

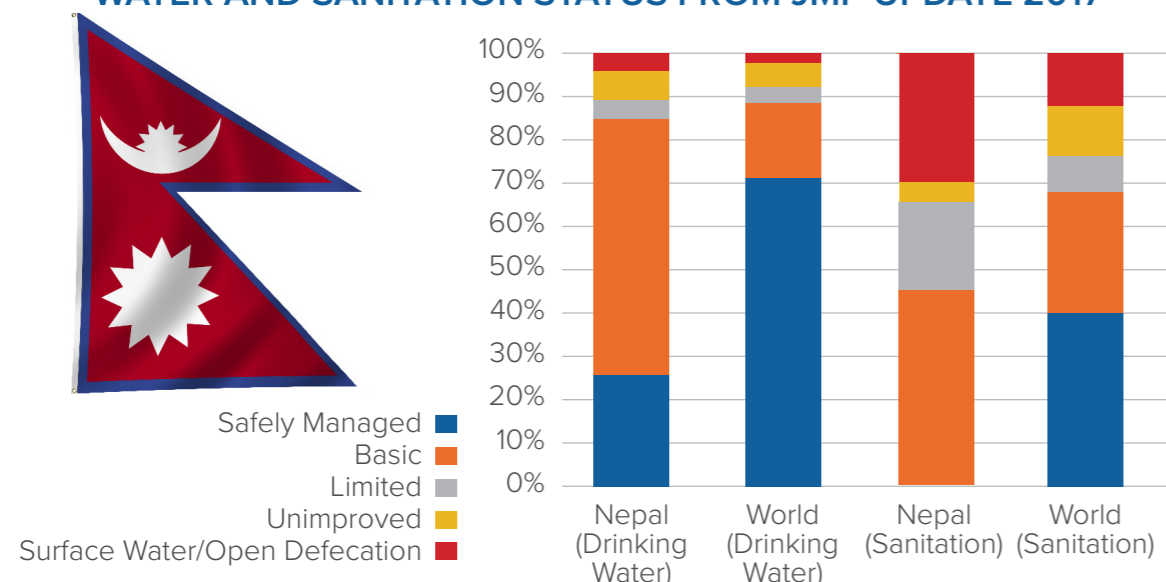
LEGAL COUNTRY MAPPING

NEPAL



NEPAL COUNTRY MAPPING

WATER AND SANITATION STATUS FROM JMP UPDATE 2017



GENERAL LEGISLATION

Member of a regional integration organisation	Yes, SAARC
State Organisation	Federal, Democratic
Relationship between International and National Law	Partly monist & dualist
Supreme Law	Constitution
Independent National Human Rights Institutions (NHRI)	Yes
Name of National Institution possessing regulation-making authority	Federal Parliament
Popular consultation as part of governing/legislative process	Yes

WATER GOVERNANCE

Right to Water or Sanitation mentioned in Constitution	Yes
A water code or a law specific to water resources	Yes
National Strategy, Policy, Action Plan etc. on Water and Sanitation	Yes
Transboundary Water Resources	Yes
Priorities in the allocation of water for different uses	Yes

LEGAL FRAMEWORK

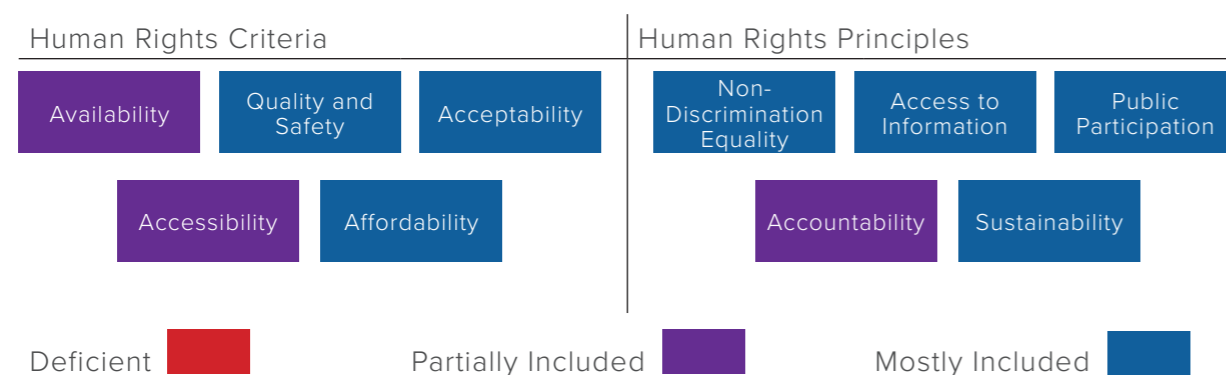


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A. PRELIMINARY QUESTIONS

What type of State is the country? (e.g., Federal, Unitary, etc.)

Nepal is a Federal Democratic Republic (art. 4 and 56 of the Constitution of Nepal).

How is the government organised politically?

The form of government of Nepal is a multi-party, competitive, federal, democratic, republican, parliamentary form of government based on pluralism (art. 74).

Division of government powers exist?

Yes.

Concurrent Powers of Federation, State and Local Level: Water Supply, Water Uses (Constitution of Nepal, Schedule 9 (5), (7))

Concurrent Powers of Federation and State: Water Supply, Sanitation, State Boundary river waterways, environmental protection, utilization of waters stretching in inter-state form (Constitution, Schedule 7 (13), (18), (23))

Federal Power: Policies relating to conservation and multiple uses of water resources (Constitution, Schedule 5 (11))

State Power: State Level Water Supply (Constitution, Schedule 6 (7))

Local Level Power: Basic health and Sanitation, Water Supply, small hydropower projects, alternative energy, protection of watersheds (Constitution, Schedule 8 (9), (19), (21)).

Which institutions and levels of government have legislative powers?

The Federal Parliament, consisting of two Houses to be known as the House of Representatives and the National Assembly is the Federal Legislature.

Who has the power to ratify treaties?

The Nepal Treaty Act, 2047 (1990) states in art. 3 that: “no one, except, the Prime minister and the Minister of Foreign Affairs, shall negotiate, accept the final draft or a certified copy, or sign or maintain reservations, or perform any other function related to a treaty to which Nepal or Government of Nepal is a party, without full power.”

Exceptions are made for Ambassadors of Charge d’Affaires representing Nepal and leaders of a delegation participating in an international conference to negotiate or accept the final draft or a certified copy of the treaty to be signed in the conference.

Is there popular consultation as part of governing/legislative process?

Yes. A referendum is possible on matters of national importance (art. 246 (2), 275 of the Constitution).

Has the country established a basin management agency? Is it autonomous?

No. A special purpose government administration at river basin level does not exist. However, the National Water Plan integrates a Water Resources Strategy that includes river basin management.

Does the country have transboundary water resources?

Yes. These include rivers shared with India and China such as the Ghaghara (Karnali) and the Gandaki as well as rivers shared solely with India such as the Kosi (Koshi), the West Rapti, the Bagmati, the Sharda and the Kamala.

Where transboundary water resources exist, is there an established international institution for basin management? Does it have any responsibility in relation to drinking water?

Yes. The International Centre for Integrated Mountain Development (ICIMOD) is a regional intergovernmental learning and knowledge sharing centre serving the eight regional member countries of the Hindu Kush Himalaya: Afghanistan, Bangladesh, Bhutan, China, India, Myanmar, Nepal, and Pakistan and is based in Kathmandu, Nepal.

The ICIMOD focuses on several regional programs including river basin management e.g. for the Koshi and Indus river basins. The Regional Programme on river basins focuses on multidisciplinary resource management approaches that address climate change and variability; cryosphere dynamics; the hydrological regime and water availability; water-related risk management; mountain community water management; and vulnerability and adaptation.

Projects include the establishment of Community Based Flood Early Systems (CBFES) together with the Department Of Hydrology and Meteorology (Ministry of Water Resources and Energy).

B. IS THE COUNTRY A MEMBER OF A REGIONAL INTEGRATION ORGANISATION?**Which countries form part of this organisation?**

Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka form part of the South Asian Association for Regional Cooperation (SAARC).

Are the decisions of the organisation binding for the members?

No. The decisions are not binding. However, it fosters cooperation within the framework of the Association in a plethora of spheres of human activity such as health, environment or climate change.

What is the mandate of the organisation?

According to Art.1 of the Charter of the South Asian Association for Regional Cooperation The objectives of the Association are:

- to promote the welfare of the peoples of South Asia and to improve their quality of life;
- to accelerate economic growth, social progress and cultural development in the region and to provide all individuals the opportunity to live in dignity and to realise their full potentials;
- to promote and strengthen collective self-reliance among the countries of South Asia;
- to contribute to mutual trust, understanding and appreciation of one another's problems;
- to promote active collaboration and mutual assistance in the economic, social, cultural, technical and scientific fields;
- to strengthen cooperation with other developing countries;
- to strengthen cooperation among themselves in international forums on matters of common interests; and
- to cooperate with international and regional organisations with similar aims and purposes

Does the regional organisation have the authority to regulate or make decisions which affect water and sanitation?

