

DESPITE GOOD INTENTIONS

A Reflection on Minority Rights in Nepal



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Cover Page

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Acronyms

AD	Anno Domini
BC	Before Christ
CA	Constituent Assembly
CBS	Central Bureau of Statistics (Nepal)
CC	Cabinet Committee
CG	Caste Groups
CPA	Comprehensive Peace Agreement
CPN (Maoist)	Communist Party of Nepal- Maoist
CPN (UML)	Communist Party of Nepal- Unified Marxist and Leninist
CPRM	Committee for the Protection of the Rights of Minorities and Marginalised Communities
CRC	Constitution Recommendation Commission
CRSDSP	Committee on Restructuring of the State and Distribution of State Power
DCP	Development Cooperation Policy, 2014 (Nepal)
DDC	District Development Committee
DRIP	(UN) Declaration on the Rights of Indigenous People, 2007
ECN	Election Commission of Nepal
ESC	Economic, Social and Cultural (Rights)
FMI	Forum on Minority Issues
FPTP	First-Past-The-Post
FY	Fiscal Year
GA	(UN) General Assembly
GDP	Gross Domestic Product
GDI	Gender Development Index
GEI	Gender Empowerment Index
GEM	Gender Empowerment Measure
GESI	Gender Equality and Social Inclusion
GFP	Gender Focal Point
GNI	Gross National Income
GON	Government of Nepal
GRB	Gender Responsive Budgeting
HBC	Hill Brahman/Chhetri (s)
HDI	Human Development Index
HDR	Human Development Report
HEI	Human Empowerment Index
HMG	His Majesty's Government
HoR	House of Representatives
HPI	Human Poverty Index
HRC	Human Rights Committee
IC	Interim Constitution (of Nepal)
ICCPR	International Covenant on Civil and Political Rights, 1966
ICERD	International Convention on Elimination of All Forms of Racial Discrimination, 1965

ICESCR	International Covenant on Economic, Social and Cultural Rights, 1966
ICJ	International Court of Justice
IEMI	Independent Expert on Minority Issues
ILO	International Labour Organization
IN	Indigenous nationalities
INGO	International Non-Government Organisation
LDC	Least Developed Countries
LSGA	Local Self-Governance Act
MIC	Middle Income Countries
MoWCSW	Ministry of Women, Children and Social Welfare
MoFALD	Ministry of Federal Affairs and Local Development
MPI	Multidimensional Poverty Index
NA	National Assembly
NC	Nepali Congress
NGO	Non-Government Organisation
NJA	National Judiciary Academy, Nepal
NLSS	Nepal Living Standard Survey
NPC	National Planning Commission
NRDPM	Network on Racial Discrimination and Protection of Minorities
NRs	Nepalese Rupees
NWC	National Women Commission
OC	Other Castes
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPMCM	Office of the Prime Minister and Cabinet of Ministers
PCI	Per Capita Income
PCIJ	Permanent Court of International Justice
PR	Proportional Representation
PRS/P	Poverty Reduction Strategy/ Paper
PWD	Persons with disability
SPA	Seven Party Alliance
SRMI	Special Rapporteur on Minority Issues
TIP	Three-Year Plan
TM	Tarai/Madhesh (i)
UDHR	Universal Declaration of Human Rights (UDHR), 1948
ULF	United Left Front
UN	United Nations
UNCT	UN Country Team
UNDP	United Nations Development Programme
UNDM	UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992
UNRCO	UN Resident Coordinator's Office
US	United States of America
WCO	Women and Children Office
WGIP	(UN) Working Group on Indigenous Populations
WGM	Working Group on Minorities

Table of Contents

Introduction		vii
Policy Recommendations		xi
Chapter 1		
1. Minority Rights in International Arrangements	1-8	
1. Introduction		1
2. Minorities and indigenous peoples		2
3. International legal frameworks for minority rights		5
4. Conclusions		8
Chapter 2		
2. Minority Rights in Nepalese Constitutions	9-22	
1. Introduction		9
2. Quest for inclusive democracy		10
3. Post-1990s constitutions and minority rights		15
4. Conclusions		22
Chapter 3		
3. Policy Planning and Issue of Minority Groups	23-34	
1. Introduction		23
2. Nepalese minority and indigenous nationalities		24
3. Inclusion in the policy planning		31
4. Conclusions		34
Chapter 4:		
4. Reality check	35-50	
1. Introduction		35
2. Development, aid and inclusion		36
3. Representation in state organs		44
4. Federal provinces and caste/ethnic composition		48
5. Conclusions		50
<i>References</i>		54

Figures

Figure 1: Quota in the CA Election	12
Figure 2: Caste/Ethnic Groups in Nepal	24
Figure 3: Women in Parliament (1986-2013)	26
Figure 4: HPI Values by Development and Ecological Regions (2001-2011)	37
Figure 5: Poverty Rate in Caste/Ethnic Groups 2011	38
Figure 6: Per Capita Income by Caste/Ethnicity 2011	38
Figure 7: Actual Disbursement of Aid by Ecological Regions (FY 2010/11-2014/15)	41
Figure 8: Inclusion in International Agencies in Nepal 2008	41
Figure 9: Leadership in INGOs by Caste/Ethnicity 2016	42
Figure 10: Caste/Ethnic Groups in Legislatures (1986-1999)	44
Figure 11: Caste/Ethnic Groups in the Constituent Assembly (2008-2013)	44
Figure 12: Caste/Ethnic Representation in Judiciary 2012	45
Figure 13: Caste/Ethnic Representation in Civil Services (2006-2012)	46
Figure 14: Caste/Ethnic Representation in Security Forces 2012	47
Figure 15: Women in Security Forces 2009	47
Figure 16: Seven Federal Provinces in Nepal	48
Figure 17: 5 Largest Caste/Ethnic Groups in 7 Provinces	48

Tables

Table 1: Caste/Ethnic, Linguistic and Religious Groups in Nepal	25
Table 2: Changes in HDI by Regions (2001-2011)	36
Table 3: HDI by Caste/Ethnicity (2006-2011)	37
Table 4: Budget Allocation and Expenditure Trends (FY 2010/11-2014/15)	39
Table 5: Regional Disbursement of Foreign Aid (/FY 2013/14-2014/15)	40
Table 6: Leadership of Approved Projects by Caste/Ethnicity (FY 2013/14)	43
Table 7: Top 5 Caste/Ethnic Groups in the Federal Provinces in Nepal (2015)	49

Annexes

Annex 1: Social Inclusion Status in Nepal 2016	52
Annex 2: 10 Major Caste/Ethnic Groups in Nepal 2011	53



Introduction

Nepal presents an outstanding case of subtleties ‘power swivel,’ which, despite noteworthy ‘renovations of the state’ for over 2 centuries, is not enthusiastically prepared to shift the rule of the game. The gravity of power in the ‘unified’ kingdom was *Hinduism*, and that is still evident in many silent features of the state. The *Muluki Ain* (Country Code), in 1854, constituted differential privileges, rights and duties to the higher, middle and lower caste groups. Even with the legal changes and gradual social improvements since then, the progenies of the *Ain* continued as ‘custom’ or ‘tradition’ or customary law (Maharjan, 2005). *Rana* dynasty (1846-1951) nurtured the extreme version of oligarchy leaving no room for differences. *Shah* reign (1768-2006) implanted, proliferated and paid the unendurable price of modernising and unifying the country.

Although caste-based discrimination was abolished in 1963, ‘Nepali’ culture was projected as essential to nation-building and sovereignty elucidating the diversity of non-Nepali languages,

ethnic structures and non-*Hindu* practices as barriers to the advancement of a common culture (Bennett, 2005). 1990's *Jan Andolan-I*, or People's Movement-I, rose against the *Panchayat* system, and the restoration of democracy stimulated a sense of awareness among ordinary citizens including excluded groups. They started pushing forward their agenda of recognition and representation in the national mainstream. However, political exclusion increased after 1990 in the parliament, public service and judiciaries comparing to the *Panchayat* era despite excluded groups' significant participation in the democratic struggles (Lawoti, 2008). The People's War, or *Jana Yudhya*, began in 1996, coining the mass frustration among excluded groups and regions. Dispersed aspirations of identity, equality and self-determination were further consolidated by armed struggle and finally asserted in the Comprehensive Peace Accord, 2006 and the Interim Constitution, 2007.

Nepal witnessed a spectacular ascent, descent and persistence of identity movements since 2007. Many of such movements and protests are inspired by the aspirations of representative democracy, human rights and social justice that primarily seek the vertical and horizontal intersection to address public needs and concerns that Nepalese state have largely ignored (Dahal 2004). Nonetheless, Nepal moved on and promulgated a new constitution in 2015. It has an unprecedented number of affirmative 'schemes' for the minority and indigenous people, has officially defined and privileged the identity of dominant castes, and, above all, leaves plenty of room for future amendment and consecutive laws to concisely interpret the definition, standard and indicator of the constitutional arrangements.

While Nepal is comparatively a 'greenhorn' to listen to the minorities, it has been a while since the concerns over identity and identity-related exclusion and exploitation of non-dominant groups drew the attention to develop appropriate means to protect and promote the rights of such groups. The quest for social justice, equality and empowerment of all human lives drove the discourse of having legal and social norms in integrating different identities; social, religious or linguistic, in the mainstream of society. Chapter 1, *Minority Rights in International Arrangements*, discusses the conception and enlargement of minority rights in the international systems. The chapter is, precisely, divided into three sections. First, the definition of and distinction between the rights of minorities and indigenous people looks into how minorities and indigenous nationalities are defined, and why different attention is required to both of them. Second, which international legal frameworks do exist for the protection and promotion of the people belonging to minority groups. Third, and the conclusions, will recapitulate the key debates and developments in the context of minority rights.

