

Civil Society Critics on Public Education Policies in Nepal: A Tools for Right to Education or Overturning Inconsistencies

RAM GAIRE, JANAK R. PANT AND ANOJ CHHETRI, PhD

Abstract

This qualitative enquiry explores a critical perspectives of education policies in Nepal from CSO (Civil Society Organization) point of view. It is mainly based on the analysis of the public discourse organized by the National Campaign for Education (NCE) Nepal with the objectives of reviewing constitutional provisions related with education and its alignment at federal, provincial and local level. The review revealed the lack of alignment, inconsistencies, and ambiguities in education policies at different levels. Findings of review suggests the needs to harmonize policy frameworks at three levels of the government and efforts to align the right to education with the spirit of the constitutional provisions. The analytical review might also be significant to cater to the needs to identify and reform the initiatives on the realization of right to education at the level of the local government and other stakeholders supporting the government efforts in the sector to institutionalize provisions of policy framework and realization of the rights provisioned in the framework.

Keywords: *Right to Education, Education Policy, Sectoral Plan, Transformative Education*

1. Introduction

The Constitution of Federal Republic of Nepal (2015) has recognized education as a fundamental right to every citizen and provided autonomy to local government particularly for managing basic and secondary education. It has provisioned the right of access to free and compulsory basic education and free education up to secondary level. In line with the spirit of the Constitution, Free and Compulsory

Education Act 2018 has been formulated at the federal level (MoEST, 2018). The Free and Compulsory Education Act (2018) aims at ensuring easy and equal access to education on the ground of basic human rights and fundamental rights as conferred by the constitution. The national planning commission in the review of Sustainable Development Goals rightly presented that there has been an important

progress in SDG4 in terms of formulating policies at federal level, however, rapid improvements in terms of implementing policies are needed, particularly in learning outcomes, quality of teaching, expansion of vocational education and general literacy and numeracy (NPC, 2020 a). Hence, the Free and Compulsory Education Act (2018) attempts to address gap in learning outcomes, quality of teaching, and expansion of vocational education.

However, the current investment in education sector and efforts appear to be inadequate to increase the access to marginalized children for quality education and learning (NCE, 2020) because underinvestment in education has challenged to ensure equal access to technical, vocational and higher education to needy people. It cannot help government to produce qualified, competent and employment oriented human resources, manage qualified and well-trained teachers at all levels. Besides, it is yet to mainstream vocational and technical education in the overall education system, reduce the disparity between private and public education, and to stop brain drain from the country (NGO Federation, 2020, p. 19). The constitutional spirit seems to promote good governance, social justice, economic equality, peace and prosperity. 'Prosperous Nepal, Happy Nepali' as buzz words proclaimed by the government of Nepal and adopted by National Planning Commission as the guiding principle of the 15th periodic plan (2076/77 to 2080/81) is presented as the efforts given to promoting well-being and prosperity of people. However, the changes in the well-being of people are not visible at the community level. For example, the state seems to be less successful in creating employment opportunities in Nepal as the annual outmigration of youths of age group 18 to 35 continues (Gov, 2020). Most of the youths are from marginalized and deprived communities working in Malaysia

and gulf countries. One-quarter of the total national GDP has been contributed by the remittance of those labor migrants.

On the one hand, the constitutional provisions guarantee equal access to basic education for every citizen and explicitly states that "every citizen shall enjoy the right to receive free and compulsory education from the State up to the basic level followed by free secondary education". On the other hand, the lack of access and poor quality of education has compelled most of the youth people to migrate abroad for low paid manual work. In addition to the rights relating to education under article 31, there are constitutional provisions made for different marginalized groups and communicate such as article 38 in relation to the women, article 39 in relation to the children, article 40 in relation to Dalits, and article 42 in relation to the indigent citizen. Constitution of Nepal (2015) has further made provisions in Article 51 under policies relating to the basic needs of the citizen under policies of the state. Based on the Constitutional spirit and provision, it is imperative for three levels of government to ensure a harmonized education policies and laws in place for implementation without any hurdle and barriers. As a recent example, the government has formulated National Education Policy to guide the education sector in the federal Nepal (MoEST, 2020). This is definitely a milestone in the education sector, but there is apparent confusion and contradiction causing unjustified delay and interference in the preparation of education policy and laws at the provincial and local levels. There is also duplication in the policy development and implementation because of the delay in formulating policy at the federal level. The right to education has been declared as the fundamental rights of all the citizen but at the same time the government policies have resulted in increased profit making private institutions which has resulted into