Water and Sanitation are not mentioned specifically in the areas of cooperation between SAARC-States. However, they are implicit. Health and Environment are considered areas of cooperation which affects water and sanitation.

The SAARC Convention on regional arrangements for the promotion of Child Welfare in South Asia considers basic services such as health care vital for child development. It opts to ensure full participation without hindrance or discrimination in the school, family and community life.

The Scope of the SAARC Convention on Cooperation on Environment Cooperation encompasses the exchange of best practices and knowledge, capacity building and transfer of eco-friendly technology concerning Freshwater Quality Management and Water management and conservation.

The SAARC Plan of Action on Poverty Alleviation recognizes that poverty reduction requires good governance by expanding the Social Safety Nets through provisions of safe drinking water and sanitation. Further, it also recognizes the importance of combating both rural and urban poverty through water and watershed development.

The Charter of the SAARC Development Fund (SDF) does fund and strengthen Water, Sanitation and Hygiene (WASH) services in selected areas of SAARC Countries, including Nepal. The Objectives include to ensure equitable access and quantity of safe drinking water, identify technology for sustainable water resource mechanisms, combat open defecation and to promote hygiene and sanitation practices in schools and communities.

C. WATER GOVERNANCE AND ADMINISTRATION

What is the structure of the government water administration (provide relevant organisational charts whenever available) and what power, role and responsibilities does the Government have at each level?

At national/federal level:

Concurrent Powers of Federation, State and Local Level: Water Supply, Water Uses (Constitution of Nepal, Schedule 9, Nr.5,7)

Concurrent Powers of Federation and State: Water Supply, Sanitation, State Boundary river waterways, environmental protection, utilization of waters stretching in inter-state form (Constitution, Schedule 7, Nr.13, 18, 23)

Federal Power: Policies relating to conservation and multiple uses of water resources (Constitution, Schedule 5, Nr.11)

At the intermediate level (state, river basin, other):

State Power: State Level Water Supply (Constitution, Schedule 6, Nr.7)

At the local level:

Local Level Power: Basic health and Sanitation, Water Supply, small hydropower projects, alternative energy, protection of watersheds (Constitution, Schedule 8 (9), (19), (21))

Which government ministries/agencies are directly or indirectly involved in governance of water and sanitation?

The WaSH sector in Nepal has three Government Ministries and many non-government agencies, civil society and private sector operating at the national, regional, district, village and municipality levels.

Ministry of Water Supply and Sanitation (MoWSS): MoWSS is the sector ministry responsible for the formulation of WaSH policies and plans as well as planning, implementation, regulation, monitoring and evaluation of programmes.

Department of Water Supply and Sewerage (DWSS): Under MoWSS, DWSS is the lead agency in the sector exclusively dedicated to planning and implementation of both rural and urban WaSH projects. With offices at the centre, 5 regions, and Divisional/ Sub-divisional offices throughout 75 Districts, DWSS has strength of around 1700 staff who have proven expertise in technical, social, finance, administration and management of WaSH services. It is implementing several rural & urban WaSH projects throughout Nepal. It is responsible for the projects with population above 1000.

Ministry of Urban Development (MoUD): MoUD is responsible for integrated urban planning and development in Municipalities.

Department of Urban Development & Building Construction (DUDBC): Under MoUD, DUDBC has been implementing ADB-financed Secondary Towns Integrated Urban Environmental Improvement Project (STIUEIP) and Integrated Urban Development Project (IUDP) in which water supply, sewerage and drainage are key components. But DUDBC has not a single Water Supply or Environmental Engineering professional to look after these projects.

Ministry of Federal Affairs and Local Development (MoFALD): MoFALD is responsible for local governance and development as per Local Self-governance Act, 1999. MoFALD is another key Ministry planning and implementing rural WaSH projects with population below 1000.

Department of Local Infrastructure Development and Agriculture Roads (DoLIDAR): DoLIDAR is the main implementing agency through District Technical Office (DTO) at the local level. DoLIDAR is currently engaged in the implementation of two Finnish grant-funded programmes, the Rural Water Supply and Sanitation Programme-Western Nepal (RWSSP-WN II) and Rural Village Water Resources Management Programme-III (RVWRMP-III). While RWSSP-WN II is completely a WaSH sector initiative, RVWRMP-III is a multi-sector programme with WaSH as a key component.

Local Bodies: District Development Committees (DDCs), Village Development Committees (VDCs) and Municipalities are local bodies governed by the Local Self Governance Act (LSGA), 1999 and are responsible for planning, management and coordination of local development efforts based on decentralized participatory planning and monitoring processes. This Act has made provisions for the development and implementation of WatSan programs as social and political responsibility of the local bodies within their respective areas. Local WaSH Coordination Committees: The WaSH Coordination Committees at the District (DWaSHCC), Municipality (MWaSHCC), and Village (VWaSHCC) committees provide coordination in the preparation of local WaSH plans with inputs from WaSH Sector Actors and in the effective implementation of the local plans.

Ministry of Health: Its main role on WaSH is to promote health and hygiene through water quality surveillance and emergency response. As an agency responsible for water quality surveillance, the Ministry has formulated water surveillance guidelines for use at the local levels. Its work on WaSH services is guided by National Health Sector Plan II (2011-2015).

Ministry of Education: The key role of Ministry of Education is to promote WaSH in Schools (WinS). The concept of child-friendly schools (2010) introduced by the Ministry highlights child friendly standards on WaSH services and hand washing practices which is being further strengthened through WaSH in Schools (WinS) Programme.

Ministry of Population and Environment: Areas such as Environmental impact assessment and wastewater quality (discharge) standards are looked after through this Ministry.

CHAPTER 2: INTERNATIONAL AND REGIONAL TREATIES

A. REGIONAL MULTILATERAL/BILATERAL TREATIES

Table 1. Regional multilateral and bilateral treaties

Instruments	Participating States	Entry into force
Charter of the South Asian Association for Regional Cooperation	SAARC-States: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka	08.12.1985
SAARC Convention on regional arrangements for the promotion of Child Welfare in South Asia	SAARC-States	05.01.2002
SAARC Convention on Cooperation on Environment	SAARC-States	29.04.2010
SAARC Plan of Action on Poverty Alleviation	SAARC-States	06.01.2004
Charter of the SAARC Development Fund (SDF)	SAARC-States	03.04.2008
Agreement Between His Majesty's Government of Nepal and the Government of India on the Gandak Irrigation & Power Project	India, Nepal	04.12.1959
Agreement Between His Majesty's Government of Nepal and the Government of India on the Gandak Irrigation & Power Project	India, Nepal	04.12.1959

B. INTERNATIONAL TREATIES

Table 2. International binding instruments

Instruments	Signature	Ratification
International Covenant on Civil and Political Rights (1966)	N/A	Acceded: 14.05.1991
Optional Protocol to the International Covenant on Civil and Political Rights (1966)	N/A	Acceded: 14.05.1991
International Covenant on Economic, Social and Cultural Rights (1966)	N/A	Acceded: 14.05.1991
Optional protocol to the International Covenant on Economic, Social and Cultural Rights (2008)	-	-
Convention on the Elimination of All Forms of Discrimination against Women (1979)	05.02.1991	22.04.1991
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999)	N/A	15.06.2007
Convention on the Rights of the Child (1989)	26.01.1989	14.09.1990
The Convention on the Rights of Persons with Disabilities (2006)	03.01.2008	07.05.2010
Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006)	N/A	07.05.2010
Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)	N/A	Acceded: 14.05.1991
Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (1998)	-	-

Instruments	Signature	Ratification
Geneva Convention (III) relative to the Treatment of Prisoners of War (1949)	N/A	07.02.1964
Geneva Convention (IV) relative to the protection of Civilian Persons in Time of War (1949)	N/A	07.02.1964
Protocol Additional (I) to the Geneva Conventions relating to the Protection of Victims of International Armed Conflict (1977)	-	-
Protocol Additional (II) to the Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts (1977)	-	-
Convention on the Law of the Non-Navigational Uses of International Watercourses (1997)	-	-
International Convention on the Elimination of All Forms of Racial Discrimination (1965)	N/A	Acceded: 30.01.1971

Table 3. ILO conventions

Instruments	Signature	Ratification
ILO Forced Labour Convention, No. 29 (1930)	N/A	03.01.2002
ILO Recruiting of Indigenous Workers Convention, No. 50 (1936) (shelved convention)	-	-
ILO Food and Catering (Ships' Crews) Convention, No. 68 (1946) (instrument to be revised)	-	-
ILO Plantations Convention, No. 110 (1958)	-	-
ILO Hygiene (Commerce and Offices) Convention, No. 120 (1964)		

Instruments	Signature	Ratification
ILO Occupational Safety and Health (Dock Work) Convention, No. 152 (1979)	-	-
ILO Convention No. 161 concerning Occupational Health Services (1985)	-	-
ILO Safety and Health in Construction Convention, No. 167 (1988)	-	-
ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989)	N/A	14.09.2007
ILO Work in Fishing Convention, No. 188 (2007)	-	-

CHAPTER 3: DOMESTIC LEGISLATION ON WATER

A. WATER AND SANITATION LAW

Is the right to water or the right to sanitation mentioned in the Constitution?

