

Securing Collective Land Rights of Women through Community Forestry in Nepal

1. Background

The fundamental rights to equality are guaranteed by the Constitution of Nepal. Therefore, article 18 of the Constitution of Nepal has explicitly stated that 'no discrimination shall be made in the application of general laws on grounds of sex and gender'. Further, the constitution has also stated that women shall have the right to participate in all bodies of the State based on the principle of proportional inclusion, which is one of the important fundamental rights of women to secure the collective rights in the natural resources including community forests. Similarly, the state can also make special provisions by law for the protection, empowerment, or development of the citizens including the socially or culturally backward women, and based on such positive discrimination, the women's collective land rights over forest and other natural resources can be secured.

The forest and climate policy instruments such as Forest Policy 2018, Climate Change Policy 2019, National Adaptation Plan 2021, Nationally Determined Contribution (NDC) 2021, Nepal's Long-term Strategy for Net-zero Emissions (2021), Strategy and Action Plan for Gender Equality and Social Inclusion (GESI) in Climate Change 2021, National REDD+ Strategy 2018, and forest or environment-related legal instruments such as Act, 2019, Environmental Protection Act, 2019 has incorporated some of the specific legal and policy provisions for securing women's rights in the forest land and forest resources for income-generating activities. Different directives, procedures, and guidelines of the forestry sector have also made some of the provisions for promoting collective land rights of women through community forests. The Forest Management Plan of each Community Forest Groups (CFGs) is one of the important documents for strengthening the collective land rights of women in the community forest. Based on these instruments of the forest and environment sector, various legal opportunities have been created for the enhancement of the collective land rights of women. However, there are different challenges to exercise such legal rights such as unequal property rights over family land, the additional burden for domestic/care work, weakness or inadequacy in the law enforcement for securing women's rights to participate in the leadership and decision-making process at a different level. Therefore, the effective implementation of constitutional and legal provisions for securing women's rights to forestland and resources, and rights to participate in the leadership and decision-making are some of the key issues for securing women's collective forestland rights at a different level. Based on the policy review and consultation with some of the members of CFGs, the legal opportunities, challenges, and way forwards are identified for securing women's collective land and resource rights in this paper.

2. Legal opportunities and scope for securing collective land and resource rights of women

Forest Policy 2018: During the formulation of Forest Policy 2018, the CFGs, FECOFUN, and stakeholders have continuously advocated for the recognition of collective land and resource rights of women in all types of forests including community forests. Therefore, this policy has included specific strategies and actions to increase women's access to forests land and resource through community forest management and to maintain gender equality in the distribution of forest benefits; to increase gender equality and inclusion in CFGs, and to build capacity for the development of women leadership and implement employment-oriented programs to improve the livelihoods of women who are depending forest resources. In this way, this policy has created enough opportunities for forest-dependent women, though due to the lack of sector-specific plans and programs, the implementation status is weak.

Forest Act, 2019: As per the preamble, one of the major objectives of this act is to contribute prosperity through the management of national forests in a form of community forests. This act has given high priority to the poverty alleviation of forest-dependent people including women groups by promoting forest-based enterprises, eco-tourism, agroforestry including ecological livestock, and income-generating activities in the forestland particularly in community forests (Sec. 18 and 22). The CFGs must promote the collective interest of its members (women and men of the families) during the preparation and implementation of its forest management plan. CFGs are autonomous and organized community institutions. After investing 25% income of CFGs in forest management, at least 50% of income should invest for poverty

alleviation, forest enterprises development, and women empowerment. This provision has created a legal opportunity for women groups in CFGs to secure women's rights in the benefits of community forest. The women group can invest such benefits for the implementation of income-generating activities in the collective land areas of community forest. The newly drafted Forest Regulation (2021) has incorporated the legal provision to allocate appropriate forestland to forest-dependent poor and marginalized women groups for income generation activities, which will strengthen the collective land rights of women through Community Forestry. The *Community Forestry Program Development Guideline (2015)* has made detailed steps and processes for the leasing agreement between CFGs and the forest-dependent women groups to allocate forest land of Community Forests for income-generating activities. However, it is required to implement such provisions effectively with the meaningful engagement of such target women groups.