two different stream of education: one offered by the private institutions which, as many parents consider, is more responsive and therefore has been matter of attraction, and prestige and the government aided schools which have been continually been squeezed in the ratio of the enrollment ratio. This has created more desperate needs and elevated the importance of the policy development and the implementation process at the provincial and local levels should ensure the quality of education and ownership including the provisions for quality teacher, effective teacher management.

The schedule 8 of the Constitution has granted jurisdiction to the local government for education management up to the secondary level whereas schedule 9 provisions education, sports and newspapers as a common jurisdiction of federal, province and local level governments that overlaps in terms of the jurisdiction. Consequently, the overlapping jurisdiction has overshadowed the sole jurisdiction of the local governments in the education management. This kind of overlapping has not only created confusion among the stakeholders but also provides space to all the levels of the government to point at each other in relation to the implementation of the education policies in the given context. There has been tendency in the federal level government to retain the power and authorities for the education, irrespective of the constitutional provisions and it has led to the situation that makes the federal government engagement profoundly visible. The National Education Policy 2076 stipulates roles of provincial government as regulating and facilitating body, but in practice the federal government itself is playing active roles in the implementation of programs.

In this context, this paper presents analytical overview of the inconsistencies and

ambiguities in educational policies on equitable access to education in the federal context. In doing so, the results are drawn from the meta-analysis of the existing education policies and thematic analysis of the comments and reflections of local stakeholders during the education discourse organized by National Campaign for Education (NCE) Nepal. The discourse was organized in the Parbat and Kaski districts in February and March 2021 respectively with the objectives of drawing on experiences and reflection of local government representatives including mayors, deputy mayors, chairperson and vice chairperson, bureaucrats, and other local stakeholders. Field notes developed from the discourse were used to complement the meta-analysis and draw conclusions on the analysis of the constitutional provisions, provincial and local level laws and policies, and their alignment with each other. In order to validate the analysis from the discourse selected members of NECs who participated in the meeting were invited for a debrief and made comments on the analysis.

2. Results and Discussion

2.1 Ambiguity in Education Policy Interpretation

The free and compulsory educational provisions guaranteed by the Constitution upto secondary level is further elaborated by the Free and Compulsory Education Act (2075 BS). Despite those constitutional provisions, the ground reality appears to be undergoing through unclearly and confusion with what was proclaimed in the legal framework. At the local level, even the public schools charge various types of fees owing to inadequate financial and human resources as the fund provided by the government is not sufficient to fulfill the teacher quota, provide teaching learning materials. Though the school leaders claim that charging fee from parents/

student is their compulsion because of inadequate funding to public school, this practice has challenged the notion of free and compulsory education as enshrined by the Constitution of Nepal. On the other hand, it is unfortunate that education policies at the three levels remain silent about the role of private actors' roles and the monitoring of the private actors in education. During the consultation a female parent from Kaski district shared that *'by and large, ambiguity exists in the education policy regarding the provision of free education due to the compulsion of private schools to charge fees, hence it has questioned the fundamental right of people to free, equitable and quality education. This obviously stands against the principles envisioned in the preamble of the Constitution'*.

The public schools which are collecting fees due to low budget allocation of the government because the decreasing trend of educational budget is insufficient for managing schools. Share of education budget has been rapidly decreasing since last decade from 17% in 2013 to 10.93% in 2021. The average financing gap to achieve the SDGs is estimated to be NRs 585 billion per year for the entire period of 2016 to 2030 (SSDP, 2016). It is an average 8.8% of GDP for 2016-19, 12.3% of GDP for 2020-22, 13% of GDP for 2023-25, and 16.4% of GDP for 2026-30 respectively. The overall annual financing gap is estimated at 12.8% of GDP throughout the period of 2016 to 2030 (NPC, 2020). On the other hand, under the notion of free and compulsory education, there is ambiguity created by the educational policies. Constitution clearly articulates about free education, not providing space for private providers of education which is further clarified by Free and Compulsory Education Act at the national level. However, the province and local education policies still consider the private providers of education and have

some provision relating to it. These are two conflicting phenomena that appear in education at the local level because of contradicting policies of the government.

