

# Environmental Protection in the Himalaya: The Role of the Nepali Judiciary in Safeguarding Human Rights and the Environment

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Ananda Mohan Bhattarai,\* Shreya Sanjel\*\* & Pranjali Kanel\*\*\*

## ABSTRACT

*Nepal, a small country in the Himalaya, is home to diverse ecosystems. It has acclimatized to and braved significant environmental challenges. Over decades, Nepal has had to navigate challenges ranging from natural disasters to pollution, as well as forest and biodiversity protection amid rapid infrastructure development. With a promising framework of rights and enormous environmental challenges, how is Nepal steering its path of inclusive democracy envisioned in the 2015 Constitution? Does it have some story to tell the world about realizing human rights while traversing the journey of environmentally sustainable development? This Article accounts for Nepal's environmental challenges and the role played by the judiciary in protecting the people and environment while promoting environmental constitutionalism. It draws relevant messages for academics and practitioners of environmental justice that justify taking Nepal as a special case in the current environment and human rights discourse.*

## INTRODUCTION

Nepal's geographical intricacies, rich culture, historical civilization, and diverse population bewilder many. Physiographically characterized as a Himalayan nation,<sup>1</sup> Nepal, a small country,<sup>2</sup> houses a relatively large population.<sup>3</sup>

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\* Justice, Supreme Court of Nepal; LL.M. (1997), J.S.D. (2000), National Law of India University; Hubert Humphrey Fellow (2002–2003), Massachusetts Institute of Technology.

\*\* Judicial Officer, Supreme Court of Nepal; B.A.LL.B. (2019), LL.M. (enrolled), Kathmandu School of Law, Nepal.

\*\*\* Intern, Supreme Court of Nepal; B.A.LL.B. (2022), Kathmandu School of Law, Nepal.

1. The Himalaya is the highest and longest mountain range, covering about 594,400 square kilometers and extends in an arc shape for about 2410 kilometers of which Nepal's range is characterized as the central section. See JACK IVES, HIMALAYAN PERCEPTION 29–31 (2004); S. S. NEGI, A HANDBOOK OF THE HIMALAYA 13 (1990).

2. Nepal has an area of over 147,000 square kilometers. See *Geography*, NEPAL TOURISM BOARD, <https://ntb.gov.np/plan-your-trip/about-nepal/geography> [<https://perma.cc/UN44-EFE2>].

3. The population of Nepal is just over twenty-nine million and is increasing with an annual growth rate of 0.92 percent as of 2021. See Nat'l Statistics Off., *National Population and Housing Census 2021: National Report*, at 1 (2021), [https://censusnepal.cbs.gov.np/results/files/result-folder/National%20Report\\_English.pdf](https://censusnepal.cbs.gov.np/results/files/result-folder/National%20Report_English.pdf) [<https://perma.cc/VC6T-SG76>] [hereinafter Nepal Census Report 2021].

Climate change has exacerbated environmental challenges in Nepal and made lives and livelihoods difficult.<sup>4</sup> Many of these challenges go beyond the capacity and competence of the state. Within the limits of its human and material resources, Nepal tries to address these challenges through an inclusive and rights-focused constitutional system. This Article assesses Nepal's efforts in this regard, specifically delving into the judiciary's role in advancing environmentally sustainable development from a human rights-based approach.

The Article begins in Section I with an introduction to Nepal in light of its intricate geographical and ecological features. It explores how these features lead to challenges that transcend ecological concerns to encompass pervasive human rights issues. Section II transitions to the international context, exploring the nexus between human rights and the environment. It explores the recognition of environmental rights as human rights, examining the emergence of soft laws and global initiatives acknowledging this relationship. Section III returns to Nepal, tracing its constitutional journey as it progresses toward democracy and inclusivity. The 2015 Constitution of Nepal emerges as a landmark in this constitutional transition, providing a comprehensive framework for environmental sustainability and enforceable human rights. Section IV examines the role of the judiciary in protecting the environment and human rights. This Section explores selected judgments to highlight the judiciary's approach and jurisprudence based on constitutional visions and guarantees. Section V provides an overview of the discussed cases and judicial efforts toward human rights protection and the sustainable use of environmental resources. Section VI presents the unique position occupied by this Himalayan nation to address pressing present and emerging environmental concerns. This Article concludes by making a case that Nepal's concerns, efforts, and plights deserve ample international attention.

## I. NEPAL AND ENVIRONMENTAL CHALLENGES

The Himalaya region begins in the west at Nanga Parbat near the Indus Gorge (northern Pakistan) and ends in the east at Namche Barwa (Arunachal Pradesh, India).<sup>5</sup> Nepal is almost exactly in the middle of this arch-shaped region. The width of the Himalaya in Nepal is altitudinally diverse, ranging from 150 to 300 kilometers.<sup>6</sup> Nepal's land area is structurally classified into the Trans-Himalaya, the main Himalaya, the middle mountains, and the Chure (also known as the Shivalik). Within this, it encompasses alpine, temperate, subtropical, and tropical climatic zones. Numerous mountain ranges

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4. World Bank Group & Asian Development Bank, *Climate Risk Country Profile: Nepal*, at 7–15 (2021), [https://climateknowledgeportal.worldbank.org/sites/default/files/2021-05/15720-WB\\_Nepal%20Country%20Profile-WEB.pdf](https://climateknowledgeportal.worldbank.org/sites/default/files/2021-05/15720-WB_Nepal%20Country%20Profile-WEB.pdf) [<https://perma.cc/6G5B-74G7>].

5. IVES, *supra* note 1, at 25.

6. ANANDA MOHAN BHATTARAI, PROTECTION OF HIMALAYAN BIODIVERSITY 2 (2010). From south to north, the country ranges from 60 meters (Kechana Kalan) to 8848 meters (Mount Everest) above sea level. See *Geography*, *supra* note 2.

descend from the Himalaya in both the north and south directions. These mountains range from high to middle elevation before eventually leveling off into the lower-elevation Shivalik Hills. The Indo-Gangetic flood plains lie south of the Shivalik range. Nepal's high mountains and hills are sparsely populated, while the main concentration of inhabitants lies in the southern plain areas.<sup>7</sup> Further, there has been a significant rural-to-urban migration in recent times, reflecting a shift in occupation away from agriculture.<sup>8</sup>

The Himalayan system is rich in biodiversity. The Eastern Himalaya, encompassing Nepal, Bhutan, and northeast India, hosts four out of the thirty-six global biodiversity hotspots.<sup>9</sup> Geomorphological configurations such as tectonically disturbed bedrock, steep slopes, and high altitudinal variation over short horizontal distances create varying climatic and geological conditions. These factors cause variation in the region's biodiversity.

The country faces challenges in maintaining ecological balance due to unreliable climatic patterns resulting in flash floods and forest fires. Recurring cloudbursts resulting in the collapse of glacial lakes at high altitudes have caused substantial damage to downstream human settlements, properties, and infrastructures.<sup>10</sup> A study by the government of Nepal revealed that climate-induced disasters account for around sixty-five percent of annual disaster-related deaths.<sup>11</sup> The average annual economic loss from these disasters is approximately 0.08 percent of the GDP.<sup>12</sup>

Nepal's geographical and ecological position, coupled with its low Human Development Index ("HDI")<sup>13</sup> and a multidimensional poverty rate

7. As per the 2021 census, 53.61 percent of the total population (over fifteen million people) resides in the Southern Terai region. See Nepal Census Report 2021, *supra* note 3, at 1.

8. *Id.* at 1, 5, 317–31.

9. Sunita Chaudhary et al., *Protected areas in the Hindu Kush Himalaya: A Regional Assessment of the Status, Distribution, and Gaps*, 4 CONSERV. SCI. & PRAC. 1, 2 (2022).

10. Cloud bursts have caused floods in different parts of the Himalayas, such as in Mustang (August 2023) and Sankhuwasabha (June 2023) in Nepal, and Sikkim in India (October 2023), causing floods and devastation downstream. See 22 *Still Missing in Sankhuwasabha Floods*, ANNAPURNA EXPRESS (June 19, 2023), <https://theannapurnaexpress.com/news/22-still-missing-in-sankhuwasabha-floods-43967> [https://perma.cc/R5YR-4FFX]. See also Dipak K Dash, *After Sikkim flood, government plans step to cut Golf risk*, TIMES OF INDIA, Oct. 15, 2023, <https://timesofindia.indiatimes.com/india/after-sikkim-flood-govt-plans-step-to-cut-golf-risk/articleshow/104432852.cms> [https://perma.cc/MMS9-NLQ2].

11. See Ministry of Forest and Environment, *National Framework on Climate Change Induced Loss and Damage* (L&D), at 48 (2021), [https://mofe.gov.np/old/downloadfile/National%20framework%20on%20Loss%20and%20Damage%20-%20Approved%20Document-%202021\\_1653988842.pdf](https://mofe.gov.np/old/downloadfile/National%20framework%20on%20Loss%20and%20Damage%20-%20Approved%20Document-%202021_1653988842.pdf) [https://perma.cc/RB77-XUUR].

12. Ministry of Forests and Environment, *Vulnerability And Risk Assessment And Identifying Adaptation Options*, at 46 (2021), <https://www.mofe.gov.np/uploads/documents/vulnerability-repnew1630571413.pdf-2940-766-1658827788.pdf> [https://perma.cc/8MD8-TL9Q]. This estimate is based on the 2018/19 figure at current prices. The report further states that in extreme years, like in 2017 when the Terai floods occurred, the economic loss and damage from the single disaster event was around 2.08% of the GDP (2017/2018) figure at current prices.

