

Assessment of the water laws for gender and social inclusion in relation to developing and/or strengthening meaningful participation in planning, decision making and implementation



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Foreword

This research was part of core activity of Jalsrot Vikas Sanstha (JVS)/GWP Nepal.

Disclaimer

The findings, interpretations and conclusions expressed herein are those of the author (s) and do not necessarily reflect the views of the institutions

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Background

The twin water crisis situation arising from scarcity and water induced disaster are increasing alarmingly subjected to climate variability and other anthropogenic changes. In such a situation, the means of controlling water resources and securing its access is attributed to the power inherent in the social hierarchy. The increasing competition for water is creating social conflict and chaos and further increasing gender inequity in water. Water related decisions are crucial not only in ensuring the access to water, but also to gain and expand the power base that is built through accessing water. Most often it is observed that the water related decisions right from the planning to engineering design are gendered and often in the hands of some powerful men in most societies. Access to water is often a challenge for women and marginalized members of society. Given the changing demographics of Nepal, with increased long-term male migration for remittance-based foreign employment, the overall responsibilities, including water works, have fallen on women's shoulders. Gender concerns in water sector development have hence become more important than ever. Water budgeting and planning is an important tool to manage scarce water resources and water-induced disaster. However, the planning process does not necessarily generate equity and justice until and unless the process is transparent and includes the concerns and needs of different stakeholders following the principles and ethics of gender equity and good governance. Despite of the numbers of legislative tools and guidelines to integrate women and youths in water related planning and decision making the statistics of their participation and representation is not satisfactory.

This Study makes an intensive review of the legislative tools to understand how far these legal documents have promoted gender and social inclusiveness and which areas need improvement in terms of integrating gender and social inclusion issues more effectively.

Objective of the study

This study aims in microscopic examination of the legal frameworks and policies in relation to gender and social inclusion in water management and their effectiveness in achieving meaningful decision making, gender equality and leadership development. The overall objective of the study are as follows

- To make intensive assessment of water related plans, policies and guidelines
- To identify the gaps and challenges for the achievement of GESI inclusive water goals
- To suggest the ways for addressing these gaps

Summary of GESI in Water related legislation/ policy framework

The gender based differences in the water sector implies to the poor access of water resources and decision making for the women and vulnerable groups. It is an established fact that this inequality manifest itself through poor performance of the water system. Recognizing this, efforts have been made to tailor water related policies towards addressing GESI issue. Beginning with the constitution of Nepal, The constitution of Nepal, 2015 clearly envisions Nepal as an inclusive state and guarantees the right to equality for all its citizen. The Preamble of the Constitution states: “Ending all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance, recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics, resolving to build an egalitarian society founded on the proportional inclusive and participatory principles in order to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability. The Fundamental Rights under Right to Equality states: No discrimination shall be made in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology or on similar other grounds. (3) The State shall not discriminate citizens on grounds of origin, religion, race, caste, tribe, sex, economic condition, language, region, ideology or on similar other grounds.”

The timeline of different water related policies, their effort for GESI integration and its reflection has been presented in the table below

Policies	Gender and Social Inclusion Efforts	Reflection
Water Resource Act, 1992	Silent on GESI issues	It does not recognize the inclusion of women and socially excluded group in planning and decision making of water resources
Water Resource Rule, 1993	Silent on GESI issue	
Drinking water Rule, 1998	<ul style="list-style-type: none"> The executive committee of the consumer organization shall have Nine persons along with at least Two women as member 	This rule has made effort to include gender narrative in the water however, the

		socially marginalized and disadvantaged groups are yet to be recognised
Local Self Governance Act (LSGA) 1999	<ul style="list-style-type: none"> Emphasized the participation of people from various social strata, especially the historically marginalized communities and women 	This has recognized the importance of GESI in development planning yet, the mechanism of integration is not disclosed.
Water Resource Strategy, 2002	<ul style="list-style-type: none"> Recognise the importance of IWRM Balance participation of men and women. Emphasizes on Socially and economically disadvantaged/vulnerable groups (e.g., poor, disabled) to be considered for targeted assistance to ensure they benefit significantly from projects. 	It lacks explicit details on how GESI would be incorporated and the quota policy
The National Water Supply and Sanitation Policy 2003	<ul style="list-style-type: none"> Mandatory 30 percent women's participation in users' committee 	Pinpointing the channel of integration through quota policy
Rural Water Supply and Sanitation National strategy 2004	<ul style="list-style-type: none"> Mandate inclusive and meaningful participation in terms of gender, caste and ethnicity, not only in the operation and maintenance of water supply and sanitation infrastructures, but also in local planning and budgeting and service delivery, with a quota of 30% women in water user committees. 	
	<ul style="list-style-type: none"> Recommends the inclusion of women in integrated river basin water management (e.g., involvement of women in river bank protection, conservation of watershed, operation and management of irrigation 	This recommendation made for GESI inclusion promotes

