



**LEGAL SOLUTIONS FOR SUSTAINABLE
FUTURES IN SOUTH ASIA: HOW PRO
BONO CONTRIBUTES TO SDG
PROGRESS**



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Advocates for International Development (A4ID), founded in 2006, is a global charity that believes the law can and should be used more effectively to advance fair and sustainable development. A4ID aims to inspire and enable lawyers to join the global fight to eradicate poverty by advancing the United Nation's Sustainable Development Goals (SDGs). Through A4ID, the world's top lawyers provide free legal support to organisations, working to advance human dignity, equality, and justice. Its work has so far impacted over 130 countries.

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Report Cover Photo Credit: *Stephan Bachenheimer, World Bank Nepal*



NEPAL: CLIMATE ACTIVISM THROUGH PUBLIC INTEREST LITIGATION



In 2015, the same year that global leaders adopted the SDG agenda, Nepal was hit by the devastating Ghorka earthquake, in which almost 9,000 people lost their lives. Since then, the country remains at acute risk of environmental impacts, facing dangerous exposure to floods, droughts, and earthquakes; all of which are exacerbated by Nepal's climate-related coping capacities.¹ Accordingly, the country is considered among the world's most vulnerable to climate-related disasters.²

Concurrently, wholesale reforms to the national, political, and governance frameworks have presented interrelated, long-standing challenges and opportunities for climate action. For instance, 2015 witnessed a newly federated government system and constitution in Nepal, concluding a number of widespread reforms proffered following the Nepalese Civil War. With this new system, came an increase in public spending, rapid decentralisation, and the granting of extensive regional and local government autonomies, bringing opportunities for a more joined-up national development approach.

More broadly, Nepal inherited an impressive developmental trajectory from preceding successes under the MDGs. While not all were achieved, most had been partially completed by 2015. Priority areas for the SDGs were thus identified in relation to the country's growing rate

of urbanisation, its dependence on international remittances, the increase in digital technologies, and its high youth population.³

Given Nepal's reliance on both remittance payments and the services sector, the COVID-19 pandemic had a disproportionately severe economic impact on the country, stifling the tourism industry and reducing remittance inflows. As with many other developing nations therefore, progress toward the SDGs has been severely stunted since 2020, and by some estimates, the number of people in poverty in Nepal may even increase relative to the 2015 baseline.⁴ Despite this, according to latest data, the country displays no overarching negative SDG trends; progress is either stagnating or moderately improving, though significantly more work needs to be done if the SDGs are to be achieved by the 2030 target. One positive exception is that improvements to the availability of clean water and sanitation (SDG 6) across the population mean that this target is on track to be achieved.⁵

While the challenges facing Nepal are immense, the country holds great potential to build up more sustainable resilience and development measures under the new governance structure, and has been identified under UNESCAP's 2023 progress report as a regional pace leader in SDGs 11 (Sustainable Cities and Communities) and SDG 17 (Partnerships for the Goals). Given

the need for holistic engagement, particularly in building sustainable infrastructure for a country with one of the highest rates of urbanisation in

Asia,⁶ progress across these indicators represents a positive step for Nepal’s green and inclusive development.

POLICY LANDSCAPE

In achieving greater climate action for the country, a number of key policy challenges and developments have also emerged for Nepal in recent years. Of note are the series of new commitments that the country has made for encouraging climate adaptation and building resilience. These include:

CHALLENGES

Land Rights Enforcement

Despite protections in law on land ownership and control many communities are still unable to effectively exercise their land rights. Limited expertise on environmental matters, with very few environmental lawyers in the country exacerbates these challenges when seeking justice.

Exclusion of indigenous communities

Although indigenous communities have been conferred Adivasi Janjati status by the Nepalese constitution, the majority continue to be excluded from the cultural and political mainstream.

Heavy reliance on tourism

Given Nepal’s heavy reliance on tourism, particularly for communities along the Himalayan belt, the impact of climate change and receding glaciers compromises livelihoods as well as climate resilience.

DEVELOPMENTS

Political will

Recent years have seen an increase in government engagement on climate and environmental matters. For example, various ministries (primarily forests, environment, water, and tourism) have established cross-sectoral working groups on climate- and environment- related matters.

