANISMS INCLUDE:

1. **Environmental Protection Fund:** Established under the Environment Protection Act, 2019, this fund is designed to manage climate change and other environmental issues. However, the allocation and disbursement of funds are often dependent on government budget allocations and donor responses.
2. **Disaster and Emergency Fund:** Created under the Disaster Risk Reduction and Management Act, 2017 this fund aims to provide resources for disaster preparedness, response, and recovery.
3. **Domestic Budget Allocation:** The government allocates a portion of its national budget every year through climate budget code. However, this allocation is often limited due to competing priorities and fiscal constraints.
4. Nepal has been a recipient of international climate finance through **UNFCCC mechanism**, including the Green Climate Fund (GCF), Global Environment Facility (GEF), and Adaptation Fund (AF) and others climate related international fund. These funds support projects related to climate change adaptation and mitigation.
5. Various **bilateral and multilateral sources**, such as the World Bank Group (WBG), Asian Development Bank (ADB), European Institution, and United Nations agencies, provide financial and technical support for climate-related projects in Nepal.

The financing provisions outlined in Nepal's climate change policies and plans are not legally binding. Although these documents set targets, goals and highlight the need for financial resources, they do not establish enforceable legal obligations for the government or other stakeholders to allocate specific funds for climate interventions.

Advocate Padam Bahadur Shrestha vs Prime Minister and Office of Council of Ministers and Others

An application on 2074/7/6 (23/08/2017) before the concerned authority to formulate a separate law dealing with issues of climate change.

Case No. 074-WO-0283, Supreme Court of Nepal, 25 December 2018 (2075/09/10 BS)

Summary: Climate change mitigation and adaptation by protecting the environment is the responsibility of the state according to the principle of Parens patriae.

Although Environmental Protection Act 1997 has made some provisions to address environmental protection along with climate change, as discussed, the provisions are inadequate regarding climate change mitigation and adaptation, hence, a separate consolidated law addressing climate change mitigation and adaptation needs to be drafted and implemented as soon as possible. In the meantime, while it is not enacted, since Climate Change Policy 2011, National Adaptation Program of Action 2010 and National Framework for Local Adaptation Plan for Action 2011 seem to have some working plans to address the effects of climate change, the writ of mandamus is issued directing adherence to those provisions.

PRELIMINARY POINTS OF DISCUSSION

- **Advocacy for separate Climate Change Act;** that ensures climate justice (keeping the most vulnerable in center), guarantees climate finance implementation, and has provision for loss and damage due to climate change
- **Inclusion of climate change action in Local Government operation Act 2017;** Actions for climate change need to be included in Local Government Operation Act, 2017