Yes. In 2015 Nepal joined the exclusive list of countries who have explicitly recognized the right to water in their national constitution. Art. 35 (4): "Every citizen shall have the right of access to clean drinking water and sanitation."

Does the Constitution otherwise reference water and sanitation?

Yes. The Constitution further states that services such as water supply belong to the Concurrent powers of Federation, State and Local Level. Moreover, the Constitution affirms rights which have been connected to HRWS, such as the right to food (Art. 36), the right to housing (Art. 37) and the right to a clean environment (Art. 30).

Is there a water code or a law specific to water resources? Please specify.

Yes. The following laws are specifically mentioning water resources.

- Water Tax Act, 1966
- Nepal Water Supply Corporation Act, 1989
- Water Resources Act, 1992
- Environment Protection Act, 1997
- Local Self Governance Act, 1999
- Water Tariff Fixation Commission Act, 2006
- Water Supply Management Board Act, 2006
- Solid Waste Management Act, 2012

Is there a national strategy/policy, action plan or similar documents on water?

Plans:

- National Water Plan, 2005

- Bagmati Action Plan, 2009
- Nepal's Sanitation and Hygiene Master Plan, 2011
- Nepal Water Supply, Sanitation and Hygiene Sector Development Plan, 2016

Policies, Strategies:

- National Water Resource Strategy, 2002
- Rural WatSan National Policy and Implementing Strategy, 2004
- Urban Water Supply and Sanitation National Policy, 2009
- Climate Change Policy, 2011
- National Household Water Treatment and Safe Storage Policies in Nepal, 2012
- National Water Supply and Sanitation Sector Policy 2014

Are there any other major regulations, decrees, orders, circulars, or similar official documents related to water (such as pricing, water policing, utility easements, public domain occupation...etc.) related to the rights to water and sanitation?

Regulation (Rules):

- Water Resource Rules, 1993
- Environment Protection Rules, 1997
- Drinking Water Rules, 1998
- Kathmandu Valley Water Supply Management Board Rules, 2007

Formation Orders:

- Rural Water Supply Sanitation Fund Development Board (Formation Order 1995)
- Melamchi WS Development Board (Formation Order, 1998)
- HP Bagmati CID Committee (Formation Order, 1998)

Standard, Directives, Guidelines:

- Standard Guidelines, 2002
- NDWQ Standards and Implementation Directives, 2005
- Co-financing WSP Implementation Guideline, 2011
- W/S Operators Directive, 2012
- Dry area Water Safety Plan Impl. Directives

B. EXTRACTION AND/OR USE OF WATER

Does the legislation regulate the right to abstract water? (surface, groundwater, etc.)?

Sec. 7 (8) (c) of the Water Supply Management Board Act enables the Kathmandu Valley Water Management Board to regulate, control or prohibit the extraction and use of water from groundwater resources within its geographical area, and as to give license, as prescribed, to extract or use such water. However, it does not apply if it is mentioned otherwise in the prevailing law.

Does the legislation distinguish between the extraction of drinking water and water for other uses?

Our research did not find any answers in this regard.

Is the right to use water connected to land ownership?

According to article 4 (2) (e) of the Water Resource Act, water resources confined to a land can be used by the owner of such land without a licence. The person making use of water resources shall make its beneficial use without causing damage to others (art. 4 (3)).

Are permits/licenses required for water use? (e.g. domestic, agricultural, industrial)?

The Water Resources Act, 2049 (1992) establishes a system of licensing. Article 4 (1) and (2), establishes that no person shall be entitled to utilize water resources without obtaining a license under this Act, except for the following:

- For one's own drinking and other domestic use on an individual or collective basis,
- For the irrigation of one's own land on an individual or collective basis,
- For the purpose of running water-mill or water-grinder as cottage industry,
- For the use of boat on personal basis for local transportation,
- For the use, as prescribed, of the water resources confined to a land by the owner of the land

The Drinking Water Rules are licensing the use of drinking water as well and set out the conditions of service utilisation by consumers.

Can permits/licenses be suspended? Under what circumstances??

The Water Resource Act, 2023 (1966) establishes in sec. 14 that services may be stopped for anyone who is in default of payment of the charge for the utilization of services or utilizes the services un-authoritatively or misuses the services or acts in contravention of services rendered to them. However, prior to the cancellation of a license the prescribed officer may issue an order to the concerned licensee by prescribing necessary improvements to be made on such activity within the specified period. If no improvement has been made the officer may cancel the license of such a person (sec. 21 (2)) after having given the licensee a reasonable opportunity to explain his innocence (sec. 21 (3)).

Can water abstraction licenses be transferred? Is transferability subject to restrictions?

Yes. According to art. 8 (6) of the Water Resources Act, 2049 (1992), a license can be sold or otherwise transferred. However, it is required to obtain the approval from the prescribed officer or authority beforehand.

Are there priorities in the allocation of water for different uses?

Yes. The Water Resources Act establishes in Article 4 and 7 that drinking water and water for domestic purposes should be given priority over other uses. Article 7 establishes a priority order which in general shall be followed while utilizing water resources: (1) drinking water and domestic users, (2) irrigation, (3) Agricultural uses such as animal husbandry and fisheries, (4) hydroelectricity, (5) cottage industry, industrial enterprises and mining uses, (6) navigation, (7) recreational uses, and (8) other uses.

CHAPTER 4. HUMAN RIGHTS CRITERIA TO WATER AND SANITATION

A. AVAILABILITY

Does the law ensure that a minimum essential level of water is available to all?

Our research did not find any answers in this regard.

What are the standards on the amount of water to be made available/is there any guidance in the law in this respect?

Does the law ensure continuous supply of water for all?

Our research did not find any answers in this regard.

Does the law prioritize water for domestic uses over other uses?

Yes. When utilizing water resources, the Water Resources Act establishes in Article 4 and 7 that drinking water and water for domestic purposes should be given priority over other uses.

Is there provision in the law for availability of water and sanitation facilities in non-domestic places such as schools, hospitals, work places, prisons, refugee camps, etc.?

Prisons: All inmates are free to use water without wastage. They have facilities to clean and wash clothes, use toilets and take bath as and when they wish. By the virtue of Prison Act, prisoners are entitled to free health service and medication. Doctors, nurse and health workers are deputed in the prison. However, health service is not adequate to satisfy the demands of inmates. Ordinary cases are treated in the prison and follow ups are made by the medical staff. Severe medical cases are referred to nearby government hospitals.

Schools: The School Sector Reform Plan 2009-15 lays out that each school must have at least two separate toilets - one for girls and one for boys. In a Foundation School (1-3 grades) there must be at least 2 toilets one for girls and one for boys. In a primary school (1-5 grades), there must be at least 3 toilets of which at least one must be allocated for girls. The SMC may decide use of the remaining toilet depending on student pressure. Similarly, in an Upper Primary School (1-8 grades) there must be at least 5 toilets of which at least two must be allocated for the girls. These toilets must also have adequate water supply including provision of detergent for cleaning. Each school must have its own source of potable water.

Similarly, the National Framework of Child-friendly School for Quality Education (2010) highlights the necessity to provide safe drinking water, clean toilets and drainage in schools.

B. ACCESSIBILITY

What are the grounds for disconnecting, interrupting or altering water supply and sanitation services (e.g., authorities may alter water supply in case of droughts or emergencies, in which cases are disconnections possible...)?

There are several laws that allow service disconnections.

Section 6 of the **Water Tax Act, 2023 (1966)** states that the cancellation the distribution of water is only permissible if the tax-payer:

- does not pay the tax during the prescribed time limit, which is no later than the month following the month the tax-payer must pay for (sec. 4 (3)) and
- does not pay the then applied additional fee in the time required (sec. 5)

Furthermore, the **Water Supply Management Board Act, 2063 (2006)** states that “the Board or service provider, [...] may suspend or terminate the service of any user who defaults on payment of the tariff fixed pursuant to this Act or the prevailing laws or on payment of the tariff within the prescribed time” (sec. 26 (1)). However, if the user pays the terminated tariff and other fees as required the service shall be provided again (sec. 26 (2)).

The Solid Waste Management Act 2068 (2011) states in sec. 40 (1) that “the Local Body may block any service or facility to any person who defaults to pay or disobeys to pay the prescribed service charges under this Act and, in addition to that the Local Body may block electricity and telephone services and house and land transaction by sell or otherwise in his/her name by writing to the concerned body. However, before writing as above, the concerned person shall be given information in writing.”