13. Nepal is categorized as having medium HDI, ranking 146 out of 193 countries. See *Nepal*, U.N. DEV. PROGRAMME HUM. DEV. REPS., <https://hdr.undp.org/data-center/specific-country-data/#/countries/NPL> [https://perma.cc/LFX2-TVFG].

of 17.5 percent,<sup>14</sup> provides ground for many socio-economic issues. The country frequently deals with natural disasters that adversely affect food security, housing, infrastructure, health, and education. Mountain-specific poverty<sup>15</sup> and disaster-induced forced migration are also a pressing matter.<sup>16</sup> Disparities rooted in economic status, gender, socio-cultural factors, and geographical situatedness exacerbate these challenges for vulnerable groups—impeding the realization of human rights and inclusivity. In this context, constitutional developments in Nepal have progressively addressed these concerns with the aim of developing a more equitable and inclusive legal and societal structure.<sup>17</sup>

## II. THE CONSTITUTIONAL JOURNEY TOWARD DEMOCRACY AND HUMAN RIGHTS

Nepal's journey toward institutionalization of democratic governance has been rather long and tumultuous. Since its first constitution in 1948, the country has experimented with seven constitutions<sup>18</sup> reflecting Nepal's political and social evolution. The present constitution, adopted by the Constituent Assembly in 2015, embodies at least four significant transitions: the shift from monarchy to a republican system of government, the evolution from a Hindu state to secularism, the transition from a unitary system to federalism, and the progression from a monolithic state to an inclusive democracy.<sup>19</sup>

Among the seven constitutions drawn over seventy-five years,<sup>20</sup> the Interim Constitution of 2007 was a pivotal moment for Nepal. It significantly advanced inclusion, human rights, and environmental protection. This Constitution provided a range of fundamental rights, emphasizing inclusivity through social justice and affirmative action. For the first time, it also recognized the right to a clean environment in conjunction with the right to health.<sup>21</sup> The subsequent 2015 Constitution widened the range of fundamental rights by

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14. Nat'l Planning Comm'n, *Nepal Multidimensional Poverty Index: Analysis Towards Action*, at 9, 34 (2021), [https://npc.gov.np/images/category/MPL\\_Report\\_2021\\_for\\_web.pdf](https://npc.gov.np/images/category/MPL_Report_2021_for_web.pdf) [<https://perma.cc/TF33-BREA>].

15. Mountain-specific poverty refers to the heightened poverty rates and unique challenges faced by populations residing in the mountainous regions. Factors such as remoteness, poor accessibility to basic facilities, extreme geographical fragility and difficulty, poor physical infrastructure, and socio-economic marginalization contribute to the persistence of poverty in the mountain regions. See Giovanna Gioli et al., *Understanding and Tackling Poverty and Vulnerability in Mountain Livelihoods in the Hindu Kush Himalaya*, in *THE HINDU KUSH HIMALAYA ASSESSMENT: MOUNTAINS, CLIMATE CHANGE, SUSTAINABILITY AND PEOPLE* 421, 422–23 (Philippus Wester et al. eds., 2019).

16. See Nepal Census Report 2021, *supra* note 3, at 3 (finding that 0.7% of the people who emigrate from their domicile leave due to natural disaster).

17. See CONST. OF NEPAL pmbl.

18. The other constitutions are the 1951 Interim Constitution of Nepal, the 1958 Constitution of the Kingdom of Nepal, the 1961 Constitution of Nepal, the 1990 Constitution of the Kingdom of Nepal, the 2007 Interim Constitution of Nepal, and the current 2015 Constitution of Nepal.

19. Ananda M. Bhattarai, *Approaching the Constitution of Nepal through Possible Interpretive Strategies*, INDIAN L. INST. L. REV. 266, 267 (2022).

20. For more on the constitutional development of Nepal, see *id.* at 266–72.

21. INTERIM CONST. OF NEPAL 2007 Art. 16.

incorporating the rights of special groups.<sup>22</sup> It further consolidated environmental rights by placing it as a distinct entitlement.<sup>23</sup> Including environmental rights in the constitutional framework addressed the need for actionable measures and enforceability.<sup>24</sup> This aligned environmental rights with inclusivity, sustainability, and other fundamental rights. From this juncture, environmental constitutionalism has evolved parallel to the constitutional values, ideals, and principles that form the foundation of the Nepali constitutional order.

Nepal's constitutional journey diachronically presents three notable highlights, particularly visible from 1990 onwards. First, it reinforces the principle that the Constitution equally binds every individual and facilitates the change of government through periodic elections. Second, it solidifies the position of the judiciary—from a subsidiary element in constitutional dynamics toward a significant player. This evolution entrenches the Supreme Court's position as the final court of appeal and vests the power of judicial review within it.<sup>25</sup> The Court functions on an access-to-justice model,<sup>26</sup> exercising broad jurisdiction to entertain public interest petitions. This stands in contrast to a more restrictive approach requiring a high threshold for legal standing and having narrow jurisdiction. The third highlight is the proliferation of enforceable rights. The pre-1990 constitutions contained civil and political rights with limited enforceability. The 1990 Constitution departed from that by presenting a bold framework of rights, which the 2007 Interim Constitution further widened. The present Constitution of Nepal provides for at least thirty enforceable rights. These include civil, political, economic, social, and cultural rights, along with the rights of vulnerable groups such as Dalits, women, children, and senior citizens. For the first time, it also guarantees the “right to live in a clean and healthy environment”<sup>27</sup> as a separate enforceable fundamental right, thus requiring both the state and non-state actors to make efforts towards environment protection. Further, when intentional actions harm environmental health, the victims are entitled to compensation.<sup>28</sup> This adds practical vitality to this declaratory right. The Constitution also calls upon the state to strive towards realizing “environmentally sustainable development.”<sup>29</sup>

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22. CONST. OF NEPAL Arts. 38, 39, 40, and 41 regarding rights of women, children, Dalits, and elderly people respectively.

23. CONST. OF NEPAL Art. 30.

24. On the constitutionalization of the environment, see Sam Bookman, *Demystifying Environmental Constitutionalism*, 54 ENV'T L. REV. 1, 3–5 (2024).

25. CONST. OF NEPAL Arts. 126(2), 128(4), 133 (assigning the Supreme Court the authority to conduct judicial review and issue final and binding interpretations of the Constitution, and granting extraordinary jurisdiction to issue appropriate orders to ensure justice in cases of public interest and fundamental rights violations).

26. Unlike other jurisdictions, the Supreme Court does not select cases it will hear. Especially in cases of public interest, the Supreme Court has relaxed standards for *locus standi* which means that the Court routinely hears matters of public concern. See *Radheshyam Adhikari v. His Majesty's Government*, 12 N.K.P. 2048, DN 4430 ¶ 9 (1992).

27. CONST. OF NEPAL Art. 30.

28. *Id.* Art. 30 § 2.

29. *Id.* Art. 51 § g (8).

The inclusive democracy promised in the present Constitution is a multidimensional concept. It includes political, social, economic, cultural, and ecological dimensions which make it a “liberatory project.”<sup>30</sup> In the environmental context, inclusive democracy prevents the state from prioritizing the short-term economic interests of specific groups<sup>31</sup> while remaining indifferent to environmental and climatic devastation and its impact on public health. True to the call for inclusive democracy, the current Constitution embraces environmental sustainability, manifesting it as an enforceable right and a state policy. The Constitution explicitly encapsulates environmental principles of intergenerational equity, the polluter pays principle, prior informed consent, and the precautionary principle.<sup>32</sup> It also provides guidelines for the protection and use of natural resources, thus instructing the state to prioritize and pursue principles of environmentally sustainable development.<sup>33</sup>

### III. THE NEXUS BETWEEN HUMAN RIGHTS AND THE ENVIRONMENT

Human rights play a crucial role in safeguarding the environment, both substantively and procedurally.<sup>34</sup> A clean and healthy environment not only upholds environmental rights but also enables the effective realization of other rights.<sup>35</sup> The evolving conception of an interplay between human rights and the environment is best expressed through the principle that “environmental harm interferes with the enjoyment of human rights and the exercise of human rights helps to protect the environment.”<sup>36</sup>

The link between the environment and human rights in international law can be traced back to the Stockholm Declaration<sup>37</sup> and the Rio Declaration in their emphasis on the right to human life in “harmony with nature.”<sup>38</sup> The Rio Declaration also acknowledges procedural rights, including public participation, access to justice, and the right to information regarding the

30. TAKIS FOTOPOULOS, TOWARDS AN INCLUSIVE DEMOCRACY: THE CRISIS OF THE GROWTH ECONOMY AND THE NEED FOR A LIBERATORY PROJECT 205–06, 306 (1997); See Tanka Prasad Acharya v. Election Commission, 079-WC-0037 ¶¶ 18–19 (Feb. 8, 2023).

31. Ananda M. Bhattarai, *Towards Inclusive Democracy*, KATHMANDU POST (Nov. 24, 2023), <https://kathmandupost.com/columns/2023/11/24/towards-inclusive-democracy> [<https://perma.cc/DKM8-H5FS>].

32. CONST. OF NEPAL Art. 51 § g (8).

33. *Id.* Art. 51 § g.

34. See U.N. Dev. Grp., *Guidance Note on Human Rights for Resident Coordinators & UN Country Teams*, at 72 (2017) (describing the interrelationship between environmental law and human rights).

35. UNDP, *What is the Right to Healthy Environment?*, at 5 (2023), <https://www.undp.org/sites/g/files/zskgke326/files/2023-01/UNDP-UNEP-UNHCHR-What-is-the-Right-to-a-Healthy-Environment.pdf> [<https://perma.cc/XD7Q-EYQ6>].

36. U.N. HUM. RTS. SPECIAL PROCEDURES, *Framework Principles on Human Rights and the Environment*, at 5 ¶ 1 (2018), <https://www.ohchr.org/sites/default/files/FrameworkPrinciplesUserFriendlyVersion.pdf> [<https://perma.cc/6XM5-NSK6>].