Women's collective land rights in community forests

The CFG may, by making an agreement, provide any part of the community forest to the forest users (including women) below the poverty line, for income generation activities through the management and use of the community forest.
 - Section 18(9), Forest Act 2019

When providing any part of the community forest for income generation to the forest users below the poverty line, priority should be given to the ultra-poor, single women, marginalized, landless and Dalit families among such forest users.
 - Forest Regulation 2022 (draft)

Climate policies and women's collective rights in land and resources: The *Climate Change Policy 2019* has included an objective for gender mainstreaming in climate change mitigation and adaptation activities implemented at all levels. The women groups can claim their rights over the climate actions and climate finance based on this policy provision. *National Adaptation Plan (2021-2050)* has included provisions to promote women's ownership in community-based adaptation activities. *Nationally Determined Contribution (NDC) 2021* has targeted to increase women's access in the forestland tenure, benefits of the forest, and dedicated finance, which will be instrumental for securing women's collective forestland rights. As per *Nepal's Long-term Strategy for Net-zero Emissions (2021)*, the women groups will be a major stakeholders for the emission reduction activities. *Strategy and Action Plan for Gender Equality and Social Inclusion (GESI) in Climate Change 2021* has also made a specific strategy to increase access to resources, finance, and technologies for women's economic development activities. *National REDD+ Strategy 2018* has incorporated a specific strategy to improve forest tenure, ensure carbon rights, and fair and equitable sharing of forest benefits.

The Environmental Protection Act 2019 has incorporated a specific provision to give priority to the interest of women when preparing and implementing adaptation plans at a different level to address the impacts of climate change (sec 24). As per Environmental Protection Rules 2020, it is obligatory to recognize the women's rights over forest and natural resources during the preparation and implementation of Environmental Assessment Reports of a development project which impacts adversely in the forests and land rights of local communities including women groups. The Free Prior Informed Consent (FPIC) is required to obtain from the project affected local communities if the government wants to develop and implement the forest-based carbon trade project (rule 28). The community forest-based women groups are also recognized as a right-holder in Nepal, therefore, they will have rights and opportunities to get benefits from these procedural rights. There is required to develop the level of legal awareness in the forest-dependent women groups in rural areas to utilize these legal opportunities.

Policy & Legal instruments on women's rights

- **Policies:** Forest Policy 2018, Climate Change Policy 2019, National Adaptation Plan (2021-2050), Nationally Determined Contribution (NDC) 2021
- **Legislation:** Forest Act, 2019; Environmental Protection Act, 2019; Environmental Protection Rules, 2020; Local Government Operation Act 2017

Local Government Operation Act 2017: This act has given legal rights and obligations to the local government for the formulation of different sectoral laws, policies, plans, and programs including the forestry sector. This act has made a mandatory legal provision for gender mainstreaming in each plan and program of local government. The local governments have formulated *Local Forest Laws* to provide support for women groups to increase their access to the land and resource for micro-enterprise development. Therefore, the local government must make a specific plan and program

with a dedicated budget for securing women's rights in forest management activities under local government, which has created a conducive environment for strengthening collective forestland and resource rights of women at the local level in Nepal.

Other different specific acts have also created various opportunities for women to exercise land rights. Such as *Industrial Enterprise Act 2019* gave priority to women for providing land to establish an enterprise in the industrial areas or any other appropriate areas. Similarly, the *Cooperative Act, 2017* and the *Income Tax Act, 2002* have made some provisions to provide tax incentives and subsidies for women-led forest enterprises and cooperatives. Such sectoral legislation has created a conducive environment for women groups to exercise land rights.

