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## Role of International Instruments in Supporting Climate Change Governance and Policy Implementation

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### ABSTRACT

Climate change is one of the major issues under Environmental Law. Environmental Law and climate change law have a close relationship, as the actions taken to protect the environment can help resolve climate change issues. Established principles of environmental Law are also key to determining the climate crisis. Environmental law must balance the mitigation and minimization of emissions with the protection of the environment, thereby fulfilling environmental objectives. However, in some instances, climate action has undermined the ecological values and enjoyment of human rights in several development-related projects. It shall be the responsibility of each state to prevent the foreseeable adverse impact of climate change. Climate change is an environmental issue, as it causes disproportionate harm to the environment and the country's overall economy. Heavy floods, Landslides, soil erosion, drought, and unwanted temperature changes are some major impacts of climate change. It has multiple effects on the forest, water resources, agriculture, human health, and biodiversity. The Constitution of Nepal provides an obligation to the Nepalese government to protect the environment. According to the Treaty Act, 1990, Nepal has a clear responsibility to adhere to international instruments that regulate and support climate change governance and policy implementation. In addition to recognition in international instruments, the Supreme Court of Nepal also concluded that climate change impairs the petitioner's constitutional right to a dignified life, along with a clean and healthy environment. The court ordered the Government of Nepal to enact a new climate change law to mitigate and adapt to the effects of climate change, reduce fossil fuel consumption, and promote low-carbon technologies, while developing scientific and legal instruments. The court also ordered the government to implement the existing national climate change policy until a new law is enacted. Despite this, there remains a need for a comprehensive Climate Act that incorporates provisions under international instruments, supports developing nations, and implements policies effectively.

**Keywords:** Climate change, environmental law, national and international instruments, right to a clean environment, governance

### Introduction

The issue of climate change and its negative effects on the environment is heavily influenced by existing national and international legal tools designed to address these risks. We recognize the contributions of both developed and developing countries in causing these issues. However, we tend to focus more on blame than on shared responsibility. The question is why these tools are not effectively implemented and functioning, despite clear evidence that poor enforcement of climate obligations leads to environmental degradation and increases the risk of climate change. It is the full responsibility of developed nations to cover

the additional costs of mitigation and adaptation measures in developing countries, especially those most vulnerable to the adverse effects of climate change.

As the world raises awareness about climate change and its effects, South Asia has been confronting its real issues like floods, droughts, cyclones, storms, air pollution, and more. This is why it is considered one of the region's most affected by global warming and climate change.<sup>1</sup>

Nepal ranks 4th and 30th in terms of climate change and flood risk, respectively. People's lives and livelihoods are threatened by climate-induced hazards, mainly floods, landslides, cold waves, heat stress, droughts, windstorms, lightning strikes, communicable diseases, and fires. The poor and marginalized, female-led households, and those in low-income informal settlements are among the most affected by climate change impacts.<sup>2</sup>

Nepal is ranked as the fourth most vulnerable country to climate change by a recent United Nations (UN) report, with the nation at risk of experiencing an environmental catastrophe. The early signs of disruption across the Himalayan ecosystem are already evident. Changes in rainfall patterns are negatively affecting conditions that have supported ecosystems for generations, as continuous heavy rainfall leads to reduced agricultural yields and increased pest outbreaks. Additionally, alterations in the glacial melt pattern are expected to decrease freshwater availability, harm biodiversity, and lower hydroelectricity production. It also raises the likelihood of unpredictable monsoons, with floods and landslides becoming more common, endangering or effectively displacing entire communities.

Environmental issues are closely connected and interdependent with climate change concerns. We know that there are multiple factors, including the overexploitation of natural resources, population growth, and industrial activities that harm the environment, which in turn affects climate change. Climate change has become a significant aspect of environmental justice because it results from both natural processes and human activities that emit greenhouse gases, such as the burning of fossil fuels, which alter the state of our environment. Environmental pollution is a significant factor contributing to climate change. It not only damages the environment but also has a direct impact on human health.<sup>3</sup>

The UN Human Development Report also indicated that mitigation will begin to have an impact starting in 2030, and even in the best-case scenario, temperatures will continue to rise until around 2050.<sup>4</sup>

### **The Constitution of Nepal<sup>5</sup>**

The Constitution of Nepal has recognized "right to clean environment" as a fundamental right. Article 30 of the Constitution of Nepal (2015) ensures the Right to a clean environment. It provides that every citizen shall have the right to live in a clean and healthy