37. U.N. Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, pmbl., U.N. Doc. A/CONF.48/14/Rev.1 (June 16, 1972).

38. U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, Principle 1, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. 1) (Aug. 12, 1992).

environment.<sup>39</sup> In human rights law, the integration of environmental well-being into human rights is evident through the focus on “living conditions” and the “highest attainable standard of physical and mental health”<sup>40</sup> in the International Covenant on Economic Social and Cultural Rights. Thus, international human rights and environmental frameworks have made subtle indications of the nexus between human rights and the environment. However, until recently, they were not integrated as rights that work in tandem.

A distinct discourse on greening human rights emerged with the Human Rights Council resolution on the Human Right to a Safe, Clean, Healthy, and Sustainable Environment.<sup>41</sup> This acknowledgment emphasizes the necessity of environmental well-being in enjoying all human rights. The Resolution on Human Rights and Climate Change further substantiates this effort by recognizing the effects of climate change on human rights.<sup>42</sup> This resolution establishes a linkage between human rights and the environment by elaborating on how environmental harm interferes with other rights, particularly for vulnerable populations.<sup>43</sup>

The recognition and implementation of these established and emerging international norms regarding the environment and human rights are essential for environmental protection. Domestic application of these standards plays a vital role in this realization. As international law faces enforcement gaps, the role of domestic courts in implementing these rights becomes crucial. South Asia, with its strong judiciaries, including those located in Nepal, provides an interesting perspective in this regard.

#### IV. MAPPING THE JUDICIAL FOOTSTEPS OF NEPAL

Following the change in the position of the Supreme Court brought about by the 1990 Constitution,<sup>44</sup> the Court has emerged as an essential locus of constitutional development. It has interpreted constitutional provisions, reviewed the constitutionality of legislative enactments, and delivered landmark decisions on cases regarding the formation and operation of government and

39. *Id.* Principle 10. For further procedural rights in relation to the environment, see generally Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), June 25, 1998, 2161 U.N.T.S. 447.

40. International Covenant on Economic, Social and Cultural Rights Arts. 11, 12, Dec. 16, 1966, 993 U.N.T.S. 3.

41. Hum. Rts. Council Res. 48/13, The Human Right to a Clean, Healthy and Sustainable Environment, at 2, U.N. Doc. A/HRC/RES/48/13 (Oct. 8, 2021).

42. Hum. Rts. Council Res. 50/9, Human Rights and Climate Change, at 2, U.N. Doc. A/HRC/RES/50/9 (July 7, 2022). This builds significantly on the Council’s previous attempt to connect climate change and human rights. See generally Hum. Rts. Council Res. 10/4, Human Rights and Climate Change, U.N. Doc. A/HRC/RES/10/4 (Mar. 25, 2019).

43. Hum. Rts. Council Res. 50/9, *supra* note 42, at 3 (July 7, 2022).

44. CONST. OF THE KINGDOM OF NEPAL 1990 Art.88 (authorizing the Court to exercise judicial review and hear cases of public interest).

parliament.<sup>45</sup> The Court has also intervened in areas such as inclusion,<sup>46</sup> education,<sup>47</sup> employment,<sup>48</sup> disability,<sup>49</sup> health and social protection,<sup>50</sup> starvation and calamities,<sup>51</sup> rights of senior citizens and single mothers,<sup>52</sup> and the alleviation of the woes of vulnerable groups such as Dalits,<sup>53</sup> Badis,<sup>54</sup> Kamlaris,<sup>55</sup>

45. See Bhattarai, *supra* note 19, at 282–96 for a survey of landmark cases regarding parliament dissolution and formation of government.

46. Tanka Prasad Acharya v. Election Commission, 079-WC-0037 ¶ 19 (Feb. 8, 2023).

47. Binay Kumar Panjiyar v. Medical Education Council, 10 N.K.P. 2078, DN 10756, 1479 (2020).

48. See Premilal Prasad Chaudhary v. Office of the PM and Council of Ministers [hereinafter OPMCM], 078-WO-0660 ¶¶ 36–38 (Feb. 7, 2003) (concerning reservations in employment as affirmative action for the marginalized Tharu community).

49. See Sudarshan Subedi v. OPMCM, 8 Coll. Sup. Ct. Decisions on Pub. Welfare 171 (2015) (on free education for persons with vision and hearing impairment); Prakash Mani Sharma v. OPMCM, 2 N.K.P. 2065, DN 7931, 178 (2008) (on health, education and housing rights of destitute, helpless, and disabled persons); Raju Prasad Chapagain v. OPMCM, 1 N.K.P. 2066, DN 8053, 445 (2008) (on special provisions for individuals with mental disabilities).

50. See Dal Bahadur Dhama v. OPMCM, 4 N.K.P. 2075, DN 9997, 759 (2018) (on vile vaccine contamination resulting in the death of children); Prakash Mani Sharma v. Ministry of Women, Children and Social Welfare, 8 N.K.P. 2065, DN 7995, 999 (2008) (on protective measures for women working in dance bars); Raju Prasad Chapagain v. OPMCM, 4 N.K.P. 2074, DN 9790, 514 (2016) (on the plight of orphans, senior citizens, persons with disabilities, and communities in extreme poverty and their constitutionally guaranteed socioeconomic rights, including to health and housing).

51. See Prakash Mani Sharma v. OPMCM, 076-WO-0938, at 3–4 (interim order) (2020) (on safe travel, health and other supports during the COVID-19 pandemic). See generally Madhav Kumar Basnet v. Prime Minister, Writ No. 3341/2065 B.S. (2008) (on the duty of the state in the context of mass starvation); Prakash Mani Sharma v. OPMCM, 1 N.K.P. 2067, DN 8540, 97 (2010) (on immediate supply of food and medicine during calamity); Bhupendra Bahadur Thing v. OPMCM, 9 N.K.P. 2074, DN 9876, 1544 (2017) (on the supply of rotten food by the World Food Program).

52. Man Bahadur Karki v. OPMCM, 3 N.K.P. 2067, DN 8332, 437 (2010); Kavita Pandey v. OPMCM, 7 N.K.P. 2067, DN 8411, 1128 (2010) (expanding the social security net to include single mothers and women); Lily Thapa v. OPMCM, 7 N.K.P. 2069, DN 9031, 884 (2012).

53. Colloquially, “Dalit” denotes communities deemed untouchable and socially, economically, politically, and religiously deprived from the state’s mainstream. Jyoti Rao Phule coined the term “Dalit” initially in India, and Dr. B. R. Ambedkar later adopted it. See AHUTI, JAAT BARTA 35–36 (2020). In Nepal, the term is used in the Constitution and by the National Dalit Commission. The 1910 *Muluki Ain* (Country Code of 1854 AD) established distinct procedures and punishments based on hierarchical divisions within society, institutionalizing the practice of untouchability. This Code subjected individuals considered untouchable and lower caste to various forms of discrimination and severe punishments based on their caste. Such provisions can be found throughout the *Muluki Ain*. For a detailed analysis of the discriminatory provisions of the *Muluki Ain* 1854, see ANDRAS HOFER, THE CASTE HIERARCHY AND THE STATE IN NEPAL: A STUDY OF THE MULUKI AIN 1854, at 45 (2004); RAJAN KHATIWODA ET. AL, THE MULUKI AIN OF 1854: NEPAL’S FIRST LEGAL CODE 29–36 (2021); INDIAN INSTITUTE OF DALIT STUDIES, CASTE-BASED DISCRIMINATION IN SOUTH ASIA: A STUDY ON NEPAL 10–19 (2008); Prakash Nepali v. Secretariat of Legislature Parliament, 8 N.K.P. 2079, DN 10923, 1450 (2021) (ensuring affirmative action for Dalit communities).

54. “Badi” refers to the communities considered impure and forced to undertake prostitution as means of livelihood. According to the 2021 census, their population is 11,470, amounting to 0.04 percent. See Nat’l Statistics Off., *National Population and Housing Census 2021: National Report on Caste/ethnicity, Language and Religion*, at 39 (2021), [https://censusnepal.cbs.gov.np/results/files/result-folder/Caste%20Ethnicity\\_report\\_NPHC\\_2021.pdf](https://censusnepal.cbs.gov.np/results/files/result-folder/Caste%20Ethnicity_report_NPHC_2021.pdf) [https://perma.cc/Z4GA-JXSN]. See Tek Tamrakar v. His Majesty’s Government and Others, 6 N.K.P. 2062, DN 7550, 680 (2005) (on birth registration of children of the Badi Community). “Kamaiyas,” “Kamlaris,” and “Halia” refer to those subject to the historical practices of indentured labor. These practices are legally abolished now.

55. Som Prasad Paneru v. OPMCM, 5 N.K.P. 2063, DN 7705, 631 (2006). *Kamlari* refers to the practice of giving up a girl child to be kept as an indentured laborer.



Halias,<sup>56</sup> and Kamaiyas.<sup>57</sup> Due to social and structural barriers, these groups consistently find themselves at the bottom of the ladder in fundamental aspects such as education, health, employment, life expectancy, and participation in state structures.<sup>58</sup> The Court's concern about freeing people from the bondage of exploitative practices and bringing them into the mainstream is apparent from the following observation made in the *Halia* case:

It is quite shameful that people, even in the 21st century, get exploited in the name of customs, religion and other pretexts, or that they are crushed by loans, work as bonded laborers in lieu of a parcel of land given to them for tilling. They live half-starved and their children are deprived of education and basic health facilities. Even to say that such a practice exists is a matter of national shame. It goes against the principle of an egalitarian society that the Constitution aspires to establish.<sup>59</sup>

Following the inclusive dimension that the 2015 Constitution provides for the right to social justice<sup>60</sup> and group-specific fundamental rights,<sup>61</sup> the Court has emphasized the alleviation and mainstreaming of Dalit and other marginalized communities on an inclusive basis. It has directed amendments to relevant legislation,<sup>62</sup> instructed the government to prepare a time-frame for allocating necessary resources ensured through affirmative action, and identified the target population for such measures.<sup>63</sup> It has also directed concerned agencies to facilitate the meaningful participation of marginalized communities in decision-making processes.<sup>64</sup>

56. *Uttar Tamata v. OPMCM*, 10 N.K.P. 2061, DN 7895, ¶¶ 6–7 (2007) (providing land to the landless *Halias*).