2.2 Evidence of Policy Coherence and Ambiguity

The cooperation, coordination and coexistence among the three levels of government is the main hallmark of federalism as enshrined in the Constitution. The views expressed by the CSO representatives highlighted the needs for the same level of cooperation, coordination and coexistence in the Act, plans and policies of all levels of government. However, due to delay in the formulation of the Federal Education Act, reflection of cooperation, coordination and coexistence could not take place in the provincial and local level policies. As a result, adhering by the previous education Act and rules do not support current roles, jurisdictions and prerogatives of three levels of the government. In this backdrop, the education discourse has captured reflection of one of the officials who was participating in the workshop representing the Education Development and Coordination Unit (EDCU). He mentioned that *'the Federal Education Policy has ignored local level innovativeness and best practices [...] appear as instructive in nature, so it does not respect principle of cooperation and coexistence as envisioned by the federalism'*. This evidently indicates that the federal, province and local levels government demonstrate both overlapping and exclusive rights, jurisdiction and roles and responsibilities for education management. This has further been made complicated by the lack of clarification in the roles and responsibilities of the three governments in the Federal Education Plans and Policies. It is the crux of the issue which is hindering the public education strengthening endeavors. A

former District Education Officer (DEO) with long professional experience in the sector stated that Constitution has bestowed responsibility of education upto secondary level upon the local level government, however, the Local Government Operation Guideline shared by the federal government provides education responsibility only upto Grade 10 at the local level. Thus, there is apparently overlapping roles and responsibilities for grade 11 and 12 in these two documents which illustrate how education policies have provided different information in different policies and that sometime contradicts with each other. This not only made the implementation of the right to education initiatives complicated to implement but also provides space to the authorities to escape from their responsibilities by showing other levels when things get complicated to implement but at the same time claim the responsibilities when things are smooth.

In course of the policy reflection and authorities shared examination as another issue. A female teacher at a community school in Kusma Municipality shared that dilemma in terms of the administration of the examination of grade 10, 11 and 12 which are provisioned under the jurisdiction of the local government whereas such examinations are still managed by the federal government.

The ongoing interaction and discourses reveal ongoing debates in terms of curriculum development as well. The role of local government in the development of local curriculum is not well explained by the Federal, Province and local Education Policies.

2.3 Programs and Plans

The 15th five-year plan reflects the School Sector Development Plan (SSDP-2016-2023) which is currently being put into

effect. This plan has given a special priority to achieving gender equality in education, and it also expects to increase the enrolment of girls in early childhood education as well as retention rates. Similarly, Nepal has developed National Framework for Education 2030 and National Strategy for the Development of Education Statistics (NSDES) (NPC, 2020).

Nepal has also set out its national SDG roadmap with goals, targets and policy strategies to achieve the SDG goals by 2030 (NPC, 2017b). The SDG National Framework of Action has been developed to achieve inclusive and equitable quality education for all Nepalese people. This framework aims to bring all three levels of government in line with the constitutional provision of cooperation, co-existence and coordination. In particular, it guides local government to develop SDG4 implementation plan at the province level and SDG4 Action Plan at the local level. However, the spirit of SDG4 is yet to be fully localized at the province and local levels (NPC, 2020) due to ambiguity and lack of coherence in terms of roles, responsibilities and jurisdiction.

2.4 Inconsistency with Sustainable Development Goal 4

Education policies formulated at the province and local levels should be instrumental in contributing to the achievement of the SDG4. However, the province and local levels education policies are not compatible with the National Framework of Sustainable Development Goals as per the outcome of the discourses. Review of the policies and the framework indicates that collaboration, coordination and communication among the three levels of government i.e. federal, province and local are poorly defined in the framework. Execution of the framework requires inter-governmental and inter-ministerial collaboration and coordination which was not defined by the framework. A part from this, the linkage with local

curriculum, monitoring mechanism for framework implementation, vision for local and inclusive education etc. are the missing threads between the local level education policies and the SDG4 National Framework. Apart from this, there is also the knowledge gap regarding the roles and responsibilities of local government in the adoption of the framework. It was reported by local government officials that they are unaware about the SDG targets and indicators at the local levels. In this respect, a government official from Parbat district shared that *localization of the SDG targets and indicators has yet to be made in true sense, consequently there is a great deal of confusion at the local level in aligning SDG with the local level plan and policies. This contradicts with the government commitments and claims in the localization of SDG in national and international platforms on the implementation of SDGs.*