Nepal promulgated 7 constitutions in last 67 years, during 1948-2015. Chapter 2, *Minority Rights in Nepalese Constitutions*, scrutinises the constitutional developments in Nepal and how minorities' concerns are addressed. The scrutiny is split into three sections. First, the Quest for Inclusive Democracy, looks into the history of constitutions in Nepal since 1948. An outline of the early constitutions, 1948, 1951, 1959, 1962 and 1990 are presented in addition to the synopsis of the People's War, the emergence of 'New Nepal', politics of constituent assembly and 'majority-led' constitution promulgation in 2015. The second part of the chapter compares some of the key features of last three constitutions; 1990, 2007 and 2015. The comparison is focused at language, religion, citizenship, fundamental rights, state policies, and other inclusion-related provisions. The last part of the chapter highlights the synthesis of key constitutional provisions regarding minority rights.

Chapter 3, *Policy Planning and Issue of Minority Groups*, deliberates the discussion on Nepalese minority groups and the attempts of inclusive policy planning since 1956. The first part illuminates the minority and indigenous people or nationalities in Nepal: caste/ethnic, linguistic and religious groups; women; indigenous people; Madheshi; and Dalits. Second part elucidates the 13 official plans adopted in Nepal since 1956. The focus is on the priority of periodic plans and how much attention minorities have enthralled in last three 3-year interim plans during 2007-2015. The third part, conclusions, presents the crux of 13 periodic plans in last 57 years in the country.

Undoubtedly, Nepal has moved forward with inclusive agenda, at least in the recent constitutions and policy planning since 2007. Most of the organisations, be it government or non-government, 'buzz' Gender Equality and Social Inclusion (GESI) in the form of principle or approach or goal. Chapter 4, *Reality Check*, assesses the realisation of inclusion in Nepalese society and institutions. The assessment is presented in four parts. First, Development, Aid and Inclusion, looks into the status of human development and poverty incidences across caste/ethnic groups, ecological and development regions. The first part also sheds light on the distribution of foreign aid, which constitutes a major portion of development efforts in Nepal, and is analysed by region and aid disbursement pattern including spending ratio. The inclusion of excluded groups in the international development organisations, international NGOs and the leadership of donor-funded NGO projects form the remaining section of the first part. Representation of different caste/ethnic groups in state organs; the legislature, judiciary, civil service and security forces, is scanned in second part of the chapter. Nepal has recently restructured the country in 7 federal provinces, and the composition of major five caste/ethnic groups in relevant provinces covers the third part. Eventually, fourth part presents a summary of the status of inclusion and where Nepal stands on its commitment towards establishing an inclusive society.

The goal of the publication is to inform the policy debate with an evidence-based assessment of relevant policies regarding minority groups and indigenous nationalities. Verified data and information from government and other reliable sources serve the basis of analysis. In some areas, the author, however, could not dismiss the unavailability of reliable data and information that limited the scope of further analysis. The intention is not to prove the biases or poor performance of assessed policies or institutions but to identify the gaps in fulfilling the promises and recommend appropriate strategies ensuring fairness of effort in protecting and promoting the rights of the persons belonging to minority groups in Nepal.

All comments and feedbacks will be cherished.



Policy Recommendations

Integration of UN Declaration on Minorities:

As a 'sounding board' of global citizen and international communities, the UN possesses the responsibility of implementing the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, 1992, (or the UN Declaration on Minorities, UNDM), at least in its own system and in the works it does in partnership with the national and regional bodies. Merely having the declaration and reminiscent of commitments cannot help in realising the provisions. More leadership efforts are required from the UN systems, and alike, to create a favourable environment, build stakeholders' capacity and coordinate the standalone endeavours of protecting and promoting the rights of persons belonging to minority groups. There is also a need of agreeing on global standards of minorities' definition and protection mechanisms. While national authorities should have room for contextualising the standards to

best fit local realities, the realisation of international norms should not be left at the discretion of dominant groups' interest generally manifested through national institutions.

Refinement and implementation of constitutional provisions:

7 constitutions during last 67 years in Nepal echo that quest for an inclusive and shared decree is not over yet. Undoubtedly, the Interim Constitution of Nepal, 2007, was the cornerstone of inclusive democracy in the country, the Constitution of Nepal, 2015, outshines the predecessors regarding the number of pro-minority provisions. However, the new constitution is not free of disorientation, contradiction and imprecision. The constitution needs streamlining to avoid future misperception and conflict over constitutional provisions. The government should scrutinise and adopt rule, act, directive, regulation and policies in the spirit of social justice, equity and reparation. Furthermore, concerned authorities should synchronise the need of group specific definition, provision, and standards as the minority and indigenous groups not always share or suffer from same issue or problems. Local context and group-specific indicators can help design effective policies and result-oriented programs.

Arrangement of several group-specific commissions in the new constitution shows that existing public institutions are either unsuccessful or are insufficient in addressing the problem of minority and indigenous groups. However, these commissions cannot serve better in absence of clear, comprehensive and robust mandates. The federal law/s should ensure that these commissions have enough resources and that their jurisdictions go beyond conducting research on behalf of the government. The commissions should be able to take action in severe cases in addition to the arrangement of a coordination mechanism should one commission needs the support of the other.

Since the Constitution of 2015 envisions of a collaborative federalism, the province, local level and autonomous structures should have enough mandate, resource and the support of the federal bodies to adopt and practice more promising measures in protecting and promoting the rights of the minority and indigenous groups. Sharing of powers avoid conflict, promote synergy among federal units and exercise thriving federal cultures.

Effectiveness of the policy processes:

Nepal has already implemented 13 periodic plans since 1956 and the 14th is in operation. Since the Eighth Five-Year Plan (1992-1997), Nepal has been acknowledging the exclusion of backwards regions, and minority groups as a significant barrier to national prosperity. Still, a large number of excluded groups and so-called 'backward' regions are left behind the national ambitions.

Discrepancies in aid disbursement and development indicators should be replaced with informed and rational planning procedures. Discretionary and short-sighted development efforts may serve the interest of decision makers but produce more unintended consequences, in the long run, undermining the value of progressive indicators. Unequal resource allocation and poor performance of development budget spending establish a major challenge to implementing inclusive promises. State and development partners should earnestly adopt an efficient and transparent mechanism to ensure effective use of development resources. Periodic assessments, such as Nepal Living Standard Survey and Economic Survey, should integrate GESI indicators to assess the effects of government policy and programmes on excluded groups as well. Integration of GESI-sensitive indicators not only help in tailoring the programmes best address the exclusion-led deprivation and marginalisation but can also ensure that public resources and opportunities are horizontally shared within and between the minority groups as well.

While poverty alleviation remains dominant of periodic planning, upgrading to Middle-Income Countries (MIC) should not just be the desire of policy planners. Absolute poverty may be tackled in next decade or so, income inequality and relative poverty remain as serious threats to national ambitions. Since national development system is overwhelmingly dependent on foreign aid and vulnerable to the fluid politics, Nepal needs a robust, inclusive and accountable policy system that do not just work ‘for’ the excluded groups but rather work ‘with’ them. Similarly, periodic planning should be guided by long-term ‘shared’ vision of the country with clearly defined objectives. Moreover, it is also important to learn from shreds of evidence, including past experiences of policy failure in Nepal, that sustainable growth and ‘balanced’ development cannot be realised until exclusionary institutions and prejudiced norms exist. Ambitious plans need appropriate and accountable institutions to produce intended results.

Realisation of gender equality and social inclusion:

Adoption of Gender Equality and Social Inclusion (GESI) provides a unique opportunity to state and non-state entities regarding transforming an exclusionary and unitary state to a vibrant and inclusive society. However, GESI should not be limited to women empowerment, only, as traditional gender-based discourse provides little benefits to the women from excluded groups and does not challenge the exclusive power politics constituting exclusionary agenda. Also, tokenism in the participation of excluded groups should be avoided. Departure from social inclusion is a turn towards more struggle and little progress. GESI can serve as a principle and as a tool, simultaneously. Diversity can provide an unprecedented amount of resources to speed up nation-state building efforts.

State restructuring should be, as enshrined in the Constitution (2015), guided by inclusive values. Similarly, the state should ensure that existing demography of caste/ethnic groups in the federal provinces and local levels do not undermine the fair and proportionate representation

of the groups not in a dominant position or population. It is practically not feasible to consider the identity of all excluded groups while delineating or naming the federal province, local bodies or even special or protected areas. So, protection mechanisms should be put in place to avoid further marginalisation of excluded groups in the federal arrangements.

Despite good intentions in recent years followed by the introduction of many affirmative policies, Nepal still has a long way to go to establish an inclusive nation-state. Unification of the Kingdom back in 17th century can no longer justify the exclusion when the world is shrinking in a small virtual community. With the rise of political awareness, access to international income opportunities and several home-grown movements, Nepalese citizen need a robust and efficient state institutions, augmented by equally or even more inclusive development agencies, which can provide equal treatment to all and should also harness the potential each Nepalese possesses. Adoption of economic growth in lieu of or circumventing inclusion should be considerate of the fact that economic growth does not always lead to peace and stability unless the fair distribution of dividend is ensured. Nepal also needs a broader and clearly laid out framework to address the root causes of underdevelopment and exclusionary practices while remaining guided by a shared vision of unity in the rich diversity.



Chapter 1

Minority Rights in International Arrangements

INTRODUCTION

With the end of the Cold War, the political and social transformation of the countries around the world drew attention towards identity issues such as class, ethnicity, nationality, and majority-minority relationships. The politics of neoliberalism shifted the focus from society or community to individual liberty. Global migration trends, market-state nexus, interchange from government to the quality of governance, and increasing gap between economic growth and social justice led to growing concern over the protection of particular groups; individual or group of people with minority identity, not in a dominant position in the society.