The Water Resources Act, 2049 (1992) also states in sec. 14 that services may be stopped to such a person who is in default of payment of the charge for the utilization of services or utilizes the services un-authoritatively or misuses the services or acts in contravention of the terms and conditions.

Drinking Water Rules, 2055 (1998) states in sec. 34 that the water supplier may stop the service provided to the consumer in the certain conditions (e.g. default of payment, violation of agreement).

What are the procedural standards/criteria for permitting interruption, disconnection or alteration of water supply and sanitation services?

Section 6 of the **Water Tax Act, 2023 (1966)** allows disconnection from water supply. It states: “If any taxpayer does not pay the tax and the additional fee as referred to in Section 5 payable by him/her even within Six months of the expiry of the time limit as mentioned in Sub-section (3) of Section 4, the distribution of water as mentioned in Clause (a) of Section 2 shall be stopped from the tap registered in his/her name.”

Further, the **Water Resource Act, 2049 (1992)** establishes in art. 14 that services may be stopped for anyone who is in default of payment of the charge for the utilization of services or utilizes the services un-authoritatively or misuses the services or acts in

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contravention of services rendered to them.

Furthermore, **the Water Supply Management Board Act, 2063 (2006)** states that “the Board or service provider, [...] may suspend or terminate the service of any user who defaults on payment of the tariff fixed pursuant to this Act or the prevailing laws or on payment of the tariff within the prescribed time” (sec. 26 (1)). However, if the user pays the terminated tariff and other fees as required the service shall be provided again (sec. 26 (2)).

The Solid Waste Management Act 2068 (2011) states in sec. 40 (1) that “*the Local Body may block any service or facility to any person who defaults to pay or disobeys to pay the prescribed service charges under this Act and, in addition to that the Local Body may block electricity and telephone services and house and land transaction by sell or otherwise in his/her name by writing to the concerned body. However, before writing as above, the concerned person shall be given information in writing.*”

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Are alternative ways of water supply and sanitation services provided for in case of alteration of supply and/or service?

Our research did not find any answers in this regard.

**Does the law provide guidance on:
The number of water outlets?**

The safety, distance and time from a dwelling or structure to reach water outlet or sanitation facilities (e.g., laws that specify water outlets must be available within a certain distance from a school or household)?

Technical safety of water outlets or sanitation facilities (e.g., law requiring that certain standards are applied in the constitution of those facilities or of buildings)?

The Sanitation and Hygiene Master Plan of the Government of Nepal lays out that the communities will be given informed choices of various types of toilets that are low cost, hygienic, users friendly and sustainable. The toilet will be as per the definition given by the Joint Monitoring Program (JMP) of UNICEF and WHO. The Master Plan however, suggests any one of the locally appropriate improved toilet options with permanent structures at least up to the plinth/ floor level for durability and sustainability of the structure.

Is there provision in the law for accessibility of water and sanitation facilities in non-domestic places such as schools, hospitals, work places, prisons, refugee camps, etc.?

The Sanitation and Hygiene Master Plan states that within the designated community, all the institutions including schools, health post, VDC, municipality building, community buildings and other public offices/ places must have hygienic toilets. These toilets should be users friendly in the local context as far as possible. The school toilets must have Child, Gender and Differently-abled (CGD) friendly water, toilet and hand washing with soap facilities including menstrual hygiene facilities.

Further, it states that provision of toilet facilities must be made mandatory to all new houses in urban, semi-urban, and district headquarters. Locally required and appropriate

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toilets with adequate capacity and hygiene facilities will also be promoted in public places such as bus stands, recreational spots, local Haat Bazaar areas, housing areas, dense settlements, roadside hotels/motels/restaurants etc. It will be encouraged to adopt on-site sanitation with septic tank in these new built up buildings. However, new commercial buildings such as hotels, apartments, cinema halls, supermarkets, government buildings etc. must have septic tank within the complexes. This provision is expected to decrease load to sewer systems. In case of sanitation system within the complexes is to be connected to sewer, the wastewater should be disposed after proper treatment as per the prevailing environmental and engineering norms, rules and regulations. Solid waste management should also be properly adopted.

C. QUALITY AND SAFETY

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Are there parameters of quality and safety for drinking water established under law?

The legal standards for the quality of drinking water are set out in the Ordinance on the Yes. Under the provision of Water Resources Act, 2049, article 18 para. 1, the Government of Nepal has issued the notice of the “Implementation Directives for National Drinking Water Quality Standards, 2062”, by the Ministry of Physical Planning and Works which sets clear parameters of quality and safety for drinking water.

Is monitoring of drinking water quality or wastewater required by law? If so, which actor is required to monitor it and how often (according to the law)?

Yes. Paragraph 4 of the “Implementation Directives for National Drinking Water Quality Standards, 2062” establishes clear guidelines on the monitoring and surveillance of drinking water sources. The “Water Supplier” themselves are hereby responsible for water quality monitoring (sub-para. 11). The frequency of monitoring depends on the physical, chemical and microbiological parameters being monitored. Details are available at sub-para. 12. The water supplier is also required to monitor all the components of the water supply system from the perspective of sanitation and risk to health, to supervise, inspect and maintain the water supply systems and to develop necessary infrastructure for quality control (sub-para. 13).

Besides the monitoring by the Water Supplier, the Ministry of Health and Population and its line agencies are responsible for surveillance of drinking water quality (sub-para. 19, 25). The frequency of monitoring depends similarly on the different bacteriological, physical and chemical parameters as well as the source and mode of supply. Details available at sub-para. 19, table 2.

Do laws/regulations include guidance on the safe construction of water and sanitation Infrastructure (e.g., to ensure no contact with excreta, ventilation, respect for construction guidelines)?

Our research did not find any answers in this regard.

Do laws/regulations include requirements or guidance on safe emptying of latrines as

well as safe treatment and disposal of treated sludge?

Our research did not find any answers in this regard.

Do laws/regulations establish requirements on household water treatment and storage (e.g., quality requirement with respect to water containers, rainwater harvesting limitations, etc.)?

No. There are no specific targets or implementation measures on Household Water treatment and Self-Storage. However, the National Water Policy includes three broad implementation measures that involve specific action: setting up an enabling environment of water management and supply, designing a clear and effective institutional framework, and launching several management instruments considering local communities' participation (NWP pg. 8).

The Rural Water Supply and Sanitation Programme, the Small Towns Water Supply and Sanitation Programme, the Major Towns Water Supply and Sanitation Programme, and the Water Supply and Sanitation Institutional Strengthening Programme uptake these measures (NWP pg. 30-32).

Implementing agencies are required to issue demand driven projects complying with given requirements (NWP pg. 30). Investment and fund allocation mechanisms for cost sharing are also forecasted for water strategies implementation (NWP pg. 83).

D. WATER POLLUTION CONTROL

Are there legislative provisions concerning waste disposal activities? Which authorities are responsible for monitoring to determine if waste has caused pollution of bodies of water?

Yes. **The Solid Waste Management Act, 2068 (2011)**, provides provisions regarding waste disposal activities. The local body, shall be responsible to construct and operate waste infrastructure (sec. 3 (1), 20 (1)) and manage the solid waste collected from its area in a manner so that the adverse effects on the environment would be minimized as less as possible (sec. 20 (1)). Moreover, the Solid Waste Technical Cooperation Centre shall extend necessary technical co-operation to the Local Body for management of solid waste in a pollution free manner (sec. 20 (2), 26).

The local body refers to concerned municipalities, sub-municipalities, cities and Village Development Committees (sec. 2 (aa)). Solid Waste includes domestic, industrial, chemical harmful and health related waste as well as materials that cannot be used presently, in solid, liquid, gaseous, thick liquid, smoke or dust form emitted out damaging the environment (sec.2 (o)).

Furthermore, **the Water Resources Act, 2049 (1992)**, states in sec. 19 (2) that “no one shall pollute water resource [...]” and in sec. 19 (3) that “*the prescribed officer may, as required, examine or cause to be examined to determine as to whether or not the water resource has been polluted or the quality standard as prescribed [...] has been maintained*”.

Is there legislation which regulates the contamination of groundwater?

Yes. **The Water Resource Act, 2049 (1992)** states in art. 19 (2) that “no water resource shall be polluted by way of using or putting any litter, industrial wastes, poison, chemical or toxicant to the effect that the pollution tolerance limit (as prescribed in sec. 19 (1)) of the water resource [...] is exceeded”. Sec. 20 also establishes that while utilizing water resources, it shall be done in such a manner that no substantial adverse effect is made on the environment.

The Drinking Water Rules, 2055 (1998), licences the use of drinking water to control water pollution and maintenance of quality standards for drinking water.

Is permission required to discharge effluents? What are the criteria used for considering applications and granting permits?

Yes. Sec. 13 (1) of the Solid Waste Management Act states that “nobody shall, without obtaining a license from the local body carry out activities relating to the management of solid waste.” If a national or foreign company, body or organisation wishes to carry out management of solid waste then his application for license shall be as prescribed in this act and therefore include details such as a solid waste management plan, details of manpower and technology relating to the management of solid waste (sec. 13 (2)). The concerned local body then may issue a license (sec. 3).