3. Challenges and issues for securing collective land and resource rights of women

Advocacy campaigns have been continuously organized for securing collective forest and resource rights of women in Nepal for many years and some of the legal provisions are incorporated in the policies and laws to address the policy issues. However, different issues and challenges still exist in this sector and some of the major challenges are highlighted as follows:

- *Limited awareness and capacity:* Due to limited awareness about legal or policy provisions on women's collective rights over the forestland and resources and lack of continuation for the capacity building of women groups about constitutional and legal rights, particularly the rural areas are deprived of the utilization of collective land and resource rights. The policy instruments are not available in the local language for awareness.
- *Nominal participation of rural women in the policy process:* The small group of women or only the women consultants are engaging in the forest and environment sector policies, plan, and program formulation process, and a large number of forest-dependent rural women groups are deprived of the participation in the policy-making process and they have no feeling of ownership over the policy provisions and its implementation.
- *Weak implementation:* The constitution and forest/environment sector legislations have incorporated some of the strong legal provisions for the protection of women's collective rights over the forestland, though due to lack of dedicated support program from the government agencies, the implementation status of such legal provision is weak.
- *State control and uncertainty:* As per the periodic development plan and economic policies of Nepal, the forest sector is counted as an economic resource, therefore there is continuous influence and intervention in the forestry sector policy process and decision-making from male-controlled state agencies and bureaucracy. Similarly, due to unexpected changes in the policies from the government agencies, there is uncertainty about the forestland tenure rights of CFGs and their members including women groups.
- *Market and demand-side intervention:* Due to the high demand for timber for reconstruction (after the earthquake) and infrastructure development, the market has been continuously created pressure on CFGs for over-harvesting of timber from community forests. The timber traders and the government agencies had imposed their centralized plans in the community forest in the name of scientific forest management and royalty generation. The women groups and the female members of the executive committee of CFGs opposed such market intervention because they want to conserve the natural forest areas of community forest. The government agencies including local governments have been issuing permits or licenses for extraction activities in the community forests. These different types of market interventions have ultimately impacted the collective land and resource rights of women in Nepal.
- *Risk of Gender-Based Violence (GVB):* As a member of the executive committee of CFUGs, women are also engaging in the patrolling of forests and mobilizing community-based anti-poaching groups for the protection of

forests and wildlife. Unfortunately, the timber smugglers and the poacher target and attack women and girls in community forest areas. Sometimes, the other different actors (such as contractors, bureaucrats, and the members of the executive committee of CFUGs) also creates challenges to women in the utilization of collective land and resource rights through different gender-based violence such as creating obstacles to participate in the decision-making, denying equitable benefits sharing and capturing the key post of the executive committee of CFUGs.

- *Patriarchal social structure*: Influences and creation of obstacles to women from the social power structure, patriarchal culture of the society, unequal power relationship and lack of ownership of women over properties and land are some of the other challenges for women groups to use and exercise of the collective land and resource rights of women in Nepal.
- *Centralized protected area regimes*: A large number of indigenous and rural women groups are conserving biodiversity and forest resources in the Conservation Areas and Buffer Zones of Nepal. However, the Protected Area law of Nepal has not recognized the land and resource rights of local communities including women groups, which is one of the real challenges for women who are depending on forest resources of conservation areas and buffer zones for their subsistence livelihoods.

4. Way forwards

The following measures can be taken to address the above-mentioned issues and challenges of women for securing their land and resource rights in the forestry sector including community forests:

- *Awareness-raising, capacity building, and networking*: The forest and environment laws and policies of Nepal are dynamic and changing rapidly based on the new constitutional frameworks and commitment to address the issues of climate change, sustainable development, and environment protection. Therefore, it is required to organize a regular program (such as training, workshops, advocacy, research, monitoring) for the awareness-raising, capacity building, empowerment, and networking of women groups to empower them for the utilization of collective land and resource rights. However, such activities should be demand-based from the rural women who are depending on collective forestland and resource.
- *Ownership over the plan, program, and decision-making process*: The government agencies, local governments, and CFUGs need to fulfill their obligation to create ownership of women groups over their forestry sector plans and programs based on the full and effective participation of women groups at all level for the effective implementation of gender-friendly policies and legislations.
- *Respecting women's collective land resource rights*: The agencies, local governments, private sector, market, and the stakeholder need to respect the collective land and resource rights of women during the collection of forest products and extraction of natural resources.
- *Advocacy campaigns*: The organized advocacy campaigns against GBV, *patriarchal social structure, and centralized policy process* will also be instrumental for securing collective land and resource rights in a long run. The success story of collective forestland utilization needs to be documented as a case study for policy advocacy.



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