Climate Change Laws and Policies

Several recent developments, instigated by both the courts and the Nepali government (outlined below) have sought to encourage climate adaptation, renewable energy, and resilient infrastructure.

CHALLENGES

Overseas Investment

Whilst large-scale overseas investment offers opportunity for growth in Nepal, these often take place with little to no government oversight leading to challenges of minimal investor accountability and transparency.

Illegal timber trade

Illegal timber trade has seen the unregulated removal of natural resources and habitats from the Churia range, increasing risks of flooding and compromising agricultural security.

Overmining of river-bed minerals

In the absence of proper regulation, overmining of river-bed minerals is compromising the health and fertility of land, particularly in Terai.

DEVELOPMENTS

Civil Society engagement

Civil society actors have expressed willingness to work more closely on environmental and climate matters, especially those who traditionally work on fundamental freedoms and human rights (e.g.: Amnesty International)

SECTOR OVERVIEW: HYDROPOWER

In encouraging green and inclusive development, one particularly bright spot for the country is its burgeoning hydropower industry, which has staved off economic contraction in the industrial sector.⁷ This sector represents a core element of the country's pledge to achieve net zero by 2045, and is central to its climate action ambitions.⁸ The growth of hydropower in the country comes

amidst a high dependency on fossil fuel imports from India and the use of traditional biomass fuel for the majority of its energy needs, leaving Nepal vulnerable to issues of energy security and regional geopolitics.⁹ However, a study by the Asian Development Bank found that if Nepal could develop just one fifth of economic potential in its hydropower industry, it could boost GDP by 87% above the counterfactual, satisfy its growing energy needs,¹⁰ and selling excess energy back to India. This in turn, would enable significant

reductions in India’s own CO2 output, by an estimated 224,000 tonnes per day.¹¹

However, realising these benefits is not straightforward. In Nepal’s wet season, hydropower facilities produce excess energy due to an abundance of viable water supplies, while in the dry season, water flows are insufficient to meet demand.¹² While smoothening out this inefficiency is possible, a general lack of investment and continuing deficiencies in political administration mean that benefits are not being realised to their full potential. What’s more, is the prominence of extreme weather events in the country, whereby increased flooding and landslides have, and will continue to, cause damage to hydropower facilities, thereby reducing much-needed

generation capabilities and further undermining their viability for investment. Indeed, given that rising global temperatures are anticipated to greatly reduce glacier volumes in the Himalayas, the prevalence of climate risks is increasing, and the supply of flowing waters needed for sustainable hydroelectric energy generation is increasingly compromised.¹³

LEGAL DEVELOPMENTS

To mitigate the risks of climate change, build stronger climate resilience, and better protect the environment and natural assets, a number of recent laws and policy developments have been passed within the country. These developments demonstrate Nepal’s commitments to SDG 13.



Photo Credit: Marcel Crozet, International Labour Organization

RECENT LAW AND POLICY DEVELOPMENTS ON CLIMATE ACTION IN NEPAL

ENVIRONMENT PROTECTION ACT, 2019: Through an order of Mandamus, the Supreme Court in *Shrestha v. Office of Prime Minister et. al* (2017), prompted the Government to draft the Environment Protection Act (EPA) of 2019. The Act primarily consolidated and amended laws relating to the environment and incorporated the terminology of “climate change” in Nepali law. As a result, the Act better reflects Nepal’s commitments under multilateral climate change treaties and Article 30 of the Nepalese Constitution in national law.

FORESTS ACT, 2019: Also issued after the Supreme Court decision in *Shrestha v. Office of Prime Minister et. al* (2017), came the Forests Act 2019 which sought to amend and consolidate laws relating Nepal’s forests. Of note, are provisions relating to unclaimed timber, forest protections in development projects and land ownership rights.

DISASTER RISK AND MANAGEMENT ACT, 2017: Repealing a previous act from 1982, the Disaster Risk and Management Act 2017 was passed to ensure that national legislation would be more effective to deal with the Nepal 2015 earthquake. The Act established the National Reconstruction Authority (NRA) and emphasised the need to adopt the Sendai Framework and build disaster resilient infrastructure. Policies and projects were subsequently established for reducing the impacts of landslides, flooding, and other climate-related disasters.