<p>National Water Plan, 2005</p>	<p>systems, in electricity distribution programmes, etc.)</p> <ul style="list-style-type: none"> • Social Equity 	<p>capacity development and benefit sharing</p>
<p>National Sanitation and Hygiene Master Plan (NSHMP) 2011</p>	<ul style="list-style-type: none"> • Commitment to GESI through GESI responsive objectives: <ul style="list-style-type: none"> i. to help ensure equity, inclusion and sustainability through participatory planning process; and ii. to develop a mechanism for ensuring access of poor, disadvantaged, and other socially excluded groups to toilets and other hygiene behaviour 	<p>This master plan has introduced a narrative on developing mechanism for GESI in sanitary goal achievement which is often lacking in most legal doctrine</p>
<p>Water Use Master Plan Guideline, 2001, 2007 and 2012</p>	<ul style="list-style-type: none"> • Emphasis on a participatory process 	<p>Water Use Master Plan Guideline, 2001, 2007 and 2012</p>
<p>Irrigation Policy, 2013</p>	<ul style="list-style-type: none"> • Provision for minimum 33 percent participation of women and representation of marginalized communities in the water users committee 	<p>Provides clear avenue of GESI representation in meaningful decision making</p>
<p>Gender Equality and Social Inclusion (GESI) Operational Guidelines, 2013</p>	<ul style="list-style-type: none"> • Ensure that a gender and social inclusion responsive approach is adopted in Ministry of Urban Development and monitored accordingly in order to improve the access to resources, opportunities and benefits from the infrastructures based development programs/ projects. • Ensure GESI issues are addressed in all infrastructure based program/project 	<ul style="list-style-type: none"> • This guideline for the first time has made it imperative to establish GESI section and GESI units at the ministry and sub/divisional level, including their capacity development for

	<p>interventions and GESI issues are well institutionalised throughout the program/project cycle.</p>	<p>the effective participation of women in the project/plan cycle.</p> <ul style="list-style-type: none"> • This guideline also recognizes the importance of budgetary provisions to implement GESI related activities, gender sensitive construction design and their participation in operation and management. • Moreover, this guideline designates the institutional unit for overall monitoring of GESI issues and activities carried out
<p>Water Induced Disaster Management Policy, 2015</p>	<ul style="list-style-type: none"> • As possible, proper representation of women, marginalized and disadvantaged groups to be made while forming disaster affected user’s committee 	<p>It does not explicitly recommend for gender and social inclusion rather, makes it optional choice.</p>
<p>Gender Equality and Social Inclusion Mainstreaming Guideline, 2015</p> <p>For</p> <p>Irrigation and Water Induced Disaster Prevention Sectors</p>	<ul style="list-style-type: none"> • This guideline provides framework in which the project cycle of both Department of Irrigation(DOI) and Department of water induced disaster(DWIDP) has been scrutinized and GESI has been incorporated in the project cycle steps. • AS per the guideline the Ministry of irrigation provides input on the proposed programs of its departments i.e. DOI and DWIDP to be GESI responsive in its content, budget allocation and provide policy guidance. 	<ul style="list-style-type: none"> • This guideline provides holistic approach to integrate GESI in MOI through plans and program of DOI and DWIDP • Provides framework for GESI sensitive project design and monitoring • Provides institutional framework for GESI integration at each level