57. For detailed analysis of case law, see Ananda M. Bhattarai, *Promoting Welfare and Social Justice through Constitutional Mechanism*, Nepal Bar Council L.J. 1, 19–27 (2019).

58. The total population of all Dalit castes per the 2021 census is twelve percent. See Nat'l Statistics Off., *National Population and Housing Census 2021: National Report on Caste/ethnicity, Language and Religion*, at 8, [https://censusnepal.cbs.gov.np/results/files/result-folder/Caste%20Ethnicity\\_report\\_NPHC\\_2021.pdf](https://censusnepal.cbs.gov.np/results/files/result-folder/Caste%20Ethnicity_report_NPHC_2021.pdf) [<https://perma.cc/Z4GA-JXSN>]. Forty-eight percent of Dalits live below the poverty line, with a literacy rate of forty percent. Sixty percent of Dalit children suffer chronic malnutrition. See *Data of Dalits in Nepal*, SAMATA FOUNDATION, <https://samatafoundation.org/data-of-dalits/> [<https://perma.cc/M6D9-WRHM>].

59. *Dugare Kami v. OPMCM*, 4 N.K.P. 2075, DN 9991, 709 ¶ 5 (2018) (concerning resettlement and rehabilitation of *Halias*).

60. CONST. OF NEPAL Art. 42.

61. *Id.* Arts. 38–41 (providing for the rights of women, children, Dalits, and elderly people, respectively).

62. *Prakash Nepali v. Secretariat of Legislature Parliament*, 8 N.K.P. 2079, DN 10923, 1450 (2021); *Premilal Prasad Chaudhary v. OPMCM*, 078-WO-0660 ¶¶ 36–38 (Feb. 07, 2003).

63. *Binay Kumar Panjiyar v. Medical Education Council*, 10 N.K.P. 2078, DN 10756, 1479 ¶¶ 100–01 (2020).

64. *Prakash Nepali v. Secretariat of Legislature Parliament*, 8 N.K.P. 2079, DN 10923, 1450 ¶ 64 (2021).

Regarding environmental rights jurisprudence, a petition filed in the 1992 *Godavari Marble* case marks a turning point.<sup>65</sup> The Supreme Court of Nepal interpreted the right to live in a clean environment as intrinsic to the right to life guaranteed by the 1990 Constitution. Since then, the judiciary has increasingly recognized the human rights concerns of environmental harm and climate change. This has resulted in the heightened safeguarding of rights and the special protection of marginalized populations most affected by environmental and climatic harm. Over time, the Court has handed down decisions in areas such as pollution control,<sup>66</sup> management of solid waste,<sup>67</sup> use of plastic,<sup>68</sup> management of pesticides,<sup>69</sup> and land use and planning.<sup>70</sup> In these cases, the Court has applied the principle of respecting, protecting, and fulfilling human rights to ensure a safe, clean, healthy, and sustainable environment, establishing a reciprocal relationship between the two. While a detailed discussion is beyond the scope of this Article, this Section highlights representative cases concerning the right to a clean and healthy environment, as well as environmentally sustainable development.

### 1. *Safeguarding Forests and Protected Areas*

The Court has focused on the protection of biodiversity by checking the rampant felling of forests,<sup>71</sup> protecting equitable rights in the use and management of community forests,<sup>72</sup> issuing orders for conserving protected species,<sup>73</sup> and protecting lakes and other water bodies.

In the past three decades, Nepal has made considerable progress in protecting forests and biodiversity through community forest programs. Forests now cover nearly forty-four percent of the country's land,<sup>74</sup> and much is owed to the community forest program. The work of environmental defenders<sup>75</sup> in

65. Surya Prasad Sharma Dhungel v. Godavari Marble Industry, Golden Jubilee Special Issue N.K.P. 2049, DN 4. ¶ 30 (1995).

66. See generally Tulkman Lama v. OPMCM, 6 N.K.P. 2061, DN 7394, P 731 (2004) (on phasing out diesel run three wheelers); Prakash Mani Sharma v. OPMCM, 8 N.K.P. 2062, DN 7581, 984 (2005) (banning brick clines operating near densely populated areas); Nonsmokers' Association v. Interim Legislature Parliament, 9 N.K.P. 2066, DN 8217, 1448 (2009) (banning smoking in public places).

67. Namindra Raj Joshi v. OPMCM, 5 N.K.P. 2066, DN 8616, 812 (2010).

68. Santosh Kumar Mahato v. OPMCM, 1 Samaj Kalyan Issue 229 (2001); Nepal Plastic Industry Association v. Mahendranagar Municipality, 3 N.K.P. 2060, DN 7207 ¶¶ 11–12 (2003); Bharat Kumar Basnet v. Ministry of Forest and Environment, 075-WO-0072 ¶ 25 (May 2, 2022).

69. Raju Prasad Chapagain v. Ministry of Agriculture, 10 N.K.P. 2066, DN 8239, 1620 (2009).

70. Chandeshwori Karmacharya v. Ashok KC, 12 N.K.P. 2068, DN 8731, 2004 (2012).

71. See Yogi Narahari Nath v. Prime Minister Girija Prasad Koirala, 1 N.K.P. 2053, DN 6127, 33 (1996) (on the felling of tropical forest around Devghat for medical college).

72. See Hari Prasad Neupane v. National Planning Commission, 1 N.K.P. 2063 DN 7184 ¶ 16 (2003) (concerning the handover of forest for community management in Churia and Terai region).

73. See Tara Bahadur Budathoki v. OPMCM, 12 N.K.P. 2075, DN 10154, 2251 (2018) (banning the export of specific forest produce even if they come from private forest).

74. Dep't of Forest Rsch. & Survey, *Forest Cover Map of Local Levels (753) of Nepal*, at 6 (2018), [https://frtc.gov.np/downloadfile/Forests%20Cover%20Maps%20of%20Local%20Levels%20in%20Nepal%20Summary%20\(1\)\\_1568111767\(2\)\\_1572858696.pdf](https://frtc.gov.np/downloadfile/Forests%20Cover%20Maps%20of%20Local%20Levels%20in%20Nepal%20Summary%20(1)_1568111767(2)_1572858696.pdf) [<https://perma.cc/JS6Q-ZMDQ>].

75. In addition to Community Forest User Groups, environmental defenders also include advocates for river cleaning, public-spirited lawyers, human rights advocates, and community leaders dedicated to

rural Nepal is yet another contributing factor to the increase in forest cover. These community forest defenders, 22,415 in number and coming from 2.9 million households, are organized by forming community forest user groups (“CFUGs”). They protect more than 2.3 million hectares of forest.<sup>76</sup>

Income generation is a prime motive for the community forest program. The Forest Act 1992 made provisions for the rational allocation of income generated from community forests for further development of such forests, poverty alleviation, women empowerment, and support for local enterprises.<sup>77</sup> This was a significant shift in the country’s environmental governance, leading to wide-scale forest rejuvenation.<sup>78</sup> However, this program is not without challenges. Unplanned infrastructure development projects, illegal quarrying and logging, out-migration, and transition from agriculture to other occupations have created adverse conditions in its management.<sup>79</sup>

Although the law guarantees autonomy to CFUGs in managing the revenue generated from community forest management, the government’s persistent attempts to divert a large portion of this income to its own coffers remain a significant issue.<sup>80</sup> The CFUGs already pay both income tax and value-added tax (“VAT”) to the federal government, as well as taxes to local governments on the income generated from forest produce sales. In fiscal year 2022–23, all seven provincial governments imposed further taxes on CFUGs ranging from fifteen to forty percent.<sup>81</sup> Given the potential impact of such taxation on forest conservation, the Supreme Court issued an interim order to stop the provincial

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protecting the environment and the rights of vulnerable groups like Dalits, women, children, persons with disabilities, and senior citizens. They play a crucial role in bringing legal and social issues to judicial attention. See Hum. Rts. Council Res. 40/11, *Recognizing the Contribution of Environmental Human Rights Defenders to the Enjoyment of Human Rights*, Environmental Protection and Sustainable Development, U.N. Doc. A/HRC/RES/40/11 (Mar. 21, 2019).

76. FEDERATION OF COMMUNITY FOREST USERS, <https://fecofun.org.np/> [<https://perma.cc/3HEQ-34QP>] (last visited June 29, 2024).

77. Forest Act, 2019, § 22 follows the same framework and provides that twenty-five percent of the revenue generated from community forests can be used by CFUGs for community forest protection and development programs while another fifty percent is to be used for poverty alleviation, women empowerment and enterprise development and the remaining twenty-five percent is set out for activities decided by the CFUG itself.

78. Alexander C. Smith et al., *Community Forest Management led to Rapid Local Forest Gain in Nepal: A 29 Year Mixed Methods Retrospective Case Study*, 126 *LAND USE POL’Y* 1, 26–33 (2023).