What is more important in the minority rights discourse is the question whether it is just the intention that demand for equality. It is, quite the reverse, not just the good intentions for peace and stability that incite minorities' concern, but rather the various *international norms* that seek protection and promotion of the people belonging to minority groups. Contemplating the epitome of social justice, equality and empowerment of all human being, it is essential to develop accommodative legal and social norms to integrate different race, caste, class, ethnicity, linguistic and religious backgrounds into the mainstream of national, regional and international systems¹. The delay in incorporating minorities' agenda in the mainstream discourse can push them in the 'precariat' group at the discretion of power players, a term defined by Gary Standing (2011) as a new class formation in the twenty-first century.²

¹ United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, United Nations, available at <http://www.un.org/documents/ga/res/47/a47r135.htm> (02/01/2016)

² Precariat is a youthful version of Marx's term 'proletariat' which means the worker who has nothing to sell but his own labour and who is readily exploited by the capitalist groups.

This chapter looks at how minorities are broadly conceived, why they need special treatment and which international treaties and instruments are put in place to protect and promote their rights. The discussions assess the definition of scholars and experts in the minority and indigenous issues, relevant international practices and the development of minority specific arrangements. In the end, I will conclude whether there has been promising environment for the minorities and the adoption of international frameworks at the national level.

MINORITIES AND INDIGENOUS PEOPLES

Post-Cold War era brought the wave of democratisation across the world and those suppressed and ignored, so far, began drawing the attention of welfare states. The weaker and fragile states, especially in multi-ethnic societies, could not adequately accommodate the diversity in state building efforts leading to tensions and further suppression of non-dominant voices. Although the identity and ethnic dimensions do not necessarily result in violent conflict, it certainly fuels and helps in enduring the insurgencies. Concerns have, since then, been raised to the inadequacy of international systems in recognising the grievances of minority groups. In response to those growing concerns, some attempts are made to safeguard the rights of individual, or groups, based on class, ethnicity, religion or language, not practiced by the majority, in global human rights and governance systems.

Defining minority groups

The evolving nature of political dimensions, legal status, and their realisation greatly shapes the preconditions and understanding of minority groups. The fluidity of such dimensions complicates the widely-accepted definition. Although, there is not any universally accepted or used definition of ‘minority group’ in the international systems, various UN bodies and rights organisations have continued to practice a working definition. The definition, by Francesco Capotorti, has been used by many in theory and practice. Capotorti defines a minority groups as:

A group numerically inferior to the rest of the population of a state and in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.³

Capotorti (1976) further elaborates the primary criteria to define a minority group: numerical inferiority; non-dominant position in relation to the population as a whole; differences in ethnic/religious/linguistic characteristics and traditions of such group comparing to the rest of population; and wish to preserve unique nature of their culture and tradition. Whereas the first three benchmarks are neutral, the fourth is individual and, so the individual or the group should determine the association with minority identity. While Capotorti’s definition of minority groups is widely used, it is not the absolute. The UN, for instance, has continually revisited the definition to make it more contextual to the changing political dynamics (OHCHR, 2007).

³ See details at <http://www.ohchr.org/EN/Issues/Minorities/Pages/internationalaw.aspx> minority under international law. U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities, 568, U.N. Doc. E/CN.4/Sub.2/384/Rev.1, U.N. Sales No. E.78.XIV.1 (02/01/2016).

In simpler term, ‘minority group’ is a non-dominant group, of individuals, who, I) share particular ethnicity, language or religion and that are different from those in dominant power positions, and II) who may be at the risk of exploitation and discrimination because of the ‘dissimilar’ identity or position. Self-definition and the wish to preserve own identity has been recognised as main features while understanding the minority status. Although these criteria and features are widely used, they are yet to be explicitly defined in the international body.

Despite the persistent brawl to agree on a universally accepted definition of a minority group, many countries, National Commission for Minorities in India for example, have attempted to recognise the collective rights of specific groups through institutional arrangements. However, state authorities often face criticism from minority organisations due to the narrowly-focused definition and short-criteria. Non-government organizations weigh more on defining a minority group based on their common identity, culture, ethnicity, language or religion and their helplessness in participating in and affecting the decision making structures. Group-specific measures in the law should be able to protect and promote their rights with an aim to eventually empowering them alongside the fellow dominant groups. Moreover, minorities need these legal protection mechanisms to remain least affected by the simultaneous development of anti-minority behaviours and involuntary assimilation in the dominant culture. Thus, the formal definition should integrate the broader characteristics of minority communities to allow unprejudiced and wider representation.

Defining indigenous peoples

Development organisations, state agencies and the indigenous scholars tend to employ two definitions while describing indigenous people: first by José R. Martinez Cobo, Special Rapporteur appointed by the UN Sub-Commission on the Prevention of Discrimination and the Protection of Minorities; and second as highlighted in Article 1 of International Labour Organization (ILO) Convention No. 169 of 1989 (Janet, 2002). Globally, the indigenous people are defined or understood as those, who hold historical continuity with the land before the formation of a country, and face discrimination in the contemporary society because of their distinct identity, and cultural uniqueness. The UN Working Group on Indigenous Populations (WGIP)⁴ offered a definition based on four criteria derived from various studies and expressions, of international organisations, academia and legal experts:

- a. priority in time;
- b. the voluntary perpetuation of cultural uniqueness;
- c. self-Identification as indigenous people, as well as external recognition as such, including by authorities; and
- d. the experience of suppression, exclusion, and discrimination by the dominant groups in the society.

WGIP addresses many shortcomings of the previous definitions. Also, the expansion of definition beyond the priority-in-time, de-emphasizes tribal components and does not make colonisation the sole condition for indigenosity. This definition is more reflective of *new indigenosity*. The definitions by ILO and UN suggest that self-identification and a collective desire to preserve practices that differ from mainstream society are the most important aspects of defining indigenous identity. Self-identification reproduces an ongoing group awareness which continues to form their common identity.

⁴ See more at <http://www.ohchr.org/EN/Issues/IPeoples/Pages/WGIP.aspx> (02/01/2016)

Do indigenous peoples need separate provision?

Globally, some groups can be classified as minority and indigenous as well is a common practice. The adoption of the UN Declaration on the Rights of Indigenous People 2007, or DRIP in short, signalled that international law distinguished between the rights of minority groups and those of indigenous peoples (Alfredsson, 1995). However, there is overlap between the general case of minority and the particular case of indigenous people (Thornberry, 1991). Some even claim that the concept of indigenous people and minorities are logically and legally interrelated (Daes, 2001). Although indigenous peoples entertain all the rights voiced for minorities, the UN Declaration on Minorities (1992) do not necessarily satisfy all the needs and aspirations of the indigenous people. The DRIP has indigenous group specific elements which include significant collective rights such as the right to self-determination and land.⁵

Another reason behind the need of additional rights for the indigenous people is that they do not always require special financial support or attention to improving their wellbeing and practising their unique culture. They, rather, have been living and enjoying before the formal boundary of a state was introduced and laws and regulations were imposed (Kuppe, 2009). More often, recognition of their distinct culture and traditions are enough to protect and promote their rights. Furthermore, the cross-border relationship among the indigenous peoples is another reason why they need specific provision. The dominant groups may perceive this cross-border relationship as a threat to the collective and national identity and culture. This situation can lead to the institutional and structural marginalisation of indigenous people.

Do minorities need special attention?

Political scientists, such as Will Kymlicka, elaborate that modern states have two choices of ensuring minority rights; one by *integration* and the other by *accommodation*. Both eventually lead to either assimilation of the minority groups in the national cultural mainstream or *accommodation* of their 'different' identity and culture through separate institutions or practices. Integration approach upholds individual rights but less stress on collective rights. On the contrary, accommodation approach typically leads to enduring collective rights.

The situation of African American in the United States is a lesson to understand the limitations of the integrative approach. The US has long held the 'melting pot' approach that seeks to incorporate all members of its society into a single American culture. The case of African-Americans, however, shows that the integration can overlook deeper forms of exclusion and denial of their cultural identity. Notwithstanding the state granting individual rights to African American minorities, the epistemological canon of 'colour-blindness' combines with the ethos of individual choice to preserve America's racial hierarchy just as surely as did Jim Crow' (Hayman & Nancy, 1993). Kymlicka (1995) firmly proposes a need to review the integrative approach which is more complex than accommodation to address the issues of African-Americans. He further asserts, based on empirical evidence, that, unlike many immigrant communities, minorities and indigenous people would prefer accommodation rather than integration.

In the accommodative approach, a system, preferably legal, is required to protect the minority groups as they desperately need recognition and protection to ensure that they can entertain same rights as their fellow majority (dominant) groups. In many diverse societies, the dominant group's history, culture, language, religions and socio-economic status put these groups in a

⁵ See http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf for full texts of the UN United Nations Declaration on the rights of Indigenous People (02/01/2016)

position that is arduous enough to be challenged by the minority groups. It usually decomposes the distinctiveness of minority identity and culture and forces them to ‘blend in’ or assimilate in the dominant circles to avert further exclusion and exploitation. The state apparatuses, market, mainstream politics, mass media, and the lifestyles of the dominant groups primarily initiate and sustain these pressures to assimilate. Undesirably, these pressures not only subdue the identity and cultures of the minority groups but also overwhelm their self-esteem and desire to contribute to the national life.

The ideal of a democratic legal system should be based on the valid social consent of both the dominant and minority groups apart from the sincere and full participation of the later in the decision-making processes. Draft of the legal policies needs wider and constructive public debate to understand, recommend and agree on the differences of power equation between the dominant and minority groups. The minorities, in many diverse societies, are portrayed as ‘threat’, and ‘spoiler’ to the establishments and thus power gaps widen between them despite the efforts of ‘compensating’ the minorities. State, and mainly the political parties, can play a decisive role in defusing or neutralising the misconceptions before initiating a consensus process. A legal framework based on the imbalanced equivalence between majority and majority, at best, will be quasi-democratic, as it lacks the accord of a substantial part of the citizens (Gross, 2006). These and similar realities and desires have had led the international consensus that minorities require special legal protection provisions to prevent subjugation, in addition to the special affirmative measures that can acknowledge them, as groups and as individuals, to defy pressures of assimilation and to achieve considerable equality in social, economic and political lives (Salomon, 2005; Nedelcu & DeBardeleben, 2016).