	<ul style="list-style-type: none"> • Gender budgeting of programs proposed and gender audit of programs implemented by DOI and DWIDP to be in line with the Gender Responsive Budgeting practice of Ministry of Finance and Result Based Monitoring and Evaluation Guideline, 2010 of National Planning Commission. • Provides outlines for GESI mainstreaming in Project Cycle of an irrigation system implemented by DOI and community disaster management program implemented by DWIDP right from the design to monitoring phase 	<ul style="list-style-type: none"> • Promotes capacity building of women and excluded groups • Provides mainstreaming mechanism for the compliance with GESI national and international laws <p>Promotes GESI responsive budgeting and auditing</p>
<p style="text-align: center;">Involuntary Resettlement Planning and Implementation Guide</p> <p style="text-align: center;">For Irrigation and Water Induced Disaster Prevention Sectors line - 2015</p>	<ul style="list-style-type: none"> • Participation and involvement of the women and socially excluded vulnerable groups encouraged in all levels of the project. • Ensuring that all information and opinions collected include the GESI perspectives. <ul style="list-style-type: none"> • Gender sensitive and culturally appropriate approach and methods shall be applied during consultation and while making their participation in the project activities. • The project shall address the following GESI issues as per relevancy during resettlement planning, implementation and monitoring of the project 	<p>This guideline recognizes the importance of gender disaggregated information for resettlement, planning, designing, monitoring, livelihood upliftment program however, it does not provide mechanism for achieving these. It also do not provide mandatory provision for GESI integration as it clearly states GESI to be addressed as per relevance.</p>
<p>Indigenous People Planning and</p>	<ul style="list-style-type: none"> • As per this guideline, the DoI/DWIDP shall ensure IPs’ participation at each stage of the project cycle, from project 	<p>This guideline provides mechanism for the integration</p>

<p>Implementation Guideline – 2015</p>	<p>identification to IP planning, implementation and monitoring</p> <ul style="list-style-type: none"> • Gender-sensitive assessment of the perceptions among affected indigenous peoples of project impact on them • The DoI/DWIDP to allocate budget within the project cost for implementing the Indigenous people plan • The DOI and DWIDP to prepare periodic monitoring reports on all IP activities planned in the project. 	<p>of indigenous people in irrigation and water induced disaster prevention sectors from the earlier screening to the project planning phase. It also provides fund for implementing the indigenous people plan. The Grievance Redress Committee is also in place to help address the issue of indigenous people affected by the project for their compensation. The most crucial provision in this guideline is the monitoring mechanism to ensure the indigenous people participation in the process.</p>
<p>National Climate Change Policy, 2019</p>	<ul style="list-style-type: none"> • Good governance and GESI to be mainstreamed in formulation of policies, institutional framework and implementation of programs related to climate. 	<p>GESI to be integrated in climate related programs but mechanism of its integration and its monitoring not disclosed.</p>
<p>National Water Resource Policy, 2020</p>	<ul style="list-style-type: none"> • Based on the principle of IWRM • Enhanced participation of private and related stakeholders in water resource conservation and development 	<p>Its strategy focuses on participation of ‘related stakeholder’ but does not make obvious reference with GESI however, the principle of IWRM focuses on participatory process so, indirectly it could be linked with gender and social inclusion yet the process of inclusion and its monitoring is a question</p>

Gaps in effective Gender and Social integration in water related Legislation/ policy framework

IWRM and GESI issues yet to be prioritized in Egalitarian legislation

In context of Nepal, constitution is often quoted as a significant foundation to promote gender and social inclusion, however, on its own, it may be insufficient. Additionally, there has been increasing trend of GESI mainstreaming tools and strategies to be integrated in legal and policy framework but they are still not prioritized to ensure systemic changes. The plans, policies and framework that mandates representation of women and socially excluded groups through the quota provision ensures their representation but the barrier to access these rights, their meaningful contribution, mechanism of inclusion and implementation are often deserted. Apart from this, number of legal documents adhering the concept of IWRM; that could address these specific barriers are pending for the approval.

Lack of gender disaggregated data

In the recent time efforts have been made to fully mainstream gender into water resource planning and decision making. There are guidelines, policy framework in place and there are other legal tools in process of approval. Number of capacity development and awareness programs are also being carried out however, despite all these effort, it has been realized that these efforts have not yielded desired results partly due to inadequate information on gender and their access to resources. Gender awareness helps in pin-pointing the specific problems and needs of women and the excluded groups so as to address them in its source. It also challenges the status quo of gender in the institutional framework in relation to the inclusion provision made by the legal tools. In this backdrop, it can be reiterated that gender-disaggregated data are essential to assess the effects of policy measures on women and men so as to be able to evaluate and track the pivotal role of women in development and to apprehend the specific contributions of women in society which is clearly lacking in the indicators used to assess the progress.