79. Naya S. Paudel et al., *Introduction*, in *REVITALIZING COMMUNITY FORESTRY IN THE CHANGING SOCIOECONOMIC CONTEXT OF NEPAL* 1, 3–6 (Naya S. Paudel et al. eds., 2021); Chandan Kumar Mandal, *Country’s Infrastructure Projects Threaten Biodiversity Conservation, Wildlife Movement, Study Shows*, *KATHMANDU POST* (Jan. 5, 2021), <https://kathmandupost.com/climate-environment/2021/01/05/country-s-infrastructure-projects-threaten-biodiversity-conservation-wildlife-movement-study-shows> [<https://perma.cc/X4TH-35AF>].

80. See *Hari Prasad Neupane v. National Planning Commission*, 1 N.K.P. 2063, DN 7184 ¶ 15 (2003) (the Supreme Court quashing the decision of the government requiring CFUGS to submit forty percent of revenue generated from community forest management).

81. Using the authority provided by the 2017 Local Government Operation Act, the local government asked CFUGs to pay taxes in addition to what they were already paying to the federal government.

governments from collecting such additional taxes.<sup>82</sup> This order, although interim in nature, provided significant relief to the CFUGs.

National parks and protected areas are another priority for forest and biodiversity conservation.<sup>83</sup> Nepal now hosts twenty protected areas covering 23.39 percent of its land, contributing to in-situ ecosystem conservation and biodiversity protection.<sup>84</sup> However, establishing national parks and conservation areas alongside human settlements has presented several new challenges. Encroachment in and around the national park's forest and buffer zone areas impedes protection efforts in Nepal.<sup>85</sup> One such challenge has been the construction of roads threatening the biodiversity and ecosystem of Bardia and Chitwan<sup>86</sup> National Park.<sup>87</sup>

The Court issued orders to halt the construction of roads that pass through the parks.<sup>88</sup> In the *Chitwan National Park* case, the Court discarded the principle of *parens patriae*, which designates the state as the owner of natural resources, to advance the notion of trusteeship of government in protecting natural resources and biodiversity for both the present and future generations.<sup>89</sup> In the *Bardiya National Park* case, the Court ruled that project alternatives that have minimum impact on the environment should be prioritized to ensure sustainable development.<sup>90</sup>

82. Advocate Dilraj Khanal v. OPMCM, 080-WO-0010, 2 (interim order) (Dec. 28, 2023).

83. With the goal of nature conservation, twenty protected areas have been established in Nepal. They cover landscapes and ecosystem from the Himalayas and high mountain watershed to the flood plains of Terai with a low representation in the mid-mountain area. It is assumed that 80 out of 118 ecosystems of Nepal are covered within the protected areas. See *Introduction*, DEP'T OF NAT'L PARKS & WILDLIFE CONSERV., <https://dnpsc.gov.np/en/introduction/> [https://perma.cc/9UWD-A6TP].

84. Bishnu Prasad Shrestha, *Conservation Education for Biodiversity Conservation in Nepal, in 25 YEARS OF ACHIEVEMENTS ON BIODIVERSITY CONSERVATION IN NEPAL* 41, 41 (Maheshwar Dhakal et al. eds., 2018).

85. Indira Aryal, *National Parks, Reserves Clearing Illegal Encroachment*, RISING NEPAL DAILY (Mar. 29, 2023), <https://risingnepaldaily.com/news/24608#%5Ch> [https://perma.cc/N9H9-J5ML].

86. Chitwan National Park is a UNESCO World Heritage site. See *Chitwan National Park*, UNESCO, <https://whc.unesco.org/en/list/284/> [https://perma.cc/PX7N-U8P8]. Pollution caused by industrial and development work in proximity of the Narayani River, which passes through the Chitwan National Park, continually threatens the parks' aquatic ecosystems. *Narayani Pollution*, NEPALI TIMES (Apr. 6, 2023), <https://nepalitimes.com/20-years-ago-this-week/narayani-pollution> [https://perma.cc/TGJ3-L3AK]; Ramesh Kumar Paudel, *Bharatpur Dumps Waste in Narayani River Banks Despite Having Designated Land to Build a Landfill Site*, KATHMANDU POST (Aug. 15, 2020), <https://kathmandupost.com/province-no-3/2020/08/15/bharatpur-dumps-waste-in-narayani-river-banks-despite-having-designated-land-to-build-a-landfill-site> [https://perma.cc/M8KG-A3P5].

87. Ramesh Bhusal, *In Nepal, New Roads are Connecting People but Threatening Wildlife*, THE THIRD POLE (Mar. 29, 2022), <https://www.thethirdpole.net/en/nature/new-roads-nepal-connecting-people-but-threatening-wildlife/> [https://perma.cc/GQ6D-5KVS]. See generally Indra Mani Rai, Gavin Melles & Suresh Gautam, *Community Development for Bote in Chitwan National Park, Nepal: A Political Ecology of Development Logic of Erasure*, 15 SUSTAINABILITY 2834 (2023).

88. See Ram Chandra Simkhada v. OPMCM, 2 N.K.P. 2076, DN 10204, 367 (2019) (on the construction of a road in Chitwan National Park without proper environmental impact assessment); Ramkumar Acharya v. Prime Minister and Office of the Council of Ministers, 1 N.K.P. 2069, DN 8942, 47 (2012) (on road construction in Bardiya National Park).

89. Ram Chandra Simkhada v. OPMCM, 2 N.K.P. 2076, DN 10204 ¶ 25 (2019).

90. Ramkumar Acharya v. PMOCM, 1 N.K.P. 2069, DN 8942 ¶¶ 9–13 (2012).

## 2. Protection of the Churia Region

Churia (also called Shivalik or Chure) is the southernmost hill range of the Himalaya system. It spreads around eight hundred kilometers in the east-west dimension of Nepal and extends to north-west and north-east India.<sup>91</sup> This range is chiefly composed of sandstone and poorly consolidated rock formations. The Churia region spreads into thirty-six districts of Nepal and occupies almost 12.78 percent of Nepal's land area.<sup>92</sup> 164 river systems originate or cross from this region. Unsystematic excavation and export of riverbed materials (sand, gravel, stones), haphazard settlement, exploitation of the forest resources, unsustainable farming, open pasturage, forest fires, and environmentally unfriendly infrastructures have significantly impacted the lives of the people in this ecologically sensitive region.<sup>93</sup>

The then-President of Nepal, Dr. Ram Baran Yadav, initiated an attempt to protect Churia in 2007-2008 by forming the "President Churia-Terai Madhesh Conservation and Development Committee."<sup>94</sup> This resulted in some progress on Churia conservation, but it has not proven adequate. The relentless excavation of stone, gravel, and sand from rivers has led to adverse effects such as the widening of the riverbed, bank erosion, loss of agricultural land in the adjoining areas, and disasters including floods and landslides.<sup>95</sup> This has posed a threat to the lives and livelihoods of people in Churia, Bhavar, and the Terai region. Recognizing the environmental threats arising from sand and gravel mining in Churia, and mindful of previous judicial efforts that failed to halt the exploitation,<sup>96</sup> the Supreme Court took a bold step to stop the plundering of Churia in the case of *Shailendra Ambedkar*.<sup>97</sup> It held that environmentally sustainable development is the "most fundamental" among state policies, just as the Constitution's guarantee of the right to a dignified life is the most fundamental among fundamental rights.<sup>98</sup> Rejecting the politically toned

91. *President Chure-Conservation Program*, OFFICE OF THE PRESIDENT OF NEPAL, <https://president.gov.np/president-chure-region-protection-program/> [<https://perma.cc/78VD-3XKP>] (last visited July 4, 2024).

92. Bharat Pokharel, Rabin Niraula & Niroj Timalina, *Changing Face of the Churia Range of Nepal: Land and Forest Cover in 1992 and 2014*, at 1 (2015).

93. See, President Chure-Terai Madhesh Conserv. Dev. Board, *President Chure-Terai Madhesh Conservation and Management Master Plan*, at 5 (2017) [hereinafter Masterplan].

94. *President Chure-Conservation Program*, *supra* note 91. See also *Former President Yadav Calls for Preventing Chure Degradation*, MYREPÚBLICA (Oct. 19, 2023), <https://myrepublica.nagariknetwork.com/amp/former-president-yadav-calls-for-preventing-chure-degradation/news.html.twig> [<https://perma.cc/U8GW-LK7A>].

95. Yogendra Subedi & Anushta Shrestha, *Managing Landslides and Road Construction in Chure Hill Region (CHR), Nepal*, at 383–86 (2022), <https://www.cdri.world/fellowship/cohort/2021-22/project/managing-landslides-and-road-construction-in-chure-hill-region-chr-nepal>

96. *Narayan Devkota v. OPMCM*, 12 NKP 2067, DN 8521, 2053 (2011); *Shiva Prasad Poudel v. OPMCM*, 7 N.K.P. 2070, DN 9030, 868 (2013).

97. *Shailendra Ambedkar v. OPMCM*, 077-WC-0099 ¶ 41 (Oct. 18, 2022). This case was brought against the budget speech of fiscal year 2022–23, which announced government plans to excavate the Churia range to extract stone, gravel, and sand and sell it outside of Nepal to increase revenue for meeting the country's trade deficit with India.