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<sup>1</sup> South Asian countries are most vulnerable to the impacts of climate change compared to other countries in the world. (Source: Global Climate Risk Index 2019), A Study of the climate change Laws and policies in south Asian Countries, 2022

<sup>2</sup> Report on Climate change and Urban Resilience in Nepal: Looking through the Lens of Urban poor, Published by Clean Energy Nepal (CEN), Climate Action Network South Asia, (CANSA) Lalitpur, 2023

<sup>3</sup> Sector: Environment and climate change, <https://www.ntu.eu>.> assess on dated 7-28-2025

<sup>4</sup> UNDP, Human Development Report, 2007-8, Fighting climate change: Human solidarity in a divided world, accessed on dated July, 2025

<sup>5</sup> Article 30 of the Constitution of Nepal in 2072 B.S

environment. The victim shall have the right to obtain compensation, in accordance with the law, for any injury caused by environmental pollution or degradation.

Article 51 (g) states that the policies relating to protection, promotion, and use of natural resources, the policies reflecting the sustainable use of natural resources, and conservation of biodiversity are specified. Furthermore, in the provisions related to agriculture, development, land reform, and agricultural security, the preservation of the environment has been stipulated as a key element. The Constitution also includes provisions regarding the National Natural Resources and Fiscal Commission, as outlined in Article 240, which aims at the sustainable and equitable distribution of natural resources among federal, provincial, and local levels.

The state shall direct its international relations towards enhancing the nation's dignity in the world community by maintaining international relations based on sovereign equality, while safeguarding Nepal's freedom, sovereignty, territorial integrity, independence, and national interests.

### **Treaty Act, 1990 (2047 B.S)**

Section 9 of the Act states that treaty provisions under international law are enforceable as national law. Article 9 (1) of the Treaty Act, 2047, states that international treaty provisions are enforceable as good as laws. It states that ‘any law of Nepal which contradicts any treaty that Nepal ratifies is null and void, to the extent it contradicts such provisions. Moreover, it is stated, in Article 9(2), that though a treaty which has not been ratified, acceded to, accepted or approved by the Parliament, though to which Nepal or Government of Nepal is a party, imposes any additional obligation to Government of Nepal, and in case legal arrangements need to be made for its enforcement, Government of Nepal shall initiate action as soon as possible to enact laws for its enforcement. Through the Treaty Act, Nepal is obligated to adhere to international law and customary international law in a binding manner.

### **Environment Protection Act (EPA), 2019 (2076 B.S)<sup>6</sup>**

The Environment Protection Act is the overarching legislation that addresses the conservation and protection of the environment. It includes detailed provisions on collecting information about ecological impacts and establishing a separate council for integrating environmental and climate change issues. The act also outlines measures for reducing carbon emissions and regulating carbon trading.

EPA, 2076, in its preamble, clearly states that the main objective of the act is to protect the environment and uphold the fundamental right of each citizen to live in a clean and healthy environment. It includes provisions for providing compensation to victims from polluters for causing environmental harm or degradation to maintain a balance between development and environmental sustainability. Most importantly, the preamble also addresses the impacts and challenges caused by climate change.<sup>7</sup>

The act defines emission as the emission of greenhouse gas or any other gas, smoke, or dust into the environment from a certain area in a certain period. The act also defines adoption as the prevention or mitigation of further loss or damage upon projecting potential impacts and risks of climate change.

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<sup>6</sup> Environment Protection Act, 2019

<sup>7</sup> Preamble of Environment protection Act, 2019 (2076 B.S)

The act, in its sections 2(d) and (e), defines climate change and climate change management. The act defines climate change as a gradual change in Earth's climate that is directly or indirectly caused by human activity, which alters the composition of the global atmosphere and exhibits natural variability over a comparable period. It defines climate change management as the mitigation or adaptation of problems caused by climate change, including policies, strategies, institutional mechanisms, provision of finance, and capacity building.<sup>8</sup>

Chapter four, sections 23 to 28, clearly discuss matters relating to climate change and its impact on local communities, ecosystems, and biodiversity. Section 23 emphasizes the importance of public information and the measures to be taken to mitigate adverse environmental effects. The Government of Nepal should adopt such measures while implementing any projects at the Federal, provincial, and local levels. Section 24 emphasizes the implementation of the adaptation plan across all three tiers of government, with a special focus on providing additional protection to communities that are more vulnerable to the impacts of climate change.