The above statement has reinforced the points made by officials that education policies lacking consciousness of SDG4 indicators and targets at the province and local levels did not receive much attention in ensuring education for children with disabilities, child-friendly education, education for the protection of human rights, and education to help them become global citizens.

The province and local levels government and legislative bodies should play key roles in integrating the SDGs and the attendant principles into their respective areas of responsibilities. The provincial and local levels planning need to be institutionalized by mainstreaming SDGs (NPC, 2020, p. 82).

2.5 Ambiguity in Teachers' Management

The participants in the discourse have raised some issues related with the teachers' management. The policy incompatibility is attributed to ineffective teacher's management which has a

bearing on the accountability of teachers to quality education. The local government are responsible for ensuring quality of school education, however, the teacher management including the salary of the teachers is managed by the federal level government which resulted into difficult to holds the teachers accountable for the quality education efforts by the local government.

This is crux of the problem is lack of accountability of teachers towards the local government which has posed questions on the monitoring of teachers by the local government. While the Constitution provides responsibility of the school education management to the local government, the prime actors of school education i.e., teachers are not made accountable towards the local government through prevailing policy framework. Thus, this dismal situation is deteriorating public education environment. Apart from above issues, there is another case of policy incompatibility related with social audit, formation of the School Management Committee (SMC), fund raising at the local level for education sector. An official lamented that *There are some examples at the local level of nominating ward chairperson as SMC chairperson, this contradicts with the policy provisions on electing the chairpersons from among the parents and naturally leads to the local government influence on the school management. There is no consensus on how to implement policy and rights enshrined in the policy framework.*

The current policy outlines provisions, roles and responsibility of the federal government for human resources projection. As per the policy provision, the provincial government is responsible for setting education standards whereas the local government is responsible for the management of teachers and employers. These responsibilities are

currently attributed to Teachers' Service Commission (GoN, 2074 BS). These provisions are explained in none of the federal policy, provincial policy or local policy. Apart from this, it is mentioned in the federal regulations that the management and performance of qualified and capable subject teachers in all the schools will be linked with the learning achievement. It is said that the training of human resources related to the education sector will be managed as per the federal and province levels policies (GoN, 2077/78).

While the local level government is responsible for teachers' management, the responsibility for performance appraisal does not fall within the realm of local government. In addition, there is no common understanding among three levels of governments on specialized education, hence there is anomaly on inclusive education as well: for example, people with disabilities are not able to attend schools of the local government areas. Likewise, provisions on community library, community information center, community learning center are mentioned in the federal policy but the local level policy framework is silent on these aspects.

2.6 Ambiguity in Revenue Generation

The Constitution has clearly stipulated the sources of revenue generation at different levels of government. One of the major sources of revenue is tax collection. However, there is ambiguity in the revenue generation frontier too due to duplicated tax collection approach. Therefore, the confusion and controversial tax collection environment have left local and provincial government with no other than resorting to the federal level government. For instance, the taxation regime for service charge covering penalties and fines, tourism royalty, entertainment tax etc. fall within the jurisdiction of federal, province and local government. Similarly, there is no clear

provisions of tax collection based on the nature of revenue and taxation headings of three levels of government. In the absence of clear revenue generation guidelines, taxes are currently being collected at the federal level. The gap in the policy provision has constrained local government in generating sufficient revenue resulting into low educational investment by the province and local governments (GoN, 2074 BS).

2.7 Threat to Principles of Federalism

The main idea of federalism is linked with the normative parameters, justified primarily by the liberty, promotion of democracy and active citizenship (Weinstock, 2001). Federal plans and policies should be harmonized by the considerations of equity and autonomous government. However, the federal context make it sometimes difficult to achieve efficiency and shared political identity. In the federal system, institutional mechanisms are established for building social trust among the different actors in the society. However, lack of trust among actors hurdles in exercising the notion of federalism including in policy making and its implementation. As explained by the Kyle Scott's Theory of Federalism (Fena, 2012), the three parameters i.e. liberty, democracy and active citizenship even in the case of Nepal have intended to create a policy inefficiencies. Review of the policies of the government shows that there is clear ambiguity among the policies which is bound to create new divisions in the idea of federalization threatening the right to self-determination as envisioned by the federalism.