98. *Id.* ¶ 39.

submission of the government that exporting riverbed materials was necessary to meet the revenue deficit in trade with India, the Court observed:

Recovering revenue through the export of stones, gravel, and sand . . . for economic or political interest is beneficial neither for the current nor for future generations. The massive exploitation of nature by extracting large quantities of stones and gravel is unacceptable. Such actions present to one's mind the image of selling the bones and flesh of one's own mother merely for monetary gains . . . [such exploitation] amounts to ecocide. To prevent this, we should all work together to protect our mountains, hills, and rivers and keep them clean and healthy. Nature is the gift we received from our ancestors to pass on to our descendants. We must never forget intergenerational justice and equity. This is also the fiduciary duty of the state. Therefore, while using nature, utmost caution should be taken. The human right to live in a clean and healthy environment guaranteed by the Constitution, and the policy of environmentally sustainable development, require this. No one has the right to abuse nature and damage it to the extent that it can never return to its original form . . . just to recover a trade deficit. Rather, the focus should be on identifying the cause for such a deficit and making up for it through the sustainable use of biological diversity and renewable energy development.<sup>99</sup>

This judgment is significant because it held that the destruction of the diverse biodiversity and human population of the Churia region would lead to the destruction of the whole country.<sup>100</sup> The Court deemed that the government's plan for excavating Churia, neglecting its commitments<sup>101</sup> as well as the judiciary's rulings,<sup>102</sup> would result in widespread environmental harm and could amount to ecocide. The Court held that humans, themselves a part of nature, have no right to act recklessly against nature and cause its irreversible decimation. Thus, it banned the export of riverbed materials from the region until parliament deliberated and legislated on the issue.

### 3. *Protection of Water Bodies and Lakes*

The protection of rivers, lakes, and water bodies has been on the judicial radar since the 1990s. The Supreme Court has issued orders addressing

99. *Id.* ¶ 32 (translation provided by the authors).

100. *Id.* ¶ 30 (“Destruction of Churia means the destruction of the whole country, if Churia is wiped out, other regions cannot remain intact.”)

101. For details of previous government interventions, see *id.* ¶ 27. Government acknowledgement of the necessity of protecting the Churia region is also evident from the masterplan it endorsed. See generally Motilal Ghimire & Niroj Timalisina, *President Chure-Terai Madhesh Conservation and Management Master Plan* (2017).

102. *Narayan Devkota v. OPMCM*, 12 N.K.P. 2067, DN 8521, 2053–54 (2010); *Shiva Prasad Paudel v. OPMCM*, 7 N.K.P. 2070, DN 9030, 869 (2013) (concerning the excavation of sand, gravel, and boulders in the Churia region).

river pollution<sup>103</sup> and the mismanagement of ponds, wetlands, and lakes.<sup>104</sup> A prominent case in this regard concerns the protection of the Fea Lake, the second-largest lake in Nepal, against urbanization-led encroachment. This lake, which spanned 10.35 square kilometers in 1961, had shrunk by almost half when petitioners filed the case in 2018.<sup>105</sup> Moreover, a large number of oddly constructed hotels and other infrastructures around the periphery diminished its natural beauty. Excessive growth of aquatic algae and weeds, and solid waste, pollution, and muddy discharge brought to the lake by its tributaries have degraded its visual aesthetic.<sup>106</sup> Through a series of orders, the Court halted the construction of cable cars passing through the lake and its periphery, directing the government to protect the lake and the biodiversity in and around it.<sup>107</sup> More recently, the Court quashed the decision of the concerned municipality to shrink the setback to thirty meters and issued a mandamus to remove any construction in the periphery for up to sixty-five meters from the bank of the lake. The Court also asked the government to develop the cleared area as a buffer zone.<sup>108</sup>

#### 4. *Ravage by Wild Animals and Compensation for Harm*

Often, conflicts arise between locals and authorities of protected areas when wild animals ravage crops and attack domestic animals and humans. In the 2009 *Bajuddin Miya* case, farmers who suffered huge agricultural losses to their crops caused by wild animals (elephants, deer, and badgers) from the Koshi Tappu wildlife reserve approached the Court after the government denied them compensation.<sup>109</sup> Observing that the state is the keeper of such animals, the Court found the state tortiously liable for crop damage and other harms to farming households.<sup>110</sup> Building on *Bajuddin Miya*, the Court in the 2018 *Thakur Subedi* case took cognizance of the economic impact of crop damage on

103. Prakash Mani Sharma v. His Majesty's Government, 9 N.K.P. 2056, DN 6789, 700 (1996) (concerning Bagmati river); Sthaneshwar Acharya v. Bhrikuti Paper and Pulp Industries Limited, 1 Sarwajanik Kalyan Issue 108 (2001) (concerning discharge of effluent from paper mills into Narayani river).

104. Prakash Mani Sharma et al. v. His Majesty's Government, 6 N.K.P. 2054, DN 6391, 312 (1997); Prakash Mani Sharma v. Local Development Ministry, 9 N.K.P. 2063, DN 7759, 1161 (2006) (concerning the protection of Ranipokhari); Dhananjaya Khanal v. OPMCM, 5 N.K.P. 2063, DN 7695 ¶¶ 18–19 (2006) (concerning the protection of a wetland called Bishajari lake).

105. Khagendra Subedi v. OPMCM, 9 N.K.P. 2075, DN 10086, 1626 (2018). Currently, the lake covers about 5.7 square kilometers.

106. Krishna Mani Baral, *Pokhara's Shrinking Phewa Lake*, NEPALI TIMES (July 24, 2021), <https://nepalitimes.com/here-now/pokhara-s-shrinking-phewa-lake> [https://perma.cc/7Y4Q-W9JZ]. See also Lal Prasad Sharma, *Phewa Lake Encroachment: Pokhara Folk Welcome Court's Decision*, KATHMANDU POST (May 1, 2018), <https://kathmandupost.com/national/2018/05/01/pokhara-folk-welcome-courts-decision> [https://perma.cc/U3TC-SJTN].

107. Dharam Bahadur Lamichanne v. Ministry of Physical Infrastructure and Transport, 9 N.K.P. 2075, DN 10085, ¶ 12 (2018); Khagendra Subedi v. OPMCM, 9 N.K.P. 2075, DN 10086, 1626 (2018); Bhagwati Pahari v. PM and Office of Cabinet Secretariat, 9 N.K.P. 2075, DN 10087, 1646 (2018).

108. Khagendra Subedi v. Pokhara Metropolitan City, O78-WO-1358 ¶¶ 18, 37 (June 19, 2023).

109. Bajuddin Miya v. OPMCM, 6 NKP 2066, DN 8169 ¶¶ 1–2 (2009).

110. *Id.* ¶¶ 29–31. Following this decision, the Government of Nepal developed Guidelines for the Relief and Distribution of Damages Caused by Wildlife, 2012. This guideline was subsequently revised in 2017 and 2023.

farmers' livelihoods and directed the government to include monkey-induced crop damage in the existing relief guidelines and pay compensation to affected farmers.<sup>111</sup> This judgment has established a foundational precedent for ensuring the "protection, empowerment and development" of vulnerable farmers—a protected group under the 2015 Constitution.<sup>112</sup> It also broadened the enforceability of the right to receive compensation by extending protection to farmers as both a human rights obligation and a liability for environmental harm.

### 5. *Plastics Control and Waste Management in Mountain Areas*

Plastics control is another area where the Court has played a substantive role by directing measures to curb pollution and mitigate environmental and public health risks. In 2017, the Court upheld the government's contested decision to ban plastics below the thickness of forty microns in Kathmandu Valley, factoring in the indefinite harm of unregulated plastic use to public health, biodiversity, and eventually the climate.<sup>113</sup> Despite this decision, the government reduced the approved ban from forty microns to less than thirty.<sup>114</sup> Following this reversal, the Court received another petition concerning the plastics ban. The Court responded with the principle of *in dubio pro natura*<sup>115</sup> and quashed the government's decision, holding the reversal as backtracking from the existing pollution control standards. This case highlighted the need for a human rights-sensitive approach to environmental protection, emphasizing the link between environmental harm and public health. It also addressed the effects of unmanaged plastic use, including soil quality degradation and water pollution, which disproportionately impact vulnerable communities such as marginalized groups and farmers who rely on agriculture and natural resources for their livelihoods.<sup>116</sup>

On another front, despite expeditions and mountain trekking serving as sources of revenue for the country, waste management in the mountains, including on Mount Everest, has been quite challenging. Responding to a petition demanding a government initiative to clean the mountains,<sup>117</sup> the Court acknowledged the potential threat to the mountains caused by reckless littering

111. Thakur Subedi v. Office of Prime Minister, 073-WO-0254, 13–14 (Apr. 2, 2018).

112. The Constitution designates farmers as a special group under the provisions for the right to social justice and right to equality. See CONST. OF NEPAL Arts. 18, 42.

113. Rajeshwar Lal Joshi v. OPMCM, 11 N.K.P. 2076, DN 10380, 2239–40 (2017); Santosh Kumar Sedhain v. Office of Prime Minister, 070-WO-0767, 25–26 (Aug. 27, 2017).

114. Bharat Kumar Basnet v. Ministry of Forest and Environment, 075-WO-0072 ¶ 25 (May 2, 2022). See also Shree Ram Subedi, *Weak Enforcement of Thin Plastic Ban*, MYREPÚBLICA (Aug. 2, 2022), <https://myrepublica.nagariknetwork.com/news/weak-enforcement-of-thin-plastic-ban/> [https://perma.cc/H77A-N5QM]; Abani Malla, *Thin Polyethene Bags are Illegal in Nepal, but they are still Everywhere*, KATHMANDU POST (Sept. 4, 2019), <https://kathmandupost.com/climate-environment/2019/09/04/thin-polyethene-bags-are-illegal-in-nepal-but-they-are-still-everywhere> [https://perma.cc/BN86-TU8H].

115. When in doubt in cases concerning environmental matters, decisions should favor strong environmental protection. See Bharat Kumar Basnet v. Ministry of Forest and Environment, 075-WO-0072 ¶ 23 (May 2, 2022).

116. *Id.* ¶¶ 17, 18.