INTERNATIONAL LEGAL FRAMEWORKS FOR MINORITY RIGHTS

The end of World War-I was in many ways the catalyst behind the development of some of the most supranational institutions. Most notably, it saw the creation of the League of Nations,⁶ which would later shape the groundwork for the United Nations.⁷ The League set up the Permanent Court of International Justice (PCIJ), the predecessor the International Court of Justice (ICJ), which recognised the issues of discrimination against minority groups. The court further acknowledged that minorities should be provided with same rights and treatment under the law (ICJ, 2012). It also affirmed that a state should not be the only actor to decide the issue and rights of minority groups but the international communities have a role to play as well. The PCIJ emphasised on the effectiveness and candid equality rather than in the text of laws.

In 1945, the World War-II ended in September, and the United Nations was established in October. The Universal Declaration of Human Rights (UDHR)⁸ was proclaimed in December 1948 as a milestone to safeguard the human rights. The UDHR became significant due to the concentration on individual rights and the principles of equality and non-discrimination. However, the UDHR did not precisely use the term, minority. The following two-three decades after the end of Cold War witnessed the emergence of ethnic and religious dimensions as a key determinant of violent conflicts in many parts of the world, with the aspirations of distinct identity, collective rights, and self-determination. This drew the attention of wider actors at the global stage resulting in the adoption of some protective mechanisms for the minority groups.

⁶ See the full text of the Covenant of the League of Nations, Versailles, entered into force 10 January 1920 at <https://www.loc.gov/law/help/us-treaties/bevans/m-ust000002-0043.pdf> (03/01/2016)

⁷ See the full text of the UN Charters which was signed on 26 June 1945 and came into force on 24 October 1945 at <http://www.un.org/en/sections/un-charter/introductory-note/index.html> (08/03/2016)

⁸ See full text of the UDHR, proclaimed by the UN General Assembly resolution 217 A at <http://www.un.org/en/universal-declaration-human-rights/> (08.03.2016)

International Covenant on Civil and Political Rights (ICCPR)

The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities⁹ was established in 1947 with a focus on protecting the individuals as members of minority groups rather than the group as a whole. It was in 1966, signing of the ICCPR, that the first ‘verbal’ minority rights protection, on both individual and collective basis, was integrated. The Article 27 of the ICCPR declaims:

*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.*¹⁰

Akin to the PCIJ’s focus, the statement that the existence of the minority groups is not only determined by respective state but the international community also had a say in the process, was reiterated by the Human Rights Committee (HRC) in 1994 (OHCHR, 1994). Moreover, despite the negative rights language used in the article, “*shall not be denied*,” the HRC placed emphasis on state parties to vigorously protect the minorities from violation of their rights, committed either by state or any private entities.

The ICCPR further recognises the right of all peoples to self-determination including the right to freely determine their political status (Article 1). The state parties to the Covenant are obliged to provide an *efficient remedy* for any violation of those rights and also requires the rights to be recognized without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Article 2-5). Articles, 26 and 27, provision for non-discrimination and equality before the law.

UN Declaration on Minorities

Until 1992, the Article 27 of the ICCPR remained the sole major determinant of minority rights in the world. In 1992, the UN General Assembly made a history by adopting the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, or the UN Declaration on Minorities (UNDM). Although the Declaration is a non-binding document, it is the first such document solely devoted to the minorities and has, since then, guided the development and promotion of minority rights throughout the world. The Declaration specifically provides an acknowledgement to both individual and *collective* rights of the minorities. The majority of the rights are individual rights, but the rights to exist, preserve and develop a minority’s identity are collective rights enshrined in the Declaration. The Declaration encourages the states to protect and promote the rights of minorities and create a foundation of inclusive society as a necessity for advancing the rule of law and preventing future conflict. State parties are also encouraged to create a favourable environment for the meaningful participation of minorities in public decision-making processes. International agencies, preferably the UN specialised agencies, are explicitly asked to integrate the provision in their policies and programs.

⁹ See full text of the UDHR, proclaimed by the UN General Assembly resolution 217 A at <http://www.un.org/en/universal-declaration-human-rights/> (08.03.2016)

¹⁰ See the full text of ICCPR, adopted by the General Assembly on 19 December 1966 at <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> (08/03/2016).

Forum on Minority Issues

In 1995, a Working Group on Minorities (WGM) was established by the Economic and Social Council resolution 1995/31 as a subsidiary body, of the Sub-Commission on the Promotion and Protection of the Human Rights. The WGM organised twelve sessions with a very specific goal of providing a common platform for dialogue on minority issues. In 2007, Forum on Minority Issues (FMI) replaced WGM by the Human Rights Council Resolution 6/15. FMI has, so far, organised nine sessions and has managed to function as an inclusive stage for promoting dialogue and cooperation on issues related to national or ethnic, religious and linguistic minorities.

Special Rapporteur on Minority Issues

In April 2005, Resolution 2005/79 established the appointment of an Independent Expert on Minority Issues (IEMI). The IEMI was later replaced by the Special Rapporteur on Minority Issues (SRMI).¹¹ The Resolution 25/5 of the Human Rights Council extended the mandate for three years and has been renewing since then. The SRMI is mandated to promote the implementation of UNDM: examine the ways and means to overcome the obstacles in full realization of minority rights; coordinate with NGOs; complement and enhance the work of other UN bodies and mechanisms that address minority rights issues; and submit an annual report to the Human Rights Council and General Assembly for efficient implementation of the rights of minorities.

Network on Racial Discrimination and Protection of Minorities

In March 2012, UN Secretary-General endorsed the establishment of Network on Racial Discrimination and Protection of Minorities (NRDPM).¹² NRDPM is established to promote dialogue and cooperation between UN departments, agencies, programs and funds. The OHCHR acts as a coordinating body bringing over 20 UN entities. In March 2013, NRDPM produced, after the endorsement by the Secretary-General, 19-point guidance notes on how to address racial discrimination and protection of minorities including integrating anti-discrimination and minority rights into the work of the UN system at global, regional and country level (OHCHR, 2013).

Other bodies and provisions for minority rights

The issues of minorities are not just limited to individual bodies or treaties, as mentioned above, but rather slices across multiple channels. In addition to HRC, Committee on ESC rights, Committee on the Elimination of Racial Discrimination, Committee on the Rights of the Child, Committee on the Elimination of Discrimination against Women, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of Persons with Disabilities, Committee of Experts on the Application of Conventions and Recommendations, and the Universal Periodic Review are all mandated and responsible for reviewing their respective terms and works to ensure minorities are protected, promoted and heard in the appropriate processes (OHCHR, 2012).

¹¹ See more about the mandates of SRMI at <http://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/SRminorityissuesIndex.aspx> (10/03/2016).

¹² See more about the mandates of NRDPM at <http://www.ohchr.org/EN/Issues/Minorities/Pages/UNNetworkRacialDiscriminationProtection-Minorities.aspx> (10/03/2016).

CONCLUSIONS

With the rise of ethnic tensions and growing inequalities across social groups, the international systems felt the need of appropriate measures to avoid and manage civil conflicts in multi-ethnic societies. Although slow, some relevant treaties and instruments exist as the result of growing attention towards minority groups. Minority groups, in general, are perceived on three common peculiarities: subordination by dominant cultures or clusters in a particular context; fear of violent retaliation to challenge the non-inclusive norms and practices; and structural and institutional marginalisation due to their association with non-dominant identity groups. While the definitions are contextualised to 'fit' the needs and interests of a given authority or state, many minority groups still suffer from the rigidity and tokenism of such practices resulting in a situation of involuntary assimilation.

The international legal instruments, including the UN Declaration on Minorities, need wider acknowledgement and efficient implementation. Non-binding provisions can fade the commitments and may lead to further atrocities against the minorities. The states with inadequate resources and weak institutions should be supported to implement the global standards in national context. UN agencies and other international organisations inherit the ethical obligation to '*walk the talk*' by integrating minority rights in their policies and programs. This move not just helps in creating an enabling environment for the progressive work on minority rights, but can also motivate the states to fulfil their commitments as a party to the international systems. Recognition, support and empowerment of the minority and indigenous peoples not just benefits them but eventually help build peaceful and sustainable communities.



Chapter 2

Minority Rights in Nepalese Constitutions

INTRODUCTION

Nepal's constitutional evolution began in 1948. The first constitution, of 1948, was devoted to the Ranas and the second constitution came after the Rana dynasty was over, in 1951. Third constitution, 1959, aimed at deepening the root of monarchy adhered to Aryan culture, Hindu religion and Nepali language. The constitution introduced equality, political freedom, non-discrimination and religious freedom but was changed in 1962 by the fourth version. It realised the need for citizenship with a condition of Nepali language proficiency. Although the constitution carried on the freedom, equality and non-discriminatory provisions from its predecessor, it was predominantly devoted to sustaining the party-less Panchayat system under absolute monarchy until 1990.

The People's Movement, in 1990, overthrew *Panchayat* system and negotiated with royal palace for multi-party democracy under the constitutional monarchy. The fifth constitution recognised Nepal as a multiethnic, and multilingual kingdom and adopted the principles of social justice and affirmative action. However, the state, parties and policies failed in sharing 'prosperity' with the diverse communities. Mass frustration among the populace triggered by mounting corruption, nepotism, and underdevelopment. People's War or the Maoist Armed Conflict began in 1996, challenging the centralised multiparty system in the constitutional monarchy. The war ended in 2006 and the sixth constitution, in 2007, staged groundworks for inclusive, federal and secular Nepal. Elections held on 2008 and 2013, producing a historic representation of excluded groups in the legislatures ever, and the seventh constitution, the Constitution of Nepal was promulgated in September 2015. Each version of the new constitution unearths the question about its stability and whether every segment of the populace is equally treated.