The Government of Nepal identifies areas that emit greenhouse gases and determines their national reference level. The Ministry shall conduct periodic monitoring of these levels, make the updated information public, measure the level of greenhouse gas emissions, and implement necessary mitigation programs. The government of Nepal, through a notification in the Nepal Gazette, issues an order to adopt mitigation measures in policies, strategies, and action plans. The act also includes the role of the private sector in such mitigation.

The Government of Nepal may also establish and enforce necessary standards to prioritize matters to be implemented in rural and urban areas, aiming to reduce the adverse impacts and risks of climate change. The Government may set the required policy and technical standards to mitigate such impacts. Additionally, the Government of Nepal may participate in carbon trading through mechanisms established by international treaties, foreign governments or organizations, business entities, or private organizations for the purpose of reducing and conserving carbon emissions.

The National Climate Change Policy 2019 has been introduced to provide policy guidance to various levels and thematic areas, aiming to develop a resilient society by reducing the risk of climate change impacts. The aims and purposes of this policy are to contribute:

- To achieve the socio-economic prosperity of the nation by building a climate-resilient society.
- To enhance the climate change adaptation capacity of persons, families, groups, and communities vulnerable to, and at risk of, climate change.
- To build resilience of ecosystems that are at risk of adverse impacts of climate change; to promote a green economy by adopting the concept of low-carbon emission development.
- To mobilize national and international financial resources for climate change mitigation and adaptation in a just manner.
- To conduct research, make effective technology development, and provide information service delivery related to climate change.
- To mainstream or integrate climate change issues into policies, strategies, plans, and programs at all levels of the State and sectoral areas.
- To mainstream gender equality and social inclusion into climate change mitigation and adaptation programs<sup>9</sup>.

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<sup>8</sup>Section 2 (d) and 2 (e) of Environment Protection Act, 2019 (2076 B.S)

<sup>9</sup>The National Climate Change Policy, 2019

### **UN Framework Convention on Climate Change (UNFCCC)**

UNFCCC, adopted on 8 May 1992, and Nepal has been a party to this convention since 1994. Since then, it came into force. The UNFCCC, which was adopted in 1992, describes climate change as a "common concern of mankind." Article 4 requires state parties to "promote and cooperate in the development, application and diffusion" of emission-reducing technologies. The UNFCCC emphasizes concepts such as "common but differentiated responsibilities."<sup>10</sup>

As a specific multinational environmental agreement (MEA) on climate issues, it aims to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous human-caused interference with the climate system within a timeframe sufficient for ecosystems to adapt naturally to climate change.

Articles 3 and 4 (3) of the convention impose a legal obligation for mitigation and adaptation measures based on the principle of 'common but differentiated responsibilities and respective capabilities.' It also includes the commitments of developed countries towards funds and financial resources needed to cover the costs of mitigation and adaptation in developing countries. Additionally, it involves actions related to the transfer of technology required for such efforts. The Global Environmental Facility (GEF) has been established as the institutional financial mechanism responsible for managing funds and providing financial assistance, including grants and concessional loans.

### **Kyoto Protocol, 1997**

The Kyoto Protocol to the UN Framework Convention on Climate Change, adopted in December 1997, came into force on February 16, 2005. It reiterates that developed countries must provide new and additional financial resources to cover the full costs and incremental costs incurred by developing countries in implementing existing commitments. Furthermore, developed countries are obligated to submit information regarding adaptation measures, programs, and finance in accordance with this protocol. They shall cooperate in promoting effective modalities for financial assistance and technology transfer. It aims for the full and effective implementation of the convention. It also emphasizes climate financing and reaffirms the legal obligations of developed nations. The Kyoto Protocol of 1997 maintained the UNFCCC's laissez-faire approach toward imposing legally binding quantitative emission limits on Annex I nations. It also discusses the adoption of the CDM (Clean Development Mechanism) for certain renewable energy projects.

### **Paris Agreement (PA, 2015)**

The Conference of the Parties adopted the Paris Agreement on December 12, 2015, and it came into force in November 2016. It established a legal obligation for developed countries to provide financial resources to developing countries for both mitigation and adaptation, building on the existing obligation under UNFCCC.

Article 9 states that developed nations should continue to lead in mobilizing climate finance from a wide range of sources, instruments, and channels, taking into account the needs and priorities of developing countries. One of the key issues under the Paris Agreement is implementing Nationally Determined Contributions (NDCs). It clearly demonstrates a strong link between climate action and sustainable development.

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<sup>10</sup> United Nations, United Nations Framework Convention on Climate Change, 1992, available at <https://unfccc.int/resource/docs/convkp/conveng.pdf>, accessed on 15 May 2024.