117. Deepak Bikram Mishra v. OPMCM, 076-WO-0203 ¶¶ 1 (Apr. 26, 2024).



during expeditions. Guided by the precautionary and polluter pays principles, the Court laid down a “comprehensive approach” to mountain conservation that encompasses considerations for granting permits for expeditions, tourist responsibilities, and managing human waste and deceased bodies discovered in the mountains.<sup>118</sup>

### 6. Calamities, Disasters, and Mitigation Efforts

In developed nations, discussions about climate change primarily concern carbon emissions, carbon reduction, and carbon trade. Conversely, the discourse in developing countries often centers around disasters, calamities, diseases, fire, loss of agricultural production, and drying water systems, and their severe impact on vulnerable communities.<sup>119</sup> A prime example of such concerns in Nepal is the 2007 mass starvation in the Midwestern mountains caused by a shortfall in food production, aggravated by the scarcity of basic medicine. Responding to a petition seeking government action for relief in this matter, the Court called upon the state to fulfill its obligation of preventing starvation and ensuring the basic necessity of the right to food and its access. It ordered the government to supply food and medicine to those in affected districts even if that meant food supplies had to be imported.<sup>120</sup> In the 2017 *Bhupendra Thing* case concerning the distribution of rotten rice as relief material after the 2015 earthquake, the Court interpreted the right to food to mean access to nutritious and quality food.<sup>121</sup> It reminded international agencies like the World Food Program to ensure that only good quality and nutritious food supplies would be distributed as relief materials.<sup>122</sup>

The destruction of settlements by fire occurs every year in the rural Terai region of Nepal. One such instance is the 2017 *Raksharam Harijan* case, where recurring fire caused by dry weather and vernacular housings in western Terai was brought to the cognizance of the Court.<sup>123</sup> Here, the Court emphasized the impact of such disasters on marginalized communities, specifically those living in thatched houses in rural areas.<sup>124</sup> The Court highlighted the necessity of integrating disaster management into projects concerning settlement development, educational facilities, healthcare infrastructure, and environmental conservation. In this case, the Court instructed the government to develop national housing and food storage standards, focusing on marginalized populations compelled to live in hazardous conditions due to financial constraints.<sup>125</sup>

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118. *Id.* ¶¶ 12–22.

119. See Food and Agricultural Organization, 2021: THE IMPACT OF DISASTERS AND CRISES ON AGRICULTURE AND FOOD SECURITY: 2021, at 12, 26, 42 (2021), <https://doi.org/10.4060/cb3673en> [<https://perma.cc/8PCH-92UX>].

120. See Prakash Mani Sharma v. OPMCM, 1 N.K.P. 2065, DN 8540, 97 (2010) (concerning supply of food and medicine in rural areas hit by starvation).

121. Bhupendra Bahadur Thing v. OPMCM, 9 N.K.P. 2074, DN 9876 ¶ 9 (2017).

122. *Id.* ¶ 16.

123. Raksharam Harijan v. OPMCM, 2 N.K.P. 2074, DN 10203, 358 (2017).

124. *Id.* ¶¶ 4–5.

125. *Id.* ¶ 4.

It ordered the government to establish comprehensive arrangements for disaster management including the development of climate-friendly housing and settlement projects. The Court also reminded the state of its commitments toward the Sustainable Development Goals (“SDGs”), the Paris Convention, and the Sendai Framework.<sup>126</sup>

In the 2021 *Amarnath Jha* case, addressing yearly floods in Terai, the Court emphasized the human rights perspective on climate change.<sup>127</sup> Recognizing climate change as a primary cause of floods, the Court observed that:

[T]he right to live in a healthy and safe environment should be respected in every possible way and Courts should protect the people from the effects of flood and landslides. Thus, when the government fails to discharge its obligations to protect the rights of disaster-affected people and communities, the Court has to embark on judicial activism.<sup>128</sup>

It asserted that constitutional rights are not merely ornaments for display in the Constitution, and thus, the state must effectively implement them. The Court directed the government to adopt a sustainable development approach in all its programs and policies and to ensure accountability. Additionally, it urged the government to implement a multifaceted strategy for disaster risk mitigation in the context of climate change.<sup>129</sup>

### 7. *Climate Change and the Court*

Climate change has resulted in massive loss of snow cover in the Himalaya, the bursting of glacial lakes, and downstream floods, all of which severely affect the lives and livelihoods of millions. In his visit to Nepal, Secretary-General Antonio Guterres made the following remarks when he addressed the Nepali parliament on October 31, 2023:

What is happening in this country as a result of climate change is an appalling injustice and a searing indictment of the fossil fuel age. I am deeply concerned by those communities in Nepal facing the brutal impacts of the climate crisis. . . . Nepal [is] a friend of the world. So the world must be a better friend to Nepal. And the United Nations will never stop fighting to make that a reality.<sup>130</sup>

To deal with the climate crisis, Nepal issued a Climate Change Policy in 2010. However, there was no binding law to address this issue. Thus, a

126. *Id.* ¶ 12.

127. *Amarnath Jha vs. OPMCM*, 9 N.K.P. 2078, DN 10743 ¶¶ 8–9 (2021) (concerning the 2017 floods in Saptari district).

128. *Id.* ¶ 25 (translation provided by the authors).

129. *Id.* ¶ 29.

130. *UN Secretary-General’s Remarks at the Nepalese Parliament*, MINISTRY OF FOREIGN AFFAIRS (OCT. 31, 2023), <https://mofa.gov.np/un-secretary-generals-remarks-at-the-nepalese-parliament/> [https://perma.cc/WYM3-PVSR].

petition was filed in the Court in 2017 seeking an order directing the government to enact climate-specific legislation.<sup>131</sup> In this case, the Court found that the state is responsible for both adaptation and mitigation and thus the failure of the government to address climate change violated the rights to a dignified life and a healthy environment guaranteed in the Constitution of Nepal, and also contravened Nepal's commitments under the UNFCCC and the Paris Agreement.<sup>132</sup> The Court highlighted the state's role in addressing, mitigating, and preventing the adverse effects of climate change and thus ruled that a new, comprehensive law was necessary to implement Nepal's international and constitutional obligations. The Court ordered effective implementation of the 2010 Climate Change Policy, the 2010 National Adaptation Program of Action, and the 2011 National Framework for Local Adaptation Plan for Action, until new climate-specific legislation is enacted.<sup>133</sup> Following this decision, a new Environment Act containing provisions on compensation for environmental harm and a distinct chapter on climate change mitigation was enacted to replace the Environment Protection Act of 1997.<sup>134</sup>

#### 8. *Development and Human Rights Accountability*

In matters concerning infrastructure development projects, the Court has given particular emphasis to the environmental and human rights dimensions. It consistently highlights the importance of sustainable development, as well as ecological and human sensitivity in such projects. Though sometimes presumed to be anti-development, the Court maintains a balanced approach<sup>135</sup> that strongly opposes overlooking environmental factors to ensure that infrastructure development proceeds responsibly without neglecting these critical aspects.

Recently, the Constitutional Bench of the Supreme Court hearing the 2023 *Upper Karnali Project* case opined that:

Rivers, land, forests, biological diversity, and natural resources of the country are invaluable assets of the people. Utilization of these resources for development must be compatible with the policy of environmentally sustainable development outlined in the Constitution. The government serves as the trustee of the public interest and should consistently act in the national interest based on public policy.<sup>136</sup>

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131. Padam Bahadur Shrestha v. OPMCM, 3 N.K.P. 2076, DN 10210, 465 (2018).

132. *Id.* ¶ 4.

133. *Id.* ¶ 6, 7.

134. Environment Protection Act, 2018, §§ 23–28.

135. *Development, Protection of Environment Should go Hand in Hand, Justices Say*, KATHMANDU POST (Apr. 28, 2023), <https://kathmandupost.com/national/2023/04/28/development-protection-of-environment-should-go-hand-in-hand-justices-say> [<https://perma.cc/ME4X-YTM2>]. See Prakash Mani Sharma v. OPMCM, 076-WF-0006 ¶ 61 (May 26, 2022) (concerning the construction of an international airport in the biodiversity-rich Nijagadh area, and ordering the government to ensure that the environmental impact assessment is factually correct and that the construction takes place only if the environmental impact assessment report ensures that environmental harm will be minimal).

136. Chakra Bahadur Bohara et al. v. OPMCM, 079-WC-0057 ¶ 50 (May 7, 2023) (translation provided by the authors).

In this case, the Court declined to issue a writ of mandamus that would quash the extension of the project. Rather, taking an integrated approach to development, human rights, and environmental protection, the Court acknowledged the significant contribution of local communities in maintaining the watershed safe despite the livelihood challenges posed by climate change, such as shrinking land productivity and other adversities. Recognizing the fundamental human right to benefit from a hydropower project in their vicinity, the Court urged the government to allocate a specific portion of the project's annual revenue to spend on areas such as education, health, and overall socioeconomic development within the watershed. The Court considered this amount as a sort of compensation for the ecosystem services provided by preserving the watershed.<sup>137</sup> Later, in the 2023 *Bigyan Singh Bista* case, the Court again followed the same logic, further consolidating the jurisprudence on rights-friendly development.<sup>138</sup> These decisions enhance the human rights accountability of the government and also attempt to alleviate the suffering of marginalized communities living in the mountain areas.

## V. OVERVIEW OF THE CONSTITUTIONAL AND JUDICIAL EXERCISE

The Constitution, premised on the access-to-justice model, designates the Supreme Court of Nepal as its guardian. It grants the Court the jurisdiction to look into all the chambers of the Constitution.<sup>139</sup> This model allows public-spirited citizens and human rights advocates to draw the attention of the Court to the human rights violations caused by executive or legislative inaction or mis-action. The Constitution mandates the Court to provide appropriate remedies on such issues, promoting a culture of judicial activism.<sup>140</sup> As discussed earlier, the Supreme Court has made seminal contributions to human rights and environmental governance matters.