This chapter assesses the key developments in Nepalese political history to achieve equality through constitutional debate. The first part, the Quest for Inclusive Democracy, incorporates a brief overview of early constitutions, during 1948-1962, and the politics of ‘inclusive’ constitutional process during 1990-2015. The constitutions of 1990, 2007 and 2015, under ‘democratic’ leadership, are scrutinised through minority groups’ point of view, in the second part of the chapter. The third and the final part presents a synopsis of key findings regarding the incorporation of minority rights in Nepal’s constitutional development and whether the new constitution is more progressive towards the inclusion of excluded groups.

QUEST FOR INCLUSIVE DEMOCRACY

The first constitution of Nepal, the Government of Nepal Act, was enacted in 1948 and all powers were delegated to the *Rana*¹³ rulers (HMG, 1948). The constitution could not even last for three years. In 1951, the Interim Government of Nepal Act was promulgated following the end of Rana dynasty and the beginning of democratisation process. The Constitution, 1951, vested all executive powers to the royal palace although it integrated social justice, prohibited all forms of exploitation, and proposals for equality of opportunity (HMG, 1951). While the constitution helped in planting the roots of democracy in Nepal, it could not realise the potentials.

The third constitution in the series, the Constitution of the Kingdom of Nepal 1959 aimed at establishing the monarchical form of government (HMG, 1959). The constitution, adhered to Aryan culture, Hindu religion and Nepali as the national language, had provisions for political freedom, equality, non-discrimination and freedom of religious practices with restriction on conversion. 3 years later, in 1962, Nepal got its fourth constitution, the Constitution of Nepal, 1962 with citizenship arrangements. Anyone born in Nepal, or either of his/her parents born in Nepal or who, as a woman, had any marital relation with a citizen of Nepal were eligible for citizenship. However, the ability to read and write in the Nepali language was required. The Constitution, 1962, sustained the rights to equality, freedom and religion with restriction on conversion (HMG, 1962). Comparing to the previous three and following three constitutions, this was the longest-survived constitution in Nepal which rooted *Panchayat* System under the absolute monarchy in Nepal, until 1990.

By the dawn of Cold War, the breeze of democratic aspirations gradually entered Nepal. People’s quest for civil and political space in public affairs occupied the narrow streets of towns and villages. Masters of *Panchayat* were hiding in their forts. It was the inception of a new era. A popular uprising, known as ‘People’s Movement-I’, forced the royal palace to end autocratic rule of the king and *Panchayat* System. Started in February 1990, the uprising, locally known as *Jana Andolan-I*, consisted of nationwide strikes and massive movements demanding the restoration of multi-party democracy. In April 1990, a ten-member interim cabinet was formed after the king agreed to lift the ban against political parties. The Constitution of the Kingdom of Nepal, 2047 was promulgated in November 1990 by King *Birendra* ending three decades’ of absolute monarchy and *Panchayat* system (HMG, 1990). The Constitution adopted various provisions with an attempt to recognise the diversity in the country. The kingdom was defined as multi-ethnic and multi-lingual (Article 4 and 6).

Despite the constitutional provisions of fighting social injustice, protect and promote various culture, language and traditions, practice of multi-party democracy, conversely, substantiated a new circle of political elites with strong roots in predominant cultures. Although all backgrounds of the Nepalese population participated in the *Jan Andolan*, the post-*Jan Andolan*

¹³ See <https://www.britannica.com/event/Rana-era> for details about the Rana dynasty which lasted between 1846-1951. (14/11/2015)

era could not witness the diversity in decision-making processes. The whole process of power-bargaining and power-exercise with the palace was influenced by dominant caste and ethnic groups. Constitution writing process, for example, indicated the sign of exclusive democracy since the beginning.

The constitution-writing process, in 1990, was split into two phases; the first step consisted of a nine-member Constitution Recommendation Commission (CRC) and the second one was the three-member Cabinet Committee (CC). The CRC was formed to draft the constitution during May- September 1990. The CRC members were recommended by the king, Nepali Congress (NC) and the United Left Front (ULF). NC and ULF recommended 6 men; 5 Hill Brahman and 1 from Tamang ethnicity. Later, 3 men; 2 Hill Brahman and 1 Hill Chhetri, were nominated in the CC. Many scholars criticised the exclusive statute writing process and even claimed that the approach was solely centred on ensuring three elements as the foundation of multi-party democracy; Shah dynasty, Hinduism and Nepali language, as the core of state-constructed Nepali identity (Malagodi, 2007). Many other perceived that post-Jan Andolan democratisation process was rather a continuation of particular power characteristics which just expanded beyond the royal palace to the political parties, mainly NC and Communist Party of Nepal- Unified Marxist and Leninist (CPN-UML). The elite-centric power politics significantly eroded the values of democracy in Nepal (Humagain & Seo, 2013) where people in general and the excluded groups, in particular, paid the hefty price. The political games in the following years failed in acknowledging the diversity in high and decisive portfolios resulting into wider discontentment and the emergence of armed struggle, the People's War, in 1996.

The People's War

On 13 February 1996, political front of CPN (Maoist), United People's Front (UPL) declared the Maoist conflict or the People's War with three primary objectives; ousting the monarchy, establishing the republic system and having people's constitution through the Constituent Assembly. The CPN (Maoist) contextualised the ideology of class war with poverty, injustice and exploitation and strengthened its capacity by ethnicizing the insurgency (Hachhethu, 2005). Comparing with the urban or rural areas in general, human casualties were more severe in villages with greater inequality (Nepal et al., 2011). Over 44% of the total number of casualties of the conflict were from indigenous nationalities and *Dalits* (Joshi & Pyakurel, 2015). Because many *Dalits* distinguish the surname to refrain from social stigma and, instead, use the one that denotes to HBC, the figure of casualties among *Dalits* could be higher than reported.

Political crisis further worsened after the royal massacre in June 2001. The new king, *Gyanendra*, seized absolute executive power which irked the mainstream political parties. The frustrated political parties signed the historic 12-point Agreement between the alliance of seven parties, known as Seven Party Alliance or SPA, and the CPN (Maoist) in November 2005, in New Delhi, India. The pact paved the way for a joint agitation, between SPA and Maoists, against the king, known as *People's Movement-II*. Repeating the history, King Gyanendra reinstated the dissolved parliament in April 2006. The Comprehensive Peace Agreement (CPA) was signed between SPA-led government and Maoists formally concluding a decade-long bloody conflict. Next month, in May, parliament unanimously abolished the monarchy and declared Nepal as a secular state.

Foundation stone of ‘New Nepal’

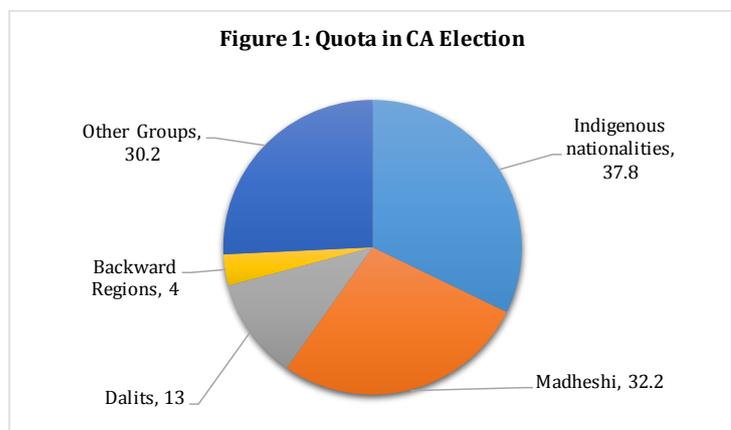
In January 2007, the Interim Constitution of Nepal (IC 2007) was promulgated leading to the election of Constituent Assembly (GON, 2007). IC 2007 pledged a progressive restructuring of the state to accommodate the demands of different caste, ethnicity, religion and further declared Nepal as a federal democratic republican state abolishing 240 years’ of monarchy in the country.¹⁴ In the meantime, feeling ‘betrayed’ by the ruling parties and Maoists, Madheshi started a 21-day mass movement, during January- February in 2007, demanding identity, proportional representation based on population and federal governance system. It was an incongruous event parallel to People’s Movement. The spontaneous movement was a landmark event in bringing out regional based ethnonationalism as one of the prominent issues in national discourse on restructuring the Nepali state which forced the government to amend IC 2007 twice within less than three months of its promulgation on 15 January 2007 (Hachhethu, 2007; Lunn, 2013). The Fifth Amendment, made on 13 July 2008, recognised the desire of Madheshi, indigenous people and other excluded people towards autonomy.

IC 2007 was in fact a result of negotiations between Seven Party Alliance (SPA), and CPN (Maoist) and is widely applauded as a framework for inclusive peace and state restructuring in Nepal. It primarily outlined the election of the Constituent Assembly, new constitution and, in the interim, share the ‘peace dividend’ with the excluded groups and conflict victims. Inclusive participation based on proportional representation was the key word coined by the IC 2007.

Constitution writing through the Constituent Assembly

To materialize the aspirations of inclusion and proportional representation, the Election to the Members of the Constituent Assembly Act, 2064 (2007), made provision for quota system under the Proportional Representation (PR) List. Accordingly, the reservation was 32.2% for *Madheshi*, 13% for *Dalits*, 37.8% for Indigenous people, 4% for the backward regions¹⁵ and 30.2% for others (ECN, 2007).¹⁶ Women were provided with 50% reservation within each group. The quota allocated for the different caste/ethnic groups in the CA election resulted in a historical representation of the minority and marginalised groups in the Assembly, in 2008 (see Chapter 4 for disaggregation of caste/ethnic representations in the CA and previous legislatures). The most radical change in the parliament was seen regarding women, who secured 32.8 percent of the total seats making Nepal at the peak of 14th position, globally, for women participation in the parliament (IPU, 2009).

The CA formed 11 thematic committees to draft the constitution. Among them, the Committee for the Protection of the Rights of Minorities and Marginalised Communities (CPRM) was one with a mandate of ensuring excluded groups’ issue in the new constitution. The CPRM, with a limited timeframe, conducted handful number of dialogue with various



Source: ECN, 2007.