In addition to the above-mentioned laws and guidelines, the Government of Nepal has also introduced other targeted policies and initiatives to prioritise climate action:

NATIONAL ADAPTATION PLAN (NAP): Nepal has been working on its NAP to outline strategies and actions to adapt to climate change impacts, particularly in sectors like agriculture, water resources, and infrastructure.

NEPAL'S LONG-TERM STRATEGY FOR NET ZERO EMISSIONS (LTS): In October 2021 the government published a new long-term strategy for achieving carbon neutrality by 2045. The strategy outlines possible net zero and clean energy trade scenarios to support in these commitments.

THE CLIMATE CHANGE POLICY, 2019: This new climate policy aims to guide climate-resilient development and increase adaptation efforts. The policy was also conceived as an inter-sectoral policy involving the Ministry of Forests and Environment, the National Planning Commission and various line agencies.

INTERNATIONAL COLLABORATION: Nepal has been making concerted efforts to work with neighbouring countries in the Hindu Kush Himalayan region to address shared climate challenges. As a result, initiatives such as the Koshi Basin Program aimed at enhancing transboundary cooperation in managing water resources, have been established. From a recipient perspective, Nepal has also become one of the biggest beneficiaries of the Green Climate Fund (GCF).

Nevertheless, whilst the Government of Nepal has paid increasing attention to the importance of climate justice in the country, competing interests for large-scale investment projects risk limiting state capacity to effectively oversee and enforce safeguards. As a result, there is a growing need for the legal community to support the country's climate ambitions: helping maximise on the opportunities that sectors such as hydropower offer, without compromising wider rights and environmental protections. Here the work of A4ID's in-country partner, Youth Empowerment in Climate

Action Platform (YECAP), highlights some of the ways that legal activists are helping to support climate action (SDG 13) across the country.

THE WORK OF YOUTH EMPOWERMENT IN CLIMATE ACTION PLATFORM

Youth Empowerment in Climate Action Platform (YECAP) is a platform for dialogue and information sharing amongst Nepal's youth population, allowing many young activists to play

a part in shaping the country's future.¹⁴ Today, a lot of these contributions focus heavily on climate action, driven by Nepal's sizable youth population and growing concerns amongst the younger generation of climate-related risks. Of note are the impacts that environmental degradation and climate change have already made: increases in glacial lake outburst floods (GLOFs) now pose severe risks to downstream communities; the once fertile plains of the Terai and Madhesh regions have become barren, owing to illegal timber logging and overmining; and a heavy

focus on energy and infrastructure investment lacks the environmental accountability needed to safeguard local community interests.

For YECAP, the need to protect the environment from climate related disasters requires a combination of environmental, social, and human rights based advocacy, particularly in empowering local communities, including indigenous populations, to have greater agency and authority over land use.

To promote green and inclusive development,

“The right to a clean and healthy environment is embodied in the Constitution of Nepal and a plethora of statutory provisions lend support to this right. However, the reality is that mining/ extraction operations often take place through an organised syndicate that yields considerable political influence. Government officials, as a result, are active co-perpetrators in the destruction of the environment. In keeping with this, refuge has been sought in the courtroom which has been successful to a certain extent”

YECAP

some of the ways YECAP has been progressing towards SDG 13 (and SDGs 14 and 15 through environmental lobbying), have focused on the importance of partnership working to raise awareness of climate justice issues. This has included work to build coalitions of support and action amongst Nepal's youth population, organising peaceful protests for climate action,

and working collaboratively with civil society organisations to develop public education initiatives. From a human-rights perspective, the group has also worked to lobby parliamentarians and parliamentary working groups on the nexus between climate law and human rights, and has been working with the National Human Rights Commission (NHRC) to bolster the authority of

“Review of Nepali land ownership and control patterns reveal that they inevitably turn on the axes of caste, ethnicity, and gender, despite protections in the law. Although indigenous communities have been conferred Adivasi Janjati status by the Nepalese constitution, most continue to be excluded from the cultural and political mainstream. As the predominant farmers for the country’s 30 million people, indigenous communities in Nepal are highly dependent on rain-fed agriculture and are acutely vulnerable to water-related stress. As a community, they are therefore disproportionately impacted by a changing and a rapidly warming climate”

YECAP

human rights bodies to address the climate crisis under their respective mandates.