However, sec. 4 states that “*the local body may issue a license [...] only after obtaining permission from the Government of Nepal on condition that the technology shall be transferred by the foreign company, organisation or body within the time period mentioned in the agreement in case of non-availability of technology necessary for the management, recycle use, processing or disposal of solid waste*”.

Can waste discharge permits be lost/suspended/modified during their lifespan? Under what circumstances? Is compensation payable?

Yes. Waste discharge permits can be suspended during their lifespan (Solid Waste Management Act, sec. 19 (1)) when it is relating to the management of solid waste, of defaulter of service charges under sec. 18. “*Any person, organization or body entrusted with the responsibility of solid waste management [...] may suspend or terminate the services of defaulters [...] of solid waste management provided for users of services [...]*” (sec. 19 (2)).

Are instances of pollution of water sources subject to penalties/fines? Which institution is in in charge of the administration of the penalties?

The Water Resources Act in art. 22 (1), establishes that the prescribed officer may impose a fine on to any person who acts in contravention of this Act or Rules made under this Act. This includes polluting water resources (art. 19 (2)), causing substantial adverse effects on the environment (art. 20) and causing several other water-related harms (art. 22 (3), (4)). The prescribed officer also realizes compensation from the person that has caused damage to anybody due to such act.

E. AFFORDABILITY

How does the law address affordability of water supply and sanitation services?

The National Water Plan (2005), states in terms of affordability that a water bill less than 3% of household income is considered affordable (NWP pg. 80). However, the plan further stipulates that the cost of drinking water supply and sanitation systems should eventually be borne by the users themselves (Art. 3.3.2.).

What mechanisms are established by law to ensure affordability of water and sanitation services?

To ensure affordability, **the Water Tariff Fixation Commission Act, 2063 (2006)** establishes in sec. 10 that the Commission shall fix the tariff on the basis of depreciation, appropriate profit, cost of operation of the service, change in consumer price index, royalty, policies of the Government of Nepal in relation to water supply or sanitation services, exchange rate of convertible foreign currency and matters set forth in sec. 11 of the same act.

How are tariffs established under law and what is the process for updating these tariffs?

The process of establishing and updating tariffs is laid out in **the Water Tariff Fixation Commission Act, 2063 (2006)**. First, the service provider shall make a detailed application pursuant to sec. 11. Then, the Commission shall make necessary examination of the application pursuant to sec. 12 and fix the tariff in accordance with the rate of tariff proposed by the applicant or with amendment, within sixty days after the date of application pursuant to sec. 13.

Does the tariff vary depending on the regions/circumstances?

Yes. Tariffs vary depending on different circumstances. As mentioned before, a tariff is to be fixed on the basis, inter alia, of the criterion laid out in the Water Tariff Fixation Commission Act, sec. 10 and 11.

Which actor is responsible for and involved in setting and/or approving tariffs for water supply and sanitation services?

The Water Tariff Fixation Commission is formed for the protection of the interests of consumers by providing qualitative and reliable water supply and sanitation service to the consumers at a reasonable price, by fixing the tariff of water supply and sanitation service (Water Tariff Fixation Commission Act, 2063 (2006), sec. 3, (1)). Duties and powers of the Commission include setting the tariffs for services (sec. 6, (a)) and approving policies and procedures by the service providers (sec.6 (b)).

Does the law allow disconnection from water supply and sanitation services for non-payment? What procedures must be followed in such cases prior to disconnecting the supply and service?

Yes. Please refer to the answer of the second question in B. Accessibility.

F. ACCEPTABILITY

Is there provision in the law or contracts with service providers that relate to the need to take into account cultural and social dimensions of acceptability (e.g., colour or odour of water, or the positioning of a facility)?

Yes. The National Drinking Water Quality Standards and Directives, 2062 (2005) establishes standards for service providers and entities mentioned in para. 2, section 4 concerning drinking water. It states among others that the colour of water cannot supersede 5 TCU (true colour units) of 15 TCU possible and that the taste and odour shall remain non-objectionable.

Is there provision in the law or contracts with service providers that relate to the need to ensure dignity and privacy (e.g., in work places, but also in the design of shared sanitation facilities for certain communities)?

Yes. The Sanitation and Hygiene Master Plan states that toilets should be users friendly in the local context as far as possible. The school toilets must have Child, Gender and Differently-abled (CGD) friendly water, toilet and hand washing with soap facilities including menstrual hygiene facilities.

CHAPTER 5. HUMAN RIGHTS PRINCIPLES TO WATER AND SANITATION

A. NON-DISCRIMINATION, EQUALITY AND UNIVERSAL ACCESS

Is there any legislation about the prohibition of direct and indirect discrimination (on all grounds) and promotion of equality in accessing water and sanitation services?

Yes. With regards to the basic human rights principle of non-discrimination, the Constitution of Nepal recognises the right to equality, **Article 18**: *“All citizens shall be equal before law. No person shall be denied the equal protection of law. No discrimination shall be made in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology or on similar other grounds.”*

Article 24 further stipulates rights opposing untouchability and discrimination that becomes important in ensuring availability and accessibility of water and sanitation services: *“in producing or distributing any goods, services or facilities, no person belonging to any particular caste or tribe shall be prevented from purchasing or acquiring such goods, services or facilities nor shall such goods, services or facilities be sold, distributed or provided only to the persons belonging to any particular caste or tribe.”*

Are there any specific provisions that address and seek to ensure (physical) access to water and sanitation services for persons with disabilities, children or the elderly?

The rights of women and the prohibition of gender-based discrimination are incorporated in a separate article (**Article 38**) in the constitution among the fundamental rights stipulating that *“every woman shall have equal lineage right without gender based discrimination.”*

Further with respect to vulnerable populations’ integration, the **National Water Plan** states in page 35 that: *“Equity, women participation and social inclusion are some key elements of the country’s commitment to shared growth.”*

Sec. 39 (2) of the **Children’s Act**, 2048 (1992) mentions that preventing children from drinking water is not justifiable for punishment to maintain discipline.

B. RIGHT TO INFORMATION

Is there any specific legislation about the right to seek, receive and impart information held by public authorities? Does the law expressly set out the right to seek, receive and impart information on water related issues?

Yes. In terms of access to information on water and sanitation-related matters, Article 27 of

the Constitution ensures the right to information as a fundamental right.

Further, the Right to Information Act, 2064 (2007) addresses the right to seek, receive and impart information held by public authorities. It provides provisions regarding the flow of information, the National Information Commission, the protection of information and punishment and compensation.

Does the right to information require the payment of a fee? Is there a provision on the affordability of such fee?

Yes. Sec. 8 (1) of the Right to Information Act states that the applicant shall pay fee as prescribed while requesting information. The fee must be based on the actual cost of providing information (Sec. 8 (2)). Otherwise, if the fee is deemed more than the actual price, the concerned person may file a petition before the Commission (sec. 8 (3)). The “Commission” means the National Information Commission pursuant to sec. 11. A public body also must publish information regarding fee and time limit required for service (sec. 5 (3), (f)).

Are there any exceptions regarding who or what type of water and environment related information held by public authorities can be accessed?

No. There are no exceptions regarding what type of water and environment related information can be accessed. Every Citizen shall have the right and access to information held in the public bodies (sec. 3 (1), (2) Right to Information Act). However, there are exceptions mentioned in sec. 3 (3), e.g. information that affect the protection of economic interest, trade privacy or the relationship among communities or that interferes in individual privacy.

Which institutions are required by law to make information on water public? Does the law reference only the right to access information or also the obligation to make public such information on water related issues (e.g., are institutions obligated to provide information only upon demand, or are they obligated to publish or make available information at certain periodic intervals, on the occurrence of certain circumstances, etc.)?

Public bodies, or institutions that are water-related are required to make information on water public (sec 4, 5 of the Right to Information Act). To respect and protect the right of information of citizen, a public body has the responsibility to update information frequently and make them public, make the citizens’ access to information simple and easy and to conduct its functions openly and transparently (sec. 4 (1), (2); sec. 5 (1), (4)).

What are the requirements listed in the law in relation to the language, locations, format, timing and means used for providing water related information to the public? How does the law ensure that information is made available to all including to minorities?

Sec. 4 (3) of the Information Act states that a public body may use different national languages and mass media while publishing, broadcasting or making information public in accordance with its prescribed responsibilities to respect and protect the right to information. Access to information is also required to be easy and simple (sec. 4 (2), (b)).

Are there any legal provisions requiring certain authorities to educate the population on water related issues?

The approved National Framework of Child-friendly School for Quality Education of the Ministry of Education (2010) points out the necessity to highlight child friendly standards on WaSH services and hand washing practices in schools which is being further strengthened through WaSH in Schools (WinS) Programme.