¹⁴ Inserted by the Fourth Amendment, 29 May 2008

¹⁵ Backward regions include Achaham, Kalikot, Jajarkot, Jumla, Dolpa, Bajahang, Bajura, Mugu and Humla districts. Of the total population of these 9 districts, 1,147,565, HBC cover 71.3 percent.

¹⁶ Other means the group not specifically mentioned in this Schedule 1 of the Act.

groups and submitted their draft to the CA for further discussion. Many believed, however, the discussion was symbolic and had no intention to allow productive input from diverse members of the Assembly. CPRM finished the debate, in the general meeting of the CA, in less than 26 hours (MC, 2010). Despite the challenges and criticisms, however, the CPRM proposed several key measures to protect and promote minority rights in federal structures: rules against discrimination and exploitation; the right to equality; and affirmative actions. In addition to CPRM, the Committee on Restructuring of the State and Distribution of State Power (CRSDSP) also proposed some positive measures to safeguard the rights of minorities in state restructuring process. For example, consideration of identity while naming and delineating federal boundaries, autonomous special and protection areas for most excluded groups were recommended in the CRSDSP's final report.

Encouraged by the positive provisions in the IC, the minority and marginalised groups throughout the country organised various forms of public meetings to collect voices and later submitted to the concerned thematic committees for incorporation. While ethnic identity-based groups were demanding for their rights in the new constitution, various other groups, notably the hard-core Hindu groups, pro-monarchy and few dominant communities were warning the CA for potential threats regarding fragmentation of Nepalese society and even secession if the identity in general and ethnicity, in particular, be primarily guaranteed in the constitution. In short, the major political parties did insufficient to allow wider inter and intra-group discussion throughout the country regarding contentious issues such as identity, federalism and forms of governance which, eventually, led to heated and sometimes violent clashes in some parts of the country (UNRCHO, 2012). The anti-federalism agitations were not spontaneous to protect harmony and co-existence but an 'organisational drive' to maintain the status quo and power structures since 2010 (TCC, 2010).

The political crisis dramatically coiled after the largest party, CPN (Maoist), quit the government in May 2009. Article 67 of the IC 2007 set the promulgation deadline by May 2010 which was extended by 2 more years on 28 May 2010. The extension was agreed between three larger parties; CPN (Maoist), NC, and CPN (UML), as a part of 3-point agreement to finish the remaining task of peace process, notably the integration of Maoist combatants and completing the tasks of constitution writing. Following the agreement, a series of political drama overshadowed the constitution writing process. Over 16 unsuccessful attempts to elect new prime minister were staged in the Assembly drawing local and international criticism. Political drama filched the worst shape on 28 May 2012 when the CA was dissolved without declaring a new constitution.

The Maoist's prime minister handed over the leadership to the serving head of supreme court to lead the interim cabinet and hold another round of the election. Nepal suffered from four cabinet changes between 2008 and 2013 deteriorating people's trust in political institutions and leaving the minorities more disappointed. The frustration was inevitable since the minority groups had significantly engaged in lobbying their issues in the constitution writing process despite repercussions from some of the dominant factions of the society. Dissolution of the CA showed the inability of Nepalese leaders to consolidate aspirations of diverse communities into the democratic mainstream which not just undermined the past achievements but also infused with fragmentation in the society. It was the climax of consensus rhetoric and induction of the arithmetic, or majority *rules*, state transformation phase which, eventually, distanced the rulers from the ruled ones.

From consensus to competition

The second election of the CA was held on 19 November 2013. The quota system, introduced in 2007, could not help the excluded groups, including women to increase or even sustain their numbers in the Assembly. Hill Brahman/Chhetri or HBC gained 55.4 percent, Tarai/Madheshi, or TM, caste groups declined to 15.4 percent, Hill indigenous nationalities, or Hill IN, slightly decreased to 14.6 percent, TM IN bagged 7.5 percent, Newars at 5 percent, Muslim 1.7 percent, and Hill *Dalits* got 0.4 percent of the seats under First-Past-The-Post, or the FPTP (UNRCO, 2013). It was a notable revival of HBC's majority in the election, 2013, comparing to 39% in the first CA election in 2008. TM caste groups declined from 23% in 2008 to 16% in 2013 whereas indigenous nationalities (Hill, TM and Newar combined) lost by 8% comparing to their seats in 2008.

Two primary factors affected the representation of non-dominant groups in the 2013 election. First, the larger political parties did not allocate enough candidates from the minority and marginalized groups or could not provide enough support in their election campaigns. Second, the split within pro-federalist political forces, such as CPN (Maoist), Madhesh/IN-based parties. CPN-Maoists, who had secured 30.52% of the FPTP votes in 2008 declined to 17.79% in 2013. Madhesh-based political parties, who had succeeded in securing 43 seats under FPTP in the previous election, declined to 12 seats in 2013. The indigenous parties split from 7, in 2008, to 13, in 2013. Nepali Congress re-emerged as the largest party in the second CA Election by bagging 29.80 percent, and CPN (UML) emerged as the second biggest party with 27.55 percent. However, that was only 7 and 6 percent increase from 2008 election, respectively. The Rastriya Prajatantra Party (RPP), Hindu conservative party advocating for the restoration of the monarchy, emerged as the fifth largest party in the second CA with 24 seats, they had 4 seats in 2008. The NC, CPN (UML) and CPN (M) represented 196, 175 and 80 seats in the second CA respectively.

It was obviously not a promising sign of a country where a large number of excluded groups were promised by the constitutions and their political leaders that the new constitution would provide 'justice' to them (Mabuhang, 2015; Adhikari & Gellner, 2014; Lawoti, 2016). To disown the previous achievements, regarding inclusive proposals prepared by the thematic committees under dissolved CA, the election result, of CA-II, was (*mis*)interpreted as a 'no' to identity politics by the bulky segment of urban-centric dominant groups and some leaders of bigger political parties as they succeeded in 'resuming' their space in the parliament.¹⁷ On the other hand, many excluded groups considered this election result as a 'conspiracy' staged by national and international institutions and donor countries who had, so far, done very little than chanting 'inclusion' in their statements.

The majority-led, constitution writing process resumed on 22 January 2014 and 99 meeting of the CA-II occurred until April 2015. In the meantime, an earthquake of 7.8 magnitude stroke Nepal on 25 April followed by another big shock, of 7.3 magnitude, on 12 May, killing over 9000 people, and causing massive physical destruction and displacement.¹⁸ The coalition government, led by Nepali Congress and CPN (UML), seized the post-earthquake opportunity to 'fast-track' deluded constitution writing process.¹⁹ From the next day of the second big earthquake, 13 May, a chronicle of 'well-controlled' meeting speeded up. 134th session of the CA-II, on 16 September, approved the constitution.²⁰

¹⁷ See the interview of Rastriya Prajatantra Party- Nepal (RPP-N)'s chair Kamal Thapa, in the Kathmandu Post at <http://kathmandupost.ekantipur.com/news/2013-12-30/secularism-a-conspiracy-between-foreign-powers-farleft.html> (02/01/2016).

¹⁸ See <http://drrportal.gov.np/home> for details (03/01/2016).

¹⁹ https://www.nytimes.com/2015/06/09/world/asia/earthquake-prods-nepal-parties-to-make-constitutiondeal.html?_r=0 (21/ (20/10/2015)

²⁰ See <http://asd.org.np/nepal-in-transition/ca-ii/meeting-chronology-of-caii/> for dates of the CA-II meeting (09/04/2016).

Throughout the first and second assemblies, during 2008-2015, ‘consensus’ remained as key *Mantra* for the politicians to resolve the contentious issues. However, the *Mantra* seldom applied when it came to sharing power or restructuring the state. CA-II followed majority versus minority process whereas the opposition alliance- led by CPN (Maoist) entailing 19 political parties, mainly Madhesh-based and indigenous groups- insisted on consensus (*all or most agree*) on disputed issues. During the first CA, the CPN (Maoist) and Madhesh-based parties, despite their two-third majority, over-weighted on consensus and thus waited for the consent of NC and CPN (UML) until the end (IWGIA, 2015). However, CPN (Maoist), in the second CA, bowed to the ruling coalition at the climax. CPN (Maoist) deserted *Madhesh*-based and some indigenous groups opposed to the majority-led constitutional promulgation without resolving major contentious issues such as name and boundaries of the federal provinces. Amid the minorities’ stark disagreement, boycott and even the protest in some parts of Nepal, notably in Tarai, the Constitution of Nepal, 2015, was proclaimed as per the Rule 113 (3) of the Constituent Assembly Regulations, 2070 (AD), on 20th September 2015 conferring mix reactions, of hope²¹ and anguish,²² among the Nepalese population (HRW, 2015). While this was an end of 8-year long majority-led political negotiations, it certainly was not the end of the quest for inclusive democracy. How the ruling parties accommodate the issues of agitating groups will determine the health of 7th constitution.

POST-1990s CONSTITUTIONS AND MINORITY RIGHTS

Nation

The Constitution of the Kingdom of Nepal, 1990:

The Constitution of the Kingdom of Nepal, 1990, had some provisions with an attempt to recognise the diversity in the country. The kingdom was defined as multi-ethnic and multi-lingual (Article 4 and 6).

The Interim Constitution of Nepal, 2007:

The Interim Constitution of Nepal (IC) pledged the progressive restructuring of the state to solve the issues of class, ethnicity, religion and gender and further declared Nepal as a federal democratic republican state abolishing 240 years’ of monarchy.²³ The nation was defined as multiethnic, multilingual, multireligious and multi-cultural and the state of Nepal was classified as secular and inclusive (Article 3 and 4).

The Constitution of Nepal, 2015:

As in the Interim Constitution, 2007, the constitution, also defines the Nation (Article 3) as multi-ethnic, multilingual, multireligious, and multicultural. The state is secular, inclusive and federal democratic republican (Article 4.1).