More specific to the legal sector are the ways in which YECAP have been working with the legal community to raise awareness and build capacity for local communities on environmental matters. Through legal training programmes, local populations – specifically indigenous youth – have access to information and expertise on procedural rights. In turn, by adopting a ‘Training of Trainers’ approach, these individuals

“There remains tremendous potential for lawyers to get involved. In fact, Nepal doesn’t have environmental lawyers, save for one or two who litigate almost all cases”

YECAP

“Lawyers can get involved by actively advocating for communities that are going to be impacted by [large-scale investment] projects, ensuring that people are held liable for any transgressions made”

YECAP

are then able to disseminate teachings to a wider audience, maximising the outreach of public legal education initiatives.

Similarly, working alongside universities and educational institutions, robust curriculums have been developed on climate change education with discussions on topics such as: International Environmental Laws (including the Paris Agreement, UNCLOS, Kyoto Protocol and the Rio Declaration) and UN process (including

the UN Special Procedures Mechanism, the UNEA, and COP). Open source resources have also been developed through UNDP's Legal Advocacy/Academic Taskforce, charged with authoring legal reports on environmental law and climate change, including the most recent "Youth Climate Justice Handbook." However the organisation urges that there still remains ample

scope for lawyers to contribute further.

Below are two examples of instances where legal representation and advocacy has been key to protecting community interests and the environment in Nepal. Notably, the challenges and impacts made through these contributions are also explored.



Photo Credit: Narendra Shrestha

THE KHIMTI-DHALKEBAR TRANSMISSION LINE



Photo Credit: Accountability Counsel

From 2013 to 2017, Accountability Counsel and LAHURNIP (the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples) advocated on behalf of local communities and indigenous peoples in response to the Khimti-Dhalkebar 220 kV Transmission Line. The transmission line had begun construction in 2005, following funding secured by the World Bank two years earlier, and was developed in order to help transport electricity imports from India to Nepal.

However, the line was also designed and implemented without proper consultation with local stakeholders, and without any information or transparency on benefit sharing. On the contrary, no adequate compensation for those affected was made, notwithstanding concerns raised on the impacts of power lines to agricultural-based livelihoods, environmental degradation, and private land holdings, with banks refusing to provide mortgages on any land under the right of way. Consequently, more than 114,000 people were directly impacted by construction but unable to contribute to decisions made or exert their rights and interests.

CHALLENGES: In voicing these issues, peaceful protests from affected communities were held, but were soon met with police brutality. In seeking recourse under more official channels, LAHURNIP advocated for a suspension of project activities until all social and environmental impacts had been addressed, taking the matter to the Nepalese Supreme Court. However national attempts to resolve the matter proved fruitless.

To overcome these barriers to justice, LAHURNIP and local communities sought the support of Accountability Counsel (a US based organisation), and international routes were pursued instead with complaints filed directly to the World Bank's Inspection Panel. The complaint resulted in an action plan from the World Bank to encourage proper compliance with international best practice.

However, in 2016, when the project recommenced it still possessed the same deficiencies as before. Again protests were held, and again police violence ensued. To help mediate tensions, Accountability Counsel helped foster dialogue between the project developers and affected communities, marking the first time the Nepalese government had engaged in a collaborative dispute resolution process with communities affected by its development efforts.

LESSONS LEARNED: The case highlighted the dual recourse available to stakeholders, via

both international and domestic avenues, in representing socio-economic actors. However, it also illuminated some of the shortcomings of legislative frameworks where there is an absence of support and backing by change-makers. Where such challenges were faced, international coalitions of support between local and foreign legal organisations helped amplify local interests and increase political pressure for public investment projects to remain accountable for their actions.

IMPACTS: As a result of the combined efforts of international and national legal activists, the case established a new precedent on best practice for public infrastructure projects. As a result, a starting point of 10% of the value of land under the right of way was offered as compensation for affected landholders. For those within the Sindhuli district, where the community movement was strongest, compensation even reached 100% of the land value for affected landholders.