Are the legal requirements concerning informing the population about regulations, restrictions, prohibitions and discontinuations in water services? Does the law require that information be made available about the existence of complaint mechanisms for water supply and sanitation services to users of such services?

Sec. 5 (3) of the Right to Information Act requires public bodies to enlist and publish multiple information for citizens to access. These include information about the functions, duties and powers of the public body, a list of Acts, Rules, By Laws or Guidelines and the service to be rendered by the body which includes regulations, restrictions, prohibitions and discontinuations in services (see sec. 5 (3) (b), (d), (k)). Furthermore, sec. 9 informs about complaint mechanisms in case the Information Officer of a public body does not provide information prescribed in sec. 9 (1).

Are there any requirements in relation to access to information in contracts with water and sanitation operators?

To acquire information with public bodies, (such as water and sanitation operators, see sec. 2 (a), Right to Information Act) there are no requirements except being a Nepali Citizen and to submit an application to the concerned Information Officer as prescribed (sec. 7 (1)).

C. PUBLIC PARTICIPATION

Is there a law which addresses public participation?

Art. 42 (1) of the Constitution stipulates the right to participate with regards to marginalised and vulnerable groups: “The socially backward women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, minorities, persons with disabilities, marginalized communities, Muslims, backward classes, gender and sexual minorities, youths, farmers, labourers, oppressed or citizens of backward regions and indigent Khas Aryashall have the right to participate in the State bodies on the basis of inclusive principle.”

Further, the National Water Plan includes the plan as a policy principle for the water sector (Art. 3.2) with the aim of achieving increased gender-balanced participation (Art. 3.3.1). Increased attention to marginalised and vulnerable groups is also listed among the social development principles.

What are the criteria listed in the law in relation to participation in water-related issues (e.g. allocated time to provide comments, invitation to public hearings, etc.)?

Our research did not find any answers in this regard.

Do the contracts between governmental authorities and operators of water and sanitation services impose upon the operators an obligation to ensure or provide for public participation at any levels at which the applicable services are delivered?

Not necessarily. It depends on what both parties agree on. Article 12 of the Water Resources Act, 2049 (1992) establishes that the government can enter into a contract with any national or foreign company, corporate body or person to develop, utilize and extend the services of any water resources on such terms and conditions as mentioned in such contract. However, our research has not indicated that a contract between governmental authorities and operators of water ought to impose an obligation to ensure public participation at any levels.

Is the establishment of regional or local associations or other groupings of water users provided for and regulated by laws or regulations? How do they interact with or connect into other agencies or regulators?

Yes. Several Laws regulate the establishment of various associations and groups of water users.

WUSCs: Water Users Associations (WUAs) are governed by the Water Resource Act 1992, Water Resource Rules 1993 and Drinking Water Rules 1998 and come into effect once registered at the District Water Resource Committee (DWRC). As WUA’s executive body, Water Users and Sanitation Committees (WUSCs) have several roles such as operator, service provider, regulator, monitor, fund raiser and manager. WUSCs include at least 33% representation of women and representation from disadvantaged groups. Water Users Committees have formed their Federations from district to National level. Users Committees registered in DWRC will be eligible for membership to Federation of Water Users.

Nepal Water Supply Corporation: is a public utility organization formed under Nepal Water Supply Corporation (NWSC) Act, 1989. The NWSC currently operates and maintains water supply systems in 22 towns and 1 VDC outside Kathmandu valley. Its functions overlap with that of the DWSS and Water Boards in some of the towns.

Rural Water Supply and Sanitation Fund Development Board (RWSSFDB): It is an autonomous body under MoWSS operating under its formation order. It facilitates implementation of small rural water and sanitation projects, through WB financing, under which communities are supported in the planning, management and monitoring of WaSH services through Service Organisation or Service Agencies.

Water Supply Management Boards: Urban areas covering Metropolis, Sub-metropolis and Municipalities are to be governed by the Management Boards as per the WSMB Act, 2006. The Boards can formulate specific policies to improve WatSan system in the area of their jurisdiction. Based on the WSMB Act, Kathmandu Valley WSMB as well as few more Boards (Bharatpur, Hetauda, Dharan, Kavre Valley) have been established till now. KUKL has been formed under the Company Act in 2006 for the operation and management of water and wastewater services in the Kathmandu valley. It has concluded a License and Lease Agreement with the KVWSMB for 30 years and operates under PPP modality. It is responsible for the maintenance of all assets received on lease from KVWSMB.

Non-Governmental Organisations: The Nepal Water Supply, Sanitation and Hygiene Sector Development Plan (SDP) envisages three critical roles for NGOs: (a) providing pro-

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poor WaSH services to unreached areas, (b) building partnerships with users and civil society to influencing policy and practices and holding the public sector accountable, and (c) bringing knowledge and innovations in the sector.

Nepal WaSH Alliance: It brings together a wide group of more than 60 Sector Actors, national and international NGO partners, and individuals for coalition building and advocacy for water and sanitation to increase public awareness. It shares of information and promotes use of knowledge on sector development.

Users' Federations: Federations of Drinking Water and Sanitation Users represent users. It lobbies for inclusive, transparent and accountable sector development. Their mission is to protect the rights of drinking water and sanitation users organizations throughout Nepal by raising their awareness and organizing and empowering them to secure their rights on WaSH, and by advocating for users' access to policy formulation and decision-making. Its success depends on inclusive participation with all Sector Actors working together to ensure functionality and sustainability of drinking water and sanitation services.

Civil Society: The concept of "Civil Society" includes the whole range of private, voluntary, non-profit, community and self-help organizations, and formal and informal groups in existence. Civil society differs from the non-governmental organization in the sense that former can be the loose groups or network of individuals and institutions without any formal requirement for registration, whereas the NGOs are required to be registered under the law of the land as approved organization with focused objective (Acharya, M.R., 2013). Civil societies as mentioned above are in fledgling stage in Nepal. The WaSH sector will adopt the policy to encourage those civil societies who act independent and as a catalyst in bringing together people from the various walks of life to enhance accountability, inclusiveness, effectiveness and legitimacy of WaSH institutions.

D. SUSTAINABILITY

How does legislation ensure that water and sanitation services are delivered in a sustainable manner, considering the availability of water resources, competing demands and generally the needs of present and future generations?

The Nepal Water Supply, Sanitation and Hygiene Sector Development Plan (2016) opts to provide a framework of planning, implementing, coordinating and monitoring all activities in the water supply and sanitation sector, with improved sector governance and effectiveness through a coherent, consistent, harmonized national WaSH programme. It further opts to put into practice the principles laid out in the rural and urban water supply and sanitation policies. It identifies priority areas for future interventions and spells out several approaches that these will have to use.

The National Water Plan (2005) is mainly focused on environmental concerns and thus introduces IWRM into its strategy to enable adequate and sustainable supply of and access to quality potable water, sanitation and hygiene. It is comprised of short term (5-year strategy), medium term (15-year strategy) and long term (25-year strategy) action plans for the water resource sector.

The Rural Water Supply and Sanitation Strategy/Policy aims to increase water supply services for rural areas, establish a development fund related to rural water, educate and involve rural communities in gender sensitisation among other aspects, establish an Operation and Management (O&M) fund, and establish social and economic mechanisms to assist poor populations.

The Government of Nepal issued also a **Small-Town Water Supply and Sanitation Program** that is intended to improve the level of water supply services provided, formalise ownership and O&M of water systems by municipalities train and carry out capacity building in local institutions to enable and empower them, and implement mechanisms allowing O&M cost recovery (National Water Plan, pg. 60).

How does the legislation ensure that delivery of water and sanitation services are economically sustainable, with sufficient expenditure for operation and maintenance?

The Nepal WSSH Sector Development Plan (2016) ensures access and sustainable management of water and sanitation for all through a sector financing strategy. Its main objective is to generate financial resources and draw investments and create market thrust for a financially self-sustained WaSH sector. The Plan also estimates the costs and risks for being implemented and draws an investment plan.

Further, to achieve a better water structure management and higher cost recovery, involvement of the private sector and of NGOs in investment, planning, implementation, operation, data collection and research, is encouraged by water policies. This trend has been specifically supported by the enactment of the **Water Resources Act** and the related **Regulations and the Local Self-Governance Acts** (NWP, pg. 59, 60, 81, 83).

The National Water Plan, further, stresses the importance of capacity building especially on local institutions as a key aspect of the decentralisation strategy adopted by the Government of Nepal (NWP, pg. 16, 31, 32, 79, 80). It also states that measures and funds have been deployed, for national and local institutional strengthening and development (NWP, pg. 75).

CHAPTER 6. ACCOUNTABILITY

A. PRELIMINARY QUESTIONS

What is the relationship between international law and national law (i.e., is the state a monist or dualist system--how is international law interpreted in relation with domestic law)?

In Nepal, there has been dominance of both monistic and dualistic schools of thoughts.