²¹ See <http://kathmandupost.ekantipur.com/news/2015-09-19/people-celebrate-constitution-promulgation-inphotos.html> for glimpses of celebration in mainly Kathmandu and hill districts (25/10/2015).

²² See <http://in.reuters.com/article/nepal-constitution-idINL4N11R2CD20150921> for post-constitution violence (27/12/2015).

²³ Inserted by the Fourth Amendment, on 29 May 2008.

Language

The Constitution of the Kingdom of Nepal, 1990:

There was not any additional provision for a language other than the nation as multi-lingual (Article 3).

The Interim Constitution of Nepal, 2007:

Nepali language was defined as the official language whereas all other languages spoken as the mother tongue were considered as the languages of the nation (Article 5.1 & 5.2). The state was encouraged to provide additional measures to use other-than-Nepali language in government offices.

The Constitution of Nepal, 2015:

All languages spoken as mother tongue in Nepal are recognised as the languages of the nation (Article 6). However, Nepali language is declared as the official language, and federal provinces are allowed to determine the language/s spoken by the majority in the respective province as official language/s, in addition to Nepali language (Article 7.1 & 7.2). A language commission is envisioned to recommend further arrangements should the federal government decides so (Article 287).

Citizenship

The Constitution of the Kingdom of Nepal, 1990:

Anyone born in Nepal, and whose father was a Nepali citizen, was entitled to citizenship (Article 9.1). A foreigner could be eligible given that the person could speak and write in Nepali; resided in Nepal for 15 years; and renounced the citizenship of another country (Article 9.4). A woman of foreign nationality could receive Nepali citizenship if she had a matrimonial relationship with a Nepali citizen (Article 9.5).

Article 125 (Provisions Regarding Citizenship of Official of the Constitutional Bodies) set up eligibility criteria, for the appointment in the constitutional bodies, as a person must either be a citizen of Nepal by birth or *descent*, or be a person who, as a naturalised citizen, had resided in Nepal for at least ten years.

The Interim Constitution of Nepal, 2007:

The citizenship provisions, under Part-2 Citizenship: Article 8.2.b, allowed the citizenship by descent if father 'or' mother was a citizen of Nepal which was a breakthrough arrangement to allow a child to have citizenship in the name of his/her mother. Article 6 allowed the naturalised citizenship to a woman of foreign nationality with a matrimonial relationship with a Nepalese citizen. Similarly, a child born in Nepal and from a Nepalese woman citizen married to a foreign man could acquire naturalised citizenship.²⁴

²⁴ There, however, were some serious issues in the constitution such as statelessness and gender discrimination. See <http://www.institutesi.org/NepalUPR2015.pdf> for a list of recommendations on the citizenship provisions in the Interim Constitution, 2007 (10/03/2016).

The Constitution of Nepal, 2015:

While most of the citizenship provisions are similar to the Interim Constitution, 2007, there has been a significant shift regarding a child being eligible for citizenship if his or her father *'and'* mother, both, are Nepalese citizen (Article 11.3). This is a departure from father *'or'* mother arrangement in the IC, 2007. A woman of foreign national marrying a Nepalese man can acquire Nepalese citizenship (Article 11.6), but the constitution does not arrange any provision for man of foreign national marrying a Nepalese woman. A child born to a Nepalese woman with a foreign husband can acquire naturalised citizenship (Article 11.7) whereas a child born to a Nepalese father with a foreign wife can get citizenship by descent (Article 11.2.b).²⁵

The citizenship provisions of the Constitution also discriminate the citizen by types; naturalised versus descent. The naturalised citizenship, for instance, limits the eligibility for high level constitutional and public offices (Article 289.1). The eligibility provision is reserved for the citizen by descent only. This arrangement is completely different than IC 2007. Article 155 of the IC 2007 had accepted naturalised citizen, in addition to the citizen by descent, to be eligible for the constitutional positions provided that he or she should have resided in the country for at least ten years. Even a naturalised citizen could be the president of the country (Article 36D of the IC 2007).

Fundamental Rights***The Constitution of the Kingdom of Nepal, 1990:***

The Constitution, under Part-3 Fundamental Rights and Duties, had provisioned the Right to Equality which prohibited discrimination on the ground of religion, race, sex, caste, tribe or ideological conviction (Article 11. 2 & 3). The constitution also encouraged the state to provide special treatments to protect and advance the interests of women, children or those who belonged to economic, social and educational backward groups. Article 12 provided the Right to Freedom whereas cultural and educational right were aimed to preserve and promote the language, script and culture of each community living in Nepal in addition to the right to have primary schooling on mother tongue (Article 18.1&2). Everyone was entitled to exercise his/her faith, but the conversion of religion was prohibited (Article 19.1 & 2). Trafficking, slavery and forced labour were also banned (Article 20.1 &2).

The Interim Constitution of Nepal, 2007:

Part-3 Fundamental Rights in the IC surpassed the past constitutions regarding conferring Right to Freedom and the Right to Equality prohibiting any form of discrimination, including untouchability based on religion, colour, sex, caste, tribe, origin, language or ideological conviction (Article 13 and 14). It also conceded punishment and compensation against the discriminatory treatment in public places. The Right relating to Education and Culture (Article 17) allowed the primary education in mother tongue and the right to preserve and promote language, script, culture, cultural civilisation and heritage of every community residing in Nepal. Article 20, Right of Women barred any form of discrimination against women, promised reproductive health right, and equal right to ancestral property. For the first time, the Constitution acknowledged the Right to Social Justice (Article 21) and ensured the right of Dalits, indigenous peoples, Madheshi, among others and their participation in state organs based on *'proportional inclusion.'* Rights of the Child was ensured in Article 22 and the Right to Religion in Article 23 allowing religious freedom but disallowing anyone to help, or compel a conversion.

²⁵ See <https://chaukathnetwork.wordpress.com/2015/12/24/critique-of-citizenship-provision-in-nepalconstitution-2072/> for citizenship issues in the Constitution of Nepal, 2015 (28/02/2016).

The Constitution of Nepal, 2015:

Under the Fundamental Rights and Duties, every person has the right to live with dignity (Article 16) and has the right to freedom (Article 17) with freedom of expression, political parties, unions and associations. Under the right to equality (Article 18), discrimination on any ground is prohibited, by individual or even state. The state is encouraged to make special arrangements for the protection and empowerment of the minority and other groups including indigent *Khas Arya* (Article 18.3). While some welcomed the inclusion of the term *Khas Arya*,²⁶ minority and indigenous people, on the contrary, conceived this as the continuation of constitutional discrimination. The criticism is based on the fact the constitution has only defined *Khas Arya* and no other groups who deserve much-needed attention.²⁷

Untouchability and discrimination are strictly prohibited, in public or private places, on the ground of origin, caste, profession, occupation or physical conditions (Article 24). Any violation of this provision is punishable by law. Everyone is guaranteed the right to religious freedom including practice, and protect but any attempt of conversion, of another person's faith, is forbidden (Article 26). The victim of exploitation, such as trafficking and forced to work, has the right to compensation, from the perpetrator (Article 29). But, the state can require the citizen to perform necessary public services.

Everyone has access to primary education, citizens with disabilities and economic poor have the right to get free higher education, and right to get an education on mother tongue is guaranteed (Article 31). The constitution grants right to language and culture: by using own language; participating in cultural lives; preserving and promoting language, culture and civilisation (Article 32).

Women are granted with various equal and special rights (Article 38). Women have the equal rights: regarding safe motherhood and reproductive health; no violence or exploitation or discrimination of any form and are punishable by law if occurs; proportional participation in all state bodies; and the right to property and family affairs. A special right is guaranteed in education, health, employment and social security. Article 39 ensures the rights of the child including education, health, entertainment, child development and participation, special protection to the helpless, orphan, conflict victim, vulnerable children and the right to juvenile friendly justice. Practices such as child labour, child marriage, abduction, engagement in armed groups or such activities and any other forms of exploitation of child or discrimination against a child are strictly prohibited and punishable by law.

Dalits have the rights to proportional inclusion, free education up to higher education, protect and promote traditional occupation and knowledge and free land ownership (Article 40). Dalits also have special arrangements regarding empowerment, representation, employment, and education. Senior Nepalese citizens have the right to special protection and social security as well (Article 41).

The Right to Social Justice (Article 42) guarantees the right of every single citizen, ranging from minority and indigenous people to poor *Khas Arya*, to participate in state bodies. The poor and near-to-extinct citizen, single women, people with disability have a special right to

²⁶ Article 84.2 of the Constitution of Nepal, 2015 defines "Khas Arya" as Kshetri, Brahmin, Thakuri, Sanyasi (Dashnami) community (of hill-origin). Integration of Thakuri and Sanyasi with Hill BC increases the latter's population from 28.7 percent to 31.2 percent. While other caste/ethnic groups are keen to spit from their indigenous identity, the HBC, on the contrary, have so far managed to unify their group identity and have preserved in the new constitution as well. Other groups do not have such privilege despite their vulnerability to dominant cultures.

²⁷ See <http://www.indigenousvoice.com/en/nepals-new-constitution-makes-mockery-of-reservation-policy.html> for the criticism of *Khas Arya* provision in the constitution. (25/02/2016)

education, health, housing, employment, food and social security (Article 43). The constitution grants the right to constitutional remedies (Article 46) and directs to go to the supreme court (Article 133) or high court (Article 144) if the fundamental rights are violated. However, the state possesses three years' timeframe to make legal arrangements in order to implement the fundamental rights (Article 47).

State Policies

The Constitution of the Kingdom of Nepal, 1990:

The Directive Principles of the State, Part-4, realised the influence of limited sections of the society over economic resources and, thus, envisioned equitable distribution of economic gains through social justice. Also, all forms of economic and social injustice based on caste, tribe, language, religion and race were prohibited (Article 25 2 & 3). The state policies were encouraged to maintain cultural diversity and national unity: by promoting languages, literature, scripts, arts and cultures of various groups; and advancing the interests of economically and socially backward groups by making special arrangements in education, health and employment (Article 26.2 & 10).