In addition, abuses and violations experienced by local communities since the project's inception was formally recorded by the Accountability Counsel and publicly recognised by the World Bank Inspection Panel, holding the project accountable for its socio-environmental impacts.



Photo Credit: UPDP, Nepal

THE CLOSURE OF NIJGADH INTERNATIONAL AIRPORT



Photo Credit: Petr Meissner, Flickr

The Nijgadh International Airport is a long proposed government ambition to build the largest airport in South Asia in Nijgadh, Bara. Despite initial proposals for the airport dating back to 1992, it was only in 2015 that concrete steps materialised when the Nepalese government authorised the Civil Aviation Authority of Nepal to begin the land acquisition process for the project.

However, issues were raised concerning the impacts of the proposed project in the absence of proper environmental impact assessments. Concerns included the likely loss of more than 2 million trees that would compromise the ability for surrounding forests to absorb rainwater, creating severe flooding risks for up to four districts. Given the location's significance as a key migratory corridor for wildlife, there were also anticipated impacts to biodiversity in the region, coupled with the potential displacement of 1,500 indigenous communities. Cross-disciplinary action and the use of public interest litigation were therefore leveraged to challenge construction.

IMPACTS: Over 500 youth actors came together, organising youth-led protests and an editorial in the national daily which raised serious doubts about the viability of the project. Following this, a petition was delivered, signed by forest experts, journalists, entrepreneurs, industrialists, environmental activists, and other critics of the project. The petition was signed by over 200 prominent individuals from varied walks of life.

These efforts in activism, coupled with public interest litigation brought by two senior advocates questioning the lack of proper environmental impact assessment, saw the Supreme Court of Nepal order construction to be halted in 2022.

CHALLENGES: In 2023, the Nepalese Government reprioritised the airport amongst its budgetary plans, committing to commence construction in the near future. It is still yet to be seen the extent to which environmental impact assessments and mitigation measures will be adopted under the new government's leadership, with the potential for ongoing challenges to arise.

RECOMMENDATIONS

In light of the significant progress still yet to be made on improving environmental conservation and climate resilience within Nepal, a number of recommendations are outlined below for how the international and national legal community can get involved to further support climate action in the country:



“[Today] there are ongoing criticisms about Supreme Court justices engaging in judicial activism and the judiciary being far too ‘pro-environment.’ My hope is that the government works in line with each other, as opposed to levying criticisms against one another”

YECAP

Photo Credit: Simone D. McCourtie, World Bank

BOLSTERING ENVIRONMENTAL LAWS & BEST PRACTICE

- Lawyers can build partnerships with UNDP, alongside other public and regional bodies to contribute expertise in identifying legislative gaps and opportunities for stronger environmental legislation.
- Lawyers can work with public bodies to develop stronger regulatory and oversight mechanisms to combat improper practices (e.g.: illegal timber logging, overmining, exploitation of land).
- Lawyers (both local and international) can promote the use of environmental impact assessments when advising clients on investment decisions.
- Lawyers can urge corporate clients to recognise their accountability and responsibilities to local stakeholders as part of business operations and risk management strategies.
- International lawyers can advocate for best practice on environmental safeguarding when representing overseas clients looking to invest in Nepal.

INCREASE CITIZEN AWARENESS ON LAND RIGHTS

- Lawyers can work with universities and academic institutions to create public educational tools/ resources on land rights protection.
- Lawyers can contribute to the development of new courses and curriculums for the next generation on climate justice, strengthening the pipeline of environmental lawyers to come.
- Lawyers can engage in opportunities for dialogue building on climate action, such as by participating with UNDP roundtable discussions, to learn from and with other key stakeholders.

USE STRATEGIC LITIGATION TO ADVANCE CLIMATE JUSTICE

- Lawyers can make the most of the Public Trust doctrine to protect natural assets from public/private encroachment.
- Lawyers can utilise strategic litigation for the legal recognition and protection of sites with important religious and cultural significance.
- Lawyers can contribute to creative solutions for environmental litigation, such as considering the use of legal personhood in protecting natural assets (e.g.: river bodies).
- Lawyers can work with local groups to bring class actions to represent community interests and provide legal services to those who are less able to access representation independently.
- Lawyers can advocate for the recognition of environmental protections as a basic human right.

NEPAL: END NOTES

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