On the one hand, **the Nepal Treaties Act 1990** explicitly provides a guarantee for the enforcement of the Convention or treaty to which Nepal is a party. Section 9 of the Act provides that *“in case any provision of a treaty to which the Kingdom of Nepal has become a party following its ratification, accession, acceptance or approval by the Parliament, contradicts with the provisions of current laws, the latter shall be held invalid to the extent of such contradiction for the purpose of that treaty, and the provisions of the treaty shall be applicable in that connection as law of Nepal”*. The Act also provides provisions for domesticating the provisions of international instruments into national situation.

On the other hand, Article 1 of **the Constitution** stipulates the supremacy of the Constitution and it declares that all other laws inconsistent with it are void to the extent of such inconsistency.

What is the hierarchical structure of the legal system?

Art. 127 of the Constitution of Nepal, 2015 states that there are following courts in Nepal:

- **The Supreme Court** which has the final authority (art. 128 (2), 128 ff.)
- **The High Courts** which are subordinate to the supreme court (art. 128 (2), 139 ff.)
- **The District Courts** which are subordinate to the other courts (art. 139 (2), 148 ff.)
- **Judicial Bodies** to try cases under law or other bodies to pursue alternative dispute settlement disputes, which are subordinate to the district courts (art. 148 (2)).

Has the State ratified the relevant international conventions establishing regional or international complaint mechanisms?

Nepal has **ratified** 6 of the 9 Individual Complaints Procedures, such as:

- The International Covenant on Civil and Political Rights, (1966)
- The International Covenant on Economic, Social and Cultural Rights, 1966
- The Convention on the Elimination of All Forms of Discrimination against Women, (1979)

- The Convention on the Rights of the Child, (1989)
- The Convention on the Rights of Persons with Disabilities, (2006)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (1984)

However, Nepal **accepts** only 3 individual complaints procedures. These are:

- The Optional Protocol to the International Covenant on Civil and Political Rights, (1966)
- The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, (1999)
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities

Further, Nepal **accepts** only 3 inquiry procedures. These are:

- The inquiry procedure under the Convention against Torture
- The inquiry procedure under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women
- The inquiry procedure under the Convention on the Rights of Persons with Disabilities.

B. REMEDIES AND COMPLAINT PROCEDURES/ACCOUNTABILITY

Are there remedies provided by law to file complaints or other ways of accessing justice in reference to water and sanitation? Who may file them? Are the decisions appealable?

Yes. The principle of accountability is incorporated into the Constitution by stating that *“[t]here shall be a right to obtain constitutional remedies in the manner set forth in Article 133 or 144 for the enforcement of the rights conferred by this Part.”* In addition, the right to clean environment incorporates that *“[t]he victim shall have the right to obtain compensation, in accordance with law, for any injury caused from environmental pollution or degradation.”*

Are such complaint procedures required to be provided in conformity with human rights principles (such as non-discrimination, equity)?

Yes. Since human rights such as non-discrimination and equality (art. 18) and rights relating to justice (art. 20) are imbedded in the Constitution of Nepal complaint procedures must comply to such principles.

Does the law provide for financial assistance for legal counsel in cases concerning water and sanitation?

Yes. The Legal Aid Act, 2054 (1997) provide legal provisions regarding legal aid for persons who are unable to protect their legal rights due to financial and social reasons).

Who monitors the administrative level bodies and/or service providers?

The Water Users Association, established pursuant to sec. 5 of the Water Resource Act, is being monitored by the prescribed officer which may cancel licenses (sec. 21) and impose fines (sec. 22) in case it performs any act contrary to this Act or Rules made under this Act.

The Water Supply Management Board, established pursuant to sec. 3 of the Water Supply Management Board Act, is being formed and thus monitored by the Government (sec. 234 of the Local Self-Governance Act, 2055 (1999)). It submits annual reports to the Government (sec. 32 WSMBA) and maintains contact through the Ministry of Physical Planning and Works (sec. 34 WSMBA). It also gives licenses to the service providers for providing the services (sec. 6 (j)). Thus, the service providers must comply with the terms and conditions of the Board.

The Kathmandu Valley Water Management Board, established pursuant to sec. 7 of the Water Supply Management Board Act, is being formed and thus monitored by the Government (sec. 234 of the Local Self-Governance Act, 2055 (1999)). It submits annual reports to the Government (sec. 32 WSMBA) and maintains contact through the Ministry of Physical Planning and Works (sec. 34 WSMBA). It also gives licenses to the service providers for providing the services (sec. 6 (j), 7 (8)). Thus, the service providers must comply with the terms and conditions of the Board.

The Local Bodies, meaning concerned municipalities, sub-municipalities, cities and Village Development Committees (sec. 2 (aa) of the Solid Waste Management Act), can make use of the private sector in managing solid waste (sec. 14, 17) and monitor them respectively. Local Bodies are accountable before the Government (sec. 234 of the Local Self-Governance Act, 2055 (1999)).

The Water Tariff Fixation Commission, established pursuant to sec. 3 of the Water Tariff Commission Act, is being monitored by the Government (sec. 234 of the Local Self-Governance Act, 2055 (1999)). The service providers are in turn accountable to the Commission and must abide by its direction and decisions pursuant with this Act and apply the tariff fixed by the Commission (sec. 6, 13 (6), 17 (3), 18 of the Water Tariff Commission Act).

Is there a possibility to appeal against the decisions of the service providers? With whom would such an appeal be lodged, and under which conditions is such an appeal possible?

The Water Resources Act states in sec. 23 that an appeal is possible for “any person who is not satisfied on the decision of the compensation [...] or the decision of the cancellation of license [...] or an order of the punishment issued by the prescribed officer [...], an appeal against such decision or order may lie in an appellate court within a period of thirty-five days.”

Further, **the Water Supply Management Board Act**, mentions in sec. 6, I, that it is the duty of the Board to hear grievance of any user when providing service by the service provider and to provide appropriate remedy respectively.

The Water Tariff Fixation Commission Act, states in sec. 17 (1) that any user who is not satisfied with the service provided by the service provider may make a complaint to the Commission, as prescribed in sec. 17. If any service provider does not apply the tariff fixed by the Commission, the Commission may fine such a service provider as prescribed in sec. 18.

What remedies are available at an administrative level?

Several Remedies are available at an administrative level

Water Supply Management Board Act

- Sec. 6 (l) provides appropriate remedy if any user is aggrieved while providing the service by the service provider,
- Sec. 7 (8)(b) provides appropriate remedy when affected by a diversion of water of a natural source,
- Sec. 23 (2) grants reasonable compensation if any loss or damage is caused to a private building or land of any person in any manner by laying pipelines or making other structures relevant,

Water Resources Act

- Sec. 10 (3) grants compensation to the concerned person for the land, building, equipment and structures relating to the utilization of the water resources by the Government,
- Sec. 15 provides compensation for any loss or damage caused by the entering into others premises by the licensee or the Government,
- Sec. 16 (3) provides compensation for any loss or damage caused by the prohibition to use the premises of a house or land located in the area where construction work for the development and utilization of water resources takes place,
- Sec. 22 (1) provides compensation for damage caused by anyone by acting in contravention to this Act and Rules made under this Act.

Who monitors these administrative-level bodies?

See 4th question of 6.B

Are such administrative bodies legally independent entities according to the law?

See: 2nd Question in 6. D.

Is there any evidence (e.g., case law) that courts in the country have (or may have) jurisdiction to enforce any economic, social or cultural rights?

Yes. The Nepal Treaty Act, 2047 (1990), states that in cases where domestic legal provisions are inconsistent with the provisions of an international treaty that Nepal is party to, the provisions of the treaty prevail over the inconsistent laws (sec. 9 (1)). Nepal has acceded to the International Covenant on Economic, Social and Cultural Rights. Thus, courts are required to enforce, economic, social or cultural rights as well.

Do courts in the country have jurisdiction to hear cases regarding the obligations to respect, protect and fulfil the human rights to water and sanitation? Is there any existing case law?

Yes. The Nepal Treaties Act, (2047) 1990 explicitly provides a guarantee for the enforcement of the Convention or treaties to which Nepal is a party. Courts thus have jurisdiction to hear cases regarding the obligations Nepal has taken upon itself by

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acceding/ratifying those very treaties. Nepal has acceded/ratified several treaties that implicitly or explicitly obligate to respect, protect and fulfil human rights to water and sanitation.

These include but are not limited to e.g. the Convention on the Rights of the Child, art. 24, 27; the Convention on the Elimination of all Forms of Discrimination against Woman, art. 14; the Convention the Rights of Persons with Disabilities, art. 28; the International Covenant on Civil and Political Rights, art. 6; and the International Covenant on Economic, Social and Cultural Rights, art. 1, 2, 11, 12. See Chapter 2 on more information on treaties.

Provide a brief overview of the judicial procedure involving a human rights violation case.

Our research did not find any answers in this regard.

Is there a Constitutional /Supreme Court? Cases are heard as the last appeal or may cases be referred directly?