The Interim Constitution of Nepal, 2007:

Under the Part 4 of the IC; Obligations, Directive Principles and Policies of the State, the state was obliged to ensure progressive political, social and economic transformations (Article 33.b), and to adopt a political system entirely upholding the universally accepted concept of basic human rights, social justice and equality, among other characteristics (Article 33.c). To further emphasising on state restructuring and making it inclusive, the IC demanded the state to end centralised and unitary governance system, and, at the same time, addressing the problems of women, Dalits, indigenous people, Madheshi and other minority and excluded communities. Discrimination based on class, caste, language, gender, culture, and religion was prohibited (Article 33.d).

The First Amendment, on 14 March 2007 of the IC, provisioned for the proportional inclusion of Madheshi, Dalits, indigenous people, women and other excluded in the state structures and asked for programs to end feudalism in all its forms (Article 33.d1 & e). The Directive Principles of the State, Article 34, provisioned to have economic policies based on equitable distribution of economic gains whereas the social policies sought to eliminate all forms of social and economic inequalities (Article 34.4&5). The Policies of the State sought upliftment and reservation for indigenous people, Madheshi, Dalits, marginalised and others living below poverty line in education, health, housing, food sovereignty and employment for given period (Article 35.10). It further demanded special provisions based on positive discrimination (Article 35.14).

The Constitution of Nepal, 2015:

Under the Directive Principles, Policies and Obligations, the state is encouraged to establish a welfare system of governance based on rule of law, inclusion, and social justice by adopting cooperative federalism, autonomy and decentralisation (Article 50.1). It further seeks to establish a classless society by ending all forms of discrimination, exploitation and injustices. The Constitution directs the state to make security forces inclusive and the public administration transparent, accountable and participatory (Article 51.a & b).

Policies relating to social justice and inclusion in Article 51.j cover different minority and marginalised groups and provide with various rights to uplift their living conditions. Such policies include, but not limited to, the arrangement for the livelihoods and employment of single women; self-dependency, protection and empowerment to the vulnerable and victim women;

provision of housing, land, and employment to the landless and freed bonded labours; participation, development and empowerment of the youth in overall national development; special provisions to indigenous people in the decision making that affect their life besides the protection and promotion of traditional knowledge, skills and cultures; special provisions and benefits to minority groups to enjoy their social and cultural rights while maintaining their identity; and equal distribution of economic, social and cultural opportunities and benefits to the Madheshi, Muslim and backward class.

Political Inclusion

The Constitution of the Kingdom of Nepal, 1990:

The political parties were required to allocate at least 5 percent of the total number of candidates contesting an election to woman (Part- 17, Article 114).

The Interim Constitution of Nepal, 2007:

The Constituent Assembly adopted mixed electoral system and required the composition of members elected by equality of population, geography and specificity (Part-7 Constituent Assembly). Out of 601 members, 240 under first-past-the-post (FPTP), 335 by proportional representation system (Article 63.3.b), and 26 members were to be nominated by the Cabinet that included indigenous peoples who could not get a seat in the Constituent Assembly either under FPTP or the proportional representation (Article 63.3.c). The political parties were required to ensure inclusivity in their candidates' selection, and proportional representation of women, Dalits, Madheshi, indigenous people and other excluded groups (Article 63.4). Similarly, a provision sought to have women, Dalits and other excluded groups in the executive committees of the political parties (Article 142.3.c).

The Constitution of Nepal, 2015:

The state is divided into three structures; federal, state or province and local level and is based on the principles of pluralism, equality, inclusive representation and identity (Article 56). Two houses, the House of Representatives (HoR) and the National Assembly (NA), form the Federal Legislature (Article 83). The HoR consists of 275 members that include 165 members elected through FPTP and 110 members through PR (Article 84.1.a & b). The PR list should also include Khas Arya in addition to the minority and marginalised groups. Each party in the Federal Parliament should have at least one-third women (Article 84.8).

Part 14 of the Constitution endows the State Legislature. The number of State Assembly members should be twice the number of members elected in the HoR from the respective state under FPTP (Article 176). This figure should be considered as 60 percent and remaining 40 percent should be the number of members to be elected under PR. As in the Federal Legislature, the PR list for the State Legislature should include women, Dalits, Madheshi, indigenous people and *Khas Arya* among others based on the 'proportional inclusion' principle. At the local level, 4 women and 2 Dalits or minority community should be included in the Village Executive (Article 215.4). At the district level, the District Coordination Committee should have 3 women and 1 Dalit or minority among the 9 members. The political parties must ensure inclusive representation in their executive committees at various levels (Article 269.4.c).

Commissions

The Constitution of the Kingdom of Nepal, 1990:

A provision for Election Commission was made in Article 103.

The Interim Constitution of Nepal, 2007:

In addition to the Election Commission, Article 131 of the IC provisioned for National Human Rights Commission to ‘ensure the respect for, protection and promotion of human rights and their effective implementation’ (Article 132.1). Similarly, the appointment of the commissioners had to be based on diversity, including woman.

The Constitution of Nepal, 2015:

National Women Commission, National Dalit Commission, National Inclusion Commission, Indigenous Nationalities Commission, Madheshi Commission, Tharu Commission, Muslim Commission and Language Commission are provisioned in the new constitution besides National Human Rights Commission (Article 252, 255, 258, 261, 262, 263, 264, 287 and 248). Women, Dalit, Language and inclusion commissions can open the office in federal provinces as required. Inclusion Commission is tasked to conduct research with an aim at protecting the rights and interests of communities, including Khas Arya, people with disabilities, minorities and marginalised groups (Article 259). Elaboration on the roles and responsibilities of the National Human Rights Commission, National Women Commission, Language Commission and National Dalit Commission are provisioned in the constitution whereas other commissions should have to wait until further prescribed by the federal law. Review of these commissions after 10 years, since the commencement of the Constitution, is also provisioned (Article 265).

Other Inclusive Features of the Constitution of Nepal, 2015

There is not any explicit provision for inclusive representation in the Election Commission, Public Service Commission, National Natural Resources and Fiscal Commission or even in National Human Rights Commission. However, equality and inclusion of groups such as woman, Dalits, Madheshi, indigenous people in addition to Khas Arya are provisioned in Nepal Army (Article 267.3). The Constitution is silent regarding the inclusion in other security apparatuses, i.e. Nepal Police, Armed Police Force and National Investigation Department.

For the first time in Nepalese constitutional history, constitution acknowledges the definition of ‘minority’ and ‘marginalized.’ The minority is defined as:

‘...ethnic, linguistic and religious groups whose population is less than the percentage specified by the Federal law, and includes groups that have their distinct ethnic, religious or linguistic characteristics, aspirations to protect such features and subjected to discrimination and oppression’ (Article 306.1.a).

Moreover, marginalized is defined as:

‘...communities that are made politically, economically and socially backward, are unable to enjoy services and facilities because of discrimination and oppression and of geographical remoteness or deprived thereof and are in lower status than the human development standards mentioned in Federal law, and includes highly marginalized groups and groups on the verge of extinction’ (Article 306.1.m).

CONCLUSIONS

Nepal has adopted the seventh statute in 2015. The first constitution, 1948, was devoted to the Ranas but the second constitution born after the abolishment of Rana dynasty, in 1951. Third constitution, 1959, deepened the roots of monarchy adhered to Aryan culture, Hindu religion and Nepali language. The fourth constitution, in 1962, introduced citizenship provisions based on Nepali language proficiency and sustained Panchayat System until 1990. The drivers of People's Movement, in 1990, negotiated a multi-party democracy under constitutional monarchy but practically failed in accommodating the grievances of excluded groups and regions. People's War, or Maoist insurgency, began in 1996, challenging the establishment. The conflict ended in 2006 and the sixth constitution, IC 2007, was declared introducing much-needed recognition of identity groups and inclusive provisions resulting in a historic representation of minority and indigenous people in the parliament. Despite rich and vibrant discussions regarding symmetrical federalism, the Assembly was dissolved in 2012. Another round of election held in 2013 to complete the 'remaining tasks' before the constitution was finally promulgated during the last quarter of 2015.

There is '*everything for everyone*' in the Constitution of Nepal, 2015, except for the affluent *Khas Arya* man. Numerous equal, special and compensatory provisions for the minority and marginalised groups are integrated. The term '*Khas Arya*' is cherished and defined more than once whereas other groups do not have such privilege. Distribution of *Khas Arya* population in the newly-delineated seven federal provinces, for instance, can genuinely support the doubts whether 'kinship' model of federalism is already framed. Despite an extensive list of rights and repetition of inclusive arrangements, there are multiple provisions which either contradict with each other or are too vague to interpret or too narrow to justify in due course of action.

Three constitutions, since 1990, have tried to reflect multi-ethnicity, multi-lingual, and inclusivity of the Nepalese society. While constitution is the supreme law of the land, the omnipotence of the law is largely contingent on the earnest realisation and shrewd interpretation by those in authority. Nonetheless, the minority and indigenous nationalities still need to seek more in the constitutions apart from how the inclusive provisions are interpreted, structures are reframed, and institutions are put in place to carry out mandates. If everyone gets everything, it, in practice, pushes the weaker section of the society at the end of the row. The soul of an ideal constitution is to provide equal recognition to every citizen, irrespective of caste, colour, status, and access and acknowledges the fact that those who have been compelled to live outskirts or far-off the national mainstream deserves more than just the normal standards.



Chapter 3

Policy Planning and Issue of Minority Groups

INTRODUCTION

The unification of Nepal was more of an annexation of smaller principalities and less of cultural amalgamation of the people living in those territories. Hinduism in general and *Varna*-based hegemony, in particular, guided the well-known dogma of King *Prithvi Narayan Shah*, a common garden, or *Sajha Phulbari* in Nepali. The Hindu social framework, based on four *Varna*, a *Sanskrit* word that denotes type, order or class, put *Brahman* (the priest) at the top, *