Since the unveiling of the new constitution in 2015, Nepal has entered a phase of inclusive rights consolidation, with the judiciary at the forefront. Inclusion, now the signature tone of the Constitution, is visible in the organization of the state and the arrangement of rights. The Court has grounded its rulings on promoting community forestry, advocating for environmental impact assessments with public participation, and supporting ecosystem services within the notion of inclusivity for the local population. While Nepal grapples with environmental challenges, some of which exceed its capacity to address, the constitutional framework emphasizes environmentally sustainable development. It prioritizes inclusive and equitable dynamics focusing mostly on vulnerable individuals and communities such as the Haliya, Dalit, and

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137. *Id.* ¶ 51(e).

138. *Bigyan Singh Bista et al. v. OPMCM*, 078-WF-0025 ¶¶ 40, 42 (June 15, 2023).

139. CONST. OF NEPAL Art. 128 § 2; *See* Bhattarai, *supra* note 18, at 298 (“there is almost no chamber of the Constitution that the Supreme Court has not unlocked”).

140. CONST. OF NEPAL Art. 133.

Kamaiya, who are at the bottom of the socioeconomic ladder. This is a prominent message that the world should recognize.

Nepal's message to the world is deducible from the way it handles matters that the global environmental law regime often overlooks. The absence of specific regulations for mountain ecosystems such as the Himalaya exemplifies this oversight. The ongoing and potential impacts of climate change on Nepal's mountains and its people, especially vulnerable communities, present distinctive issues for the country. Observing how Nepal addresses these challenges, such as keeping mountains clean, safeguarding the biodiversity and human inhabitants of mountain ranges like the Churia, and addressing human-wildlife conflicts, through domestic and international law can provide valuable insights to scholars and practitioners across the globe.

From establishing environmental protection as a fundamental right through court rulings (when the constitutional text did not provide for the same), to formulating guidelines for safeguarding mountain regions and contributing to state practice on the concept of ecocide, Nepal is setting a precedent for other jurisdictions to follow. Nepal's view of environmental challenges through a human rights lens predates international recognition, as exemplified by the 1995 *Godavari Marble case*.<sup>141</sup> The Court has extended this notion of a nexus between human rights and the environment to issues such as protecting forests,<sup>142</sup> national parks,<sup>143</sup> mountain ranges,<sup>144</sup> and prioritizing people-centered development with direct payback mechanisms for ecosystem services.<sup>145</sup> In addressing longstanding issues like development versus environment, the Court has centered sustainability at the core of environmental protection, recognizing sustainability not just as a provision but also as an essence of the Constitution.<sup>146</sup>

Case law shows that Nepal addresses its unique concerns with practical solutions, drawing from both domestic and international law. By recognizing emerging concepts, Nepal is also shaping state practice in the international environmental law framework. Nepal's courts have actively incorporated international norms into their judgments, serving as a conduit for their application. As international law lacks its own enforcement mechanism, the role of domestic courts is pivotal.

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141. Surya Prasad Sharma Dhungel v. Godavari Marble Industry, Golden Jubilee Special Issue N.K.P. 2049, DN 4 ¶ 30 (1995) ("Since a clean and healthy environment is part of the totality of life, the right to a clean and healthy environment is inherently included within the right to life.") (translation provided by the authors).

142. Prakash Mani Sharma v. OPMCM, 076-WF-0006 ¶ 52 (May 26, 2002).

143. Ram Chandra Simkhada v. OPMCM, 2 N.K.P. 2076, DN 10204 ¶ 27 (2019).

144. Shailendra Ambedkar v. OPMCM, 077-WC-0099 ¶ 7 (Oct. 18, 2022).

145. Chakra Bahadur Bohara et al. v. OPMCM, 079-WC-0057 ¶ 51e (May 7, 2023). Bigyan Singh Bista et al. v. OPMCM, 078-WF-0025 ¶ 42 (2023).

146. Shailendra Ambedkar v. OPMCM, 077-WC-0099 ¶ 39 (Oct. 18, 2022) ("Sustainable development is the 'most' fundamental principle of the Constitution."); Prakash Mani Sharma v. OPMCM, 076-WF-0006 ¶ 61 (May 26, 2022) (noting that, "from a judicial point of view, development always means balanced and sustainable development") (translation provided by the authors); Ram Chandra Simkhada v. OPMCM, 2 N.K.P. 2076, DN 10204 ¶ 10 (2019).

Nepal also serves as a case study on how innovative legal opportunities and rights empower people for effective environmental governance. The resilience of community forest and buffer zone forest management systems is established by the fact that these programs survived the Maoist insurgency (1996-2006).<sup>147</sup> In the post-conflict era, ongoing judicial interventions, such as relief to CFUGs from burdensome taxes, reflect continued efforts to preserve a successful initiative.<sup>148</sup> Nepal has made considerable progress in generating clean energy and increasing forest cover in recent times. However, the challenge lies in effectively and sustainably implementing court judgments.

Despite constitutional guarantees<sup>149</sup> and judicial efforts, close analysis of Nepali case law on environmental and natural resource management evince varying levels of non-compliance and regression in implementation. Victims and activists have had to bring certain cases multiple times before the courts because government and business communities disregarded the judicial orders after a certain period of time.<sup>150</sup> Consequently, courts have had to reissue similar orders. Although there is no risk of outright defiance, the pattern of disregarding judicial orders and at times backtracking from prior commitments reflects a lack of genuine interest and sustained commitment to environmental protection.<sup>151</sup> This calls for regular judicial vigilance.

The greatest issue facing Nepal today is the impact of climate change. As Secretary-General Guterres said, “Nepal is facing the brutal impacts of the climate crisis,” which is an existential threat to the populace.<sup>152</sup> The carbon emissions in the neighborhood and beyond victimize Nepal despite the state’s minimal emission contributions. This has contributed to many environmental and human rights harms. Despite positive human rights and environmental

147. Michael A. Rechlin et al., *Lal Salam and Hario Ban: The Effects of the Maoist Insurgency on Community Forestry in Nepal*, 17 *FORESTS, TREES & LIVELIHOODS* 245, 252 (2007).

148. Dilraj Khanal v. OPMCM, 080-WO-0010, 2 (interim order) (Dec. 28, 2023); *Nepal’s Constitutional Bench Halts ‘Triple Taxation’ on Community Forests*, MONGABAY (Oct. 18, 2023), <https://news.mongabay.com/2023/10/nepals-constitutional-court-halts-triple-taxation-on-community-forests/> [<https://perma.cc/VW7N-ZRNKJ>].

149. CONST. OF NEPAL Arts. 126 § 2, 128 § 4.

150. In *Narayan Devkota v. OPMCM*, the Court issued an order to stop excessive excavation of Churia. 12 N.K.P. 2067, DN 8521 ¶ 21 (2010). However, over time, the government introduced new policies and continued excavations in Churia which led to another judicial intervention in *Shailendra Ambedkar v. OPMCM*, 077-WC-0099 ¶ 41 (Oct. 18, 2022). Similarly, Court orders regarding regulation of plastic use in Kathmandu valley issued in *Rajeshwar Lal Joshi v. OPMCM*, 11 N.K.P. 2076, DN 10380, 2239–40 (2017), and orders regarding Fewa lake protection issued in *Bhagwati Pabari v. PM and Office of Cabinet Secretariat*, 9 N.K.P. 2075, DN 10087, 1646 (2018), were also not implemented by the government. Subsequently, stakeholders and environmental defenders filed new petitions pertaining to these issues and the Court issued fresh orders again. See Bharat Kumar Basnet v. Ministry of Forest and Environment, 075-WO-0072 ¶ 27 (May 2, 2022); Khagendra Subedi v. Pokhara Metropolitan City, 078-WO-1358 ¶ 37 (June 19, 2023).

151. *Development, Protection of Environment should go Hand in Hand, Justices Say*, KATHMANDU POST (Apr. 28, 2023), <https://kathmandupost.com/national/2023/04/28/development-protection-of-environment-should-go-hand-in-hand-justices-say> [<https://perma.cc/ME4X-YTM2>]; Abhaya Raj Joshi, *In Nepal, Environmental Advocates Fend off ‘Anti-Development’ Smear*, MONGABAY (Mar. 25, 2024), <https://news.mongabay.com/2024/03/in-nepal-environmental-advocates-fend-off-anti-development-smear/> [<https://perma.cc/E8NP-MYWV>].

152. *UN Secretary-General’s Remarks at the Nepalese Parliament*, *supra* note 130.

governance efforts, Nepal cannot mitigate climate change and its impacts with its efforts alone. Global visibility of Nepal's environmental concerns and international support in mitigating them are therefore paramount for the country to effectively address these challenges, which are also global in nature. This support can help Nepal implement sustainable practices, enhance resilience to climate change, and protect its valuable natural resources.

#### CONCLUSION

Whenever such disputes are presented to it, the Supreme Court of Nepal has enforced fundamental rights and inclusivity, and applied principles of international environmental and human rights law. When met with occasional defiance from the government, the Court has consistently urged adherence to the state's domestic and international obligations. Through such decisions, Nepal wishes to convey notions of sustainability, environmental inclusivity, and human rights. The efforts made by domestic courts in struggling democracies such as Nepal present significant case studies revealing how domestic endeavors can realize the ideals of international human rights and environmental law. They deserve acknowledgment and in-depth discussion.

On the path of ensuring inclusivity and human rights, Nepal is grappling with numerous environmental challenges. Nepal's narrative centers on the disproportionate effects it experiences in the changing global environmental and climatic scenario. It seeks to draw global notice to these impacts in light of its geographical, ecological, and social backdrop. Through legal and judicial measures, Nepal has actively addressed longstanding global issues and unique, emerging problems. The creative role played by the Nepali judiciary serves as an example for the world and merits global recognition and support.