Yes, there is a Supreme Court. The Constitution of Nepal states in art. 133 (4) that it has jurisdiction to hear both original and appellate cases, examine decisions referred for confirmation of sentences, review cases, and hear petitions as specified by law. Under extraordinary jurisdiction, it has the power to hear petitions and issue orders of habeas corpus, mandamus, certiorari, prohibito, and quo warranto (art. 133 (3)). It may review its own judgments, revise decisions of a Court of Appeals, or decide the constitutionality of a law. It also has the power to make rules for administering the courts and formulating policies (art. 133 (4)).

Have domestic courts applied international human rights law in past cases or have they referred to decisions from international human rights bodies?

Yes. Domestic Courts are required and have applied international human rights law in past cases. Sec. 9 (1) of the Nepal Treaty Act, 1990 states that *"in case of the provisions of a treaty, to which Nepal or Government of Nepal is a party upon its ratification accession, acceptance or approval by the Parliament, inconsistent with the provisions of prevailing law, the inconsistent provision of the law shall be void for the purpose of that treaty, and the provisions of the treaty shall be enforceable as good as Nepalese laws"*.

Are court proceedings conducted in only one principal language, or are they also conducted in local languages, including minority and indigenous languages? Does the law require that information is made available in local languages?

Specific laws concerning languages in court proceedings have not been found so far. However, art. 51 (b) (3) of the Constitution of Nepal, 2015, and sec. 9 (1) of the Nepali Treaty Act, 1990 obligates the state to pursue policies to implement international treaties and agreements. Art. 14 (3) (a) and 3 (2) of the Convention on Civil and Political Rights requires charges in court proceedings to be in a language the one being charged can understand and grants him equal access to a lawyer without discrimination based on language. Further, art. 18 of the Constitution of Nepal prohibits discrimination based on language and art. 32 grants every person and community the right to use their languages which includes minority and indigenous languages.

The law also requires that information is made available in local languages. Sec. 4 of the Right of Information Act, 2064 (2007) states that the Public Body has to respect and

protect the right to information of citizen and may thus use different national languages while publishing, broadcasting or making information public (sec. 4 (3))

Have domestic courts applied (or referenced) recommendations of national human rights institutions?

Yes. However, NHRI recommendations have often not been implemented on a significant number of final decisions of the courts of law.

C. NATIONAL HUMAN RIGHTS INSTITUTIONS

Is there an independent national human rights institution?

Yes. The National Human Rights Commission, Nepal (NHRC-Nepal) (art. 248, Constitution), is an independent national human rights institution in Nepal, accredited with A status and thus being in full compliance with the Paris Principles.

Does the mandate of the National Human Rights Institution cover the entire human rights framework, including economic, social and cultural rights?

Yes. The functions, duties and powers of the NHRC are laid out in art. 249 of the constitution and Sec. 4 of the National Human Rights Commission Act, 2068 (2012) and do cover the entire human rights framework.

Is the national human rights institution authorized to receive and adjudicate complaints of violations of human right to water and sanitation right?

Yes. Sec. 10 of the NHRC Act states that *"in case of violation of human rights or abetment thereof the victim himself or herself or anyone on behalf of him or her, may lodge a complaint as prescribed by the Commission"*. However, sec. 5 states that those complaints regarding incidents of human rights violation or its abetment shall have to be lodged at the Commission within Six months from the date on which the incident took place or within Six months from the date on which a person, under control of someone else, got released and became public.

Does the national human rights institution have a legal basis or authority to initiate an action to address systemic human rights violations?

Yes. Art. 249 (2) and (3) of the Constitution and sec. 4 – 7 & 12 of the NHRC Act enables the NHRC to initiate various actions to address human rights violations. These include investigating complaints, make recommendations, coordinate and collaborate with civil society to enhance awareness, publish names of perpetrators of human rights, conduct inspections etc.

What types of remedies does the national human rights institution have the authority to impose?

Our research did not find any answers in this regard.

Is the institution allowed to initiate investigations/hearings?

Yes. Art. 249 (2) (a) of the Constitution and Sec. 4 (1) (b) and 12 of the NHRC Act enable the NHRC to initiate investigations with the permission of the Court or on grounds of a complaint of a human rights violation.

Does the national human rights institution have the authority to monitor how remedies for violations of rights to water and sanitation are implemented by governmental authorities, service providers or other agencies/entities?

D. REGULATION

Is there a water regulator established by law?

Yes. Several water and sanitation regulators are established.

Water Users Association: The Water Resources Act, 2049 (1992) states in sec. 5 (1) that “Persons willing to make use of water resources for collective benefits on an institutional basis may form a Water Users Association”.

Water Supply Management Board: The Water Supply Management Board Act, 2063 (2006) states in sec. 3 (1) that: “The Government of Nepal may [...] form a Water Supply Management Board, as required, to effectively operate and manage, or caused to be effectively operated and managed, the service system within One or more than one Municipality, [...]” Functions, powers and duties are laid out in sec. 6 and include to prevent the misuse and pollution of potable water (sec. 6 (c)), formulate and implement or cause to be implemented, short-term and long-term policies on the service system (sec. 6 (e)) and to give licenses to the service providers for providing the service or providing service by entering into an agreement with the service providers (sec.6 (j) and 8).

Kathmandu Valley Water Management Board: Furthermore, the Water Supply Management Board Act, states in sec. 7 (1) that: “[...] the Government of Nepal may form a separate Kathmandu Valley Water Management Board in order to operate the water supply service and sanitation service in the municipal areas within the Kathmandu Valley in a regular, systematic and effective manner.” Functions, powers and duties are laid out in sec. 6 and 8 respectively, which includes the regulation, control and prohibition of the extraction and use of water from groundwater resources within its geographical area and giving license to extract or use such water (sec. 8 (c)).

The **Water Tariff Fixation Commission** is formed for the protection of the interests of consumers by providing qualitative and reliable water supply and sanitation service to the consumers at a reasonable price, by fixing the tariff of water supply and sanitation service (Water Tariff Fixation Commission Act, 2063 (2006), sec. 3 (1)). Duties and powers of the Commission include setting the tariffs for services (sec. 6, (a)) and approving policies and procedures by the service providers (sec.6 (b)).

Is the water regulator an independent entity?

Water Users Association: Yes. It is an autonomous body (sec. 6 (1)) and thus independent.

Water Supply Management Board: Yes (sec. 4 Water Supply Management Board Act). However, according to sec. 31 “the Government may give necessary direction to the Board in relation to the maintenance of quality of service, protection of environment and maintenance of quality of potable and sanitation, and it shall be the duty of the Board to abide by such direction.”

Kathmandu Valley Water Management Board: Yes (sec. 4 Water Supply Management Board Act). However, according to sec. 31 the Government may give necessary direction which shall be implemented by the board.

Water Tariff Fixation Commission: Yes. (sec. 5 Water Tariff Fixation Commission Act).

What are the oversight mechanisms and responsibilities related to drinking water supply and sanitation services of the regulator?

Our research did not find any answers in this regard.

Which actors are responsible for ensuring accountability of institutions or entities involved in water supply and sanitation services?

All Actors involved in monitoring the administrative level bodies and service providers mentioned in the 4th Question in 6.B are responsible for ensuring accountability.

Further, it is the users themselves that ensure accountability. The Water Supply Management Board Act, mentions in sec. 6, 1, that it is the duty of the Board to hear grievance of any user when providing service by the service provider and to provide appropriate remedy respectively. The Water Tariff Fixation Commission Act mentions also that the user can complain as prescribed (sec. 17 (1)) if he or she is not satisfied with the service provided.

ACRONYMS

HRBA	Human Rights-Based Approach
HRWS	Human Rights to Water and Sanitation
IWRM	Integrated Water Resources Management
NGO	Non-Governmental Organisation
NHRI	National Human Rights Institution
SDG	Sustainable Development Goal
WASH	Water, Sanitation and Hygiene
N/A	Not Applicable

APPENDIX

Is the Government able to withdraw cases where it is involved in a Human Rights violation?

Yes. Government Cases Act, 2049 (1992) Section 29 states:

(1) In the cases where the Government of Nepal has to be a plaintiff or where the Government of Nepal has filed a case or where the Government of Nepal is a defendant pursuant to the prevailing laws, if there is an order of the Government of Nepal, the Government Attorney, with the consent of other parties, may make a deed of reconciliation or with the consent of the court, may withdraw the criminal case in which the Government of Nepal is plaintiff. In such a situation, the following as indicated below shall be prescribed:

(a) if reconciliation is made, no one shall be charged any fee for the same.

(b) in case of withdrawal of the case, the criminal charge or the Government claim ceases and the defendant gets release from the case.

(2) Notwithstanding anything contained in Sub-Section (1), if the case has an effect on the property of any civilian, such case shall not be withdrawn from the court under this Section.

However, the "Procedures and Norms to be Adopted while Withdrawing Government Cases, 1998", approved by the cabinet on 17 August 1998, lays down the bases and prerequisites for the withdrawal of cases and the process to be followed.