The basic principle of Nepal's federalism relies in the cooperation, coordination and co-existence. Federalism allows the plans and policies preparation as well as decision making level at the community level so that it is possible to practice deliberative democracy (Kincald, 2013). In doing so, the coherence amongst the policies at different

levels is required. Else, it creates chaos, weakens equitable distribution of resources and results inefficiency.

The policy-making process in Nepal is more dominant from Elitism where interest groups has dominant role on it. According to the elite theory, policy is a purposive course of action adopted by those in power in the pursuit of certain objectives (Sapru, 2012). The theory explains that power is concentrated in the interest group. This relates with the Nepal's policy making process that though the constitution envisions every level of governments should be autonomous but in the practice policy hold lies with the federal government as some guiding policies are yet to be enacted by the Federal government such as Federal Education Act and Regulation to implement Act relating with the Free and Compulsory Education 2018.

3. Conclusion and Policy Recommendations

The Constitution of Nepal has granted education related rights with roles and responsibilities to the local governments; hence the local governments are in the process of formulating local education laws and policies. However, there are issues and challenges in this process. The major challenges are due to lack of alignment between different policy provisions, lack of shared understanding by different stakeholders and lack of mechanism that can effectively coordinate and resolve the issues of diverse interpretation and claim. As a result, the education policy formulation and implementation of the constitutional provision at the local level has been affected. The government and CSO stakeholders are concerned about it because of some anomalies in the prevailing policy directives and its consequences on the right to quality education. It is believed that education policies must address the present and future needs of individuals,

families, communities, and countries, therefore account the aspirations of people should be considered based on the true spirit and essence of the Constitution. Local education policies need to be formulated by adopting integrated approach in line with the national / local laws, policy, requirements, and context. While the federal government has initiated formulation of many policy instruments both at three levels of government through an integrated approach, the government should however continue to work at reinforcing synergy and managing coherence, consistency and policy harmony. These education policies are also expected to contribute to the attainment of national targets and SDG4 by reinforcing synergy (NPC (2020, p 79).

Some of the challenges that the government approach is facing are navigating through the federal transition pathways, and the incentives and investment for consolidating gains made by the political changes. In the hindsight, the following observations are made for the government to take forward and further validate and consolidate amid education stakeholders:

- First of all, there is need at federal level to promote broad-based ownership of the integrated approach among all stakeholders who could streamline education policies and provisions and draw clear roles and responsibilities within well-defined jurisdiction which can create and strengthen enabling environment for reviewing existing policies and enhance coherence and compatibility by removing ambiguous clauses and roles.
- The provincial and local governments need to be well equipped with informed policies, provisions, resources and capacities to manage school education system. The officials and stakeholders can only implement their roles effectively when they are capacitated

on the implementation of the existing policy provisions.

- Establishing a mechanism at the planning level such as at National Planning Commission to ensure periodic review of the integrated approach and policy implementation process and adjust/ revise them in a timely manner can be helpful to get better insights on the areas of challenge and opportunities.
- The way constitution has made provisions of the right to education as the shared responsibility for all

three level of the government, it becomes imperative for three levels of government to ensure harmonized education policies and laws in place for implementation and ensure sound coordination mechanism among them. The harmonious effort needs to be translated to the operational level to the dissemination of the plans and policies formulated at the federal level so that province and local governments could own it and harmonize their respective plans and policies in line with the federal policies and plans.

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(Mr. Ram Gaine is the Coordinator for National Coalition for Education Nepal, Jenak Raj Pant is associated with Oxfam Denmark and Anoj Chhetri is Chairperson for Nepal Participatory Action Network and also associated with Oxfam Denmark. Email: Mr. Gaine ram@ncenepal.org.np, Mr. Pant: pant.jenak@gmail.com and Dr. Chhetri: anoj.chhetri@gmail.com)