Furthermore, Goal 13 of the SDGs urges states to take urgent action to combat climate change and its impact. It states that every person in every country, on every continent, is impacted in some way by climate change. Goal 13 seeks to implement the commitment of UNFCCC to achieving a climate-neutral world.

**Government Initiatives in Managing Climate Change Problems:**

Nepal has undertaken various initiatives to address climate change issues. In 2065 B.S., Nepal developed the National Adaptation Program of Action (NAPA), focusing on different climate adaptation projects. This program helps minimize climate risks, reduce greenhouse gas (GHG) emissions, and promote emission reduction strategies, including preventing deforestation. It is popularly known as the REDD strategy (Reducing Emissions from Deforestation and Forest Degradation in Developing Countries). The plan aims to decrease emissions from deforestation and forest degradation while promoting conservation, sustainable forest management, and enhancement of forest carbon stocks. It introduces a new approach to lowering CO<sub>2</sub> emissions by paying for actions that prevent forest loss or degradation, such as carbon trading or payments for forest management. In 2065 B.S., a Climate Change Council and a Climate Change Coordination Committee were established under the chairmanship of the Prime Minister.

Additionally, a separate Department for Climate Change Management was created under the Ministry, and a Climate Change and Carbon Unit was established within the Alternative Energy Promotion Centre. The unit primarily focuses on the Clean Development Mechanism. Millennium Development Goals and Sustainable Development Goals have also directly and indirectly addressed climate change issues. In 2076 B.S., climate change was incorporated into the Local Adaptation Plan of Action (LAPA) to enable community-level responses with local participation. The Nepali government has also fulfilled its international commitments under the Kyoto Protocol and the Paris Agreement. The Paris Agreement adopts a bottom-up approach, allowing parties to determine their own contributions to combat climate change. As Nepal transitions into a federal structure, policies and programs related to climate change will need to be integrated at the local, provincial, and federal levels. Other achievements include the *NAPA (National Adaptation Program of Action, 2010)* and the *National Framework on Local Adaptation Plans for Action (2011)*.

In the cases of **Padam Bahadur Shrestha v. Office of the Prime Minister and Amarnath Jha v. Office of the Prime Minister**, the judiciary recognizes climate change as a constitutional issue that the government must address through disaster risk reduction and climate protection laws. Although the Right to the Environment is guaranteed by Article 30 of the Nepalese Constitution, domestic courts have not yet established a legal obligation for proactive shifts to renewable energy. As the impacts of climate change worsen, Nepal's judiciary may be compelled to reference new international precedents to interpret environmental rights in a way that mandates the use of renewable energy. Nepal must carefully consider trade law when developing renewable energy policies that align with the country's energy and climate objectives. There is also a need for a legal framework that supports financial mechanisms and encourages investment through public-private partnerships. This support should go beyond financial aid to include technical assistance, technology transfer, and climate risk mitigation efforts to fulfill the state's obligations. Nepal should enact comprehensive legislation that explicitly recognizes climate change issues as a vital component of the country's energy and climate policies.

Nepal's sustainable development agenda is made possible by national strategies, including the Climate Change Policy (2019), the National Renewable Energy Framework (2017), and the National Energy Efficiency Strategy (2018). These tools place a strong emphasis on energy conservation, decentralized renewable energy sources, and coordinating development goals with climate adaptation.

Through court decisions, it is addressed that Nepal requires separate climate change laws and climate mitigation units. The court stated that, in line with the principles of climate justice, sustainable development, intra- and inter-generational justice, conservation of biodiversity and ecosystems, a new climate change law based on the Paris Agreement should be enacted. As a result, the Environment Protection Act, 2019, was enacted with significant provisions on climate change. Furthermore, climate change policy and Nationally Determined Contributions 2016 are framed in accordance with this decision.

### **Amarnath Jha v Office of the Prime Minister<sup>11</sup>**

A landmark ruling in the Amarnath Jha case reflects Nepal's evolving view of climate change as a matter of public safety and human rights. The case highlighted the severe effects of climate-related disasters and the government's duty to reduce such risks. It was triggered by devastating floods in the Terai region during the 2017 monsoon season. The petitioner argued that the government's inadequate flood control violated people's constitutional rights to life, food, shelter, and health. The Supreme Court acknowledged that environmental governance must directly address climate vulnerability and disaster risk, as demonstrated by its interim order requiring the government to take immediate and long-term measures to prevent flooding, such as building embankments and dams. By linking climate resilience to the protection of fundamental rights, this decision effectively expands the scope of environmental law to include climate adaptation as a constitutional obligation.