Lack of technical capacity for execution of Gender Responsive Budget

The constitution of Nepal (2015), has adhered the principles of equality, equity, non-discrimination and participation. GESI as a heart to the development planning has been recognized by the different legislative framework and the concept of gender-responsive budgeting was introduced in 2007. Gender-responsive budget committee was formulated at the ministerial level, however, mainstreaming gender perspectives into the local budgeting process has remained a challenge. In 2015, the Ministry of Federal Affairs and Local Development (MoFALD) formulated the Gender Responsive Budget Localisation Strategy to translate national policies into local actions however, these initiatives have failed to eliminate discriminatory practices largely due to the lack of requisite technical capacity to effectively plan and implement gender responsive actions. The gender responsive budgeting is mandated at the national and local level and the indicators have been provided while carrying out government's annual programme. However, it is difficult for the

decision makers to apply these indicators and classify projects as gender responsive due to lack of technical understanding. The budget process also does not provide tools to track expenditure (and therefore impact), but only the allocation. To mainstream gender-responsive budgeting in Nepal, budget monitoring systems need to be strengthened by increasing the financial literacy and technical capacity of female local leaders and decision-makers which is very limited.

Absence of Gender Mainstreaming focal agency at Sub-national level

Gender mainstreaming tools and guidelines are central to the policy making and planning. There have been noteworthy policies, provisions and affirmative action to increase women representation and participation in decision-making positions especially through quotas, however, women continue to remain highly under-represented in decision making position. The concept of gender and social inclusion seems to be limited to their numeral representation only. Whereas the process of empowerment through quality education, health, comprehensive capacity development and enabling environment for opportunities is limited resulting in gap for the achievement of status of equality and social equity. In spite of rigorous programs designed through gender responsive budget, the absence of gender focal point at sub-national and local level limits the achievement of designated goals. The absence of focal point creates loophole in assessing the quality and extent of programs to integrate the GESI issues. It also affects the evaluation and monitoring of the outputs due to the lack of accountability and low attention in the issue

Lack of consideration on time poverty

Women and Poor often lack time to participate in skill development activities as the majority of their time is spent on committed paid and unpaid work. Time poverty is a form of inequality that has received much less attention but has major adverse implications for accessing water resources and decision making rights for women. For a woman the access to a good education, productive and remunerated activities, capacity development program is often limited by their responsibility for everyday unpaid household and care activities. Similarly, the socially marginalized groups who often lack the house and property rights and are forced to rely on day to day labor work cannot afford to take part in empowerment and capacity development training. At the recent time due to increased migration of male for the foreign employment, women have added household responsibility which limits their time for participatory programs. Even though the representation of women and vulnerable groups is mandated, their presence is just for number only, meaningful participation is lacking.

Recommendation to address the gaps

This action plan as recommended in this writing has been categorized into four broad headings and has been summarized as below

Enabling Environment

- High-level commitment and accountability to mainstream gender and inclusion objective in country's development plans and policies
- Identification of weak / missing link
- Engage/inform/educate all three spheres of the government on implementation, monitoring and evaluation of IWRM policy and plan. Ensure that at all stages of programme management cycle critical stakeholders such as water users, particularly women and those from excluded groups are involved.
- Targeted awareness raising campaign and activities to be developed at all levels addressing various groups

Institution and Participation

- Engage/mobilise civil society organizations and water user groups/platforms for lobbying with the government for policy approvals, which are pending for long.
- Mandatory provision for creating gender units within the river basin management bodies
- Engagement through formal partnership and coordination mechanism to be established through multi stakeholders and inter-sectoral coordination , to design and implement robust capacity development activities

Finance

- Dedicated funding to enable design and implementation of gender mainstreaming strategies
- Investments to promote the enrolment of women in science, technology, engineering and management discipline and relevant technical field to ensure their good representation in managerial/ decision making position
- Promote transparency on activities implemented through gender responsive budget
- Financial literacy and technical capability enhancement program for the GESI focal points at the sub-national/ local level for the effective implementation of the gender sensitive program

Management Instrument

- Effective mechanism to translate policy and strategy into action and operationalisation of action plans

- Provision for the centralized monitoring system through gender disaggregated data collection, to inform effective mainstreaming strategies
- Enhanced local technical expertise in collecting data and identifying relevant indicators for gender disaggregated information
- Create an environment of knowledge sharing and opportunity for women and other excluded groups to contribute their time in capacity building and mentorship program for the meaningful participation in water related decision making.