The Court's approach logically supports transitioning to low-carbon energy sources like solar power as part of the national plan to reduce the effects of climate change by treating it as a main cause of disasters that threaten public safety. The ruling emphasizes the government's duty to stop climate change-related harm and creates a legal foundation for integrating renewable energy growth into broader climate resilience strategies.

This shows that the judiciary is beginning to consider scientific data on climate risks and the need for proactive governance. It indicates that judges are willing to hold the government accountable for climate inaction, creating a legal environment that encourages investment and builds infrastructure for sustainable energy. The decision integrates constitutional rights, environmental protection, and disaster risk reduction, supporting Nepal's transition to a resilient and sustainable energy future.

### **Ramchandra Simkhada et al. v Nepal Government<sup>12</sup>**

The petitioners sought to halt the construction of roads and railroads that would have traversed Chitwan National Park, a location renowned worldwide for its ecological significance. The case highlighted the conflict between environmental preservation and economic growth. The Court upheld the idea of sustainable development, which states that economic growth must continue without causing irreversible harm to ecosystems, by basing

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<sup>11</sup> Amarnath Jha v Office of Prime Minister, 2019, Decision No. 10743.

<sup>12</sup>Ramchandra Simkhada et al. v Nepal Government, 2012, Decision No. 10204.

its ruling on both international environmental obligations and constitutional rights. The Court's emphasis on reducing environmental damage and safeguarding biodiversity.

### **Padam Bahadur Shrestha v Office of the Prime Minister**

The Supreme Court of Nepal issued a historic ruling in this case, showing the judiciary's active role in environmental governance and climate change law. The petitioner argued that current frameworks, including the Climate Change Policy of 2011 and the Environmental Protection Act of 1997, are not enough to deal with the increasing threats of climate change. Due to its Himalayan location, dependence on climate-sensitive industries like agriculture, and socioeconomic challenges, the petitioner stated that Nepal requires comprehensive legislation.

The Court recognized climate change as a constitutional issue and expanded the traditional understanding of environmental law. It argued that climate protection is a fundamental right enforceable against the state, not just an issue of policy, citing Article 30 of the 2015 Constitution, which guarantees citizens the right to a clean and healthy environment and a dignified life. The government is legally required to take effective measures to address the impacts of climate change. The Court also incorporated Nepal's international obligations under the Paris Agreement and the United Nations Framework Convention on Climate Change. It emphasized that international environmental treaties hold genuine, binding significance within Nepal's legal system and are not simply aspirational. As a result, the ruling compelled the government to pass a specific climate change law.

The Court ordered the government to adopt current strategies, such as the 2011 Climate Change Policy and the National Adaptation Programme of Action (NAPA), as interim measures rather than merely legislative reform.

### **Conclusion**

We have constitutional mandates, statutory policies, institutional roles, and international commitments that develop a legal and policy framework for climate change. The Constitution of Nepal in 2072 B.S. clearly recognizes the Right to Environment as a fundamental right. The right to the environment is closely linked with the Right to the Environment, and environmental law regulates and manages the impact of climate change. The right to the environment and the mitigation of climate change impacts have been acknowledged through several court decisions.

The major legal instruments for climate change adaptation include the UN Framework Convention on Climate Change (1992), the Kyoto Protocol (1997), and the Paris Agreement (2015). Generally, it is outlined that developed nations should bear primary responsibility for causing climate change and should transfer the costs for adaptation and mitigation actions to developing countries. As per the Treaty Act, 2047 (1990), the Nepal government has a binding obligation toward international instruments that Nepal has signed and ratified. It is the responsibility of the Nepal government to develop laws aligned with those instruments to which Nepal has committed. These obligations shall be enforced as a general principle of international law or customary international law in a binding manner. A major issue debated today is whether the principle of common but differentiated responsibilities based on respective capabilities has been actualized. However, the major instruments, including UNFCCC, clearly require developed countries to fulfill their commitments regarding funds and financial assistance, as well as the costs of mitigation and adaptation measures in developing countries. Furthermore, the Kyoto Protocol reaffirms the effective

implementation of the convention and the fulfillment of existing commitments under it. It also emphasizes climate financing from both private and public actors. Even SDG 13 highlights the need to address the impacts of climate change, aiming to strengthen resilience and adaptive capacity to climate-related hazards and natural disasters. It also seeks to incorporate climate change measures into policies, strategies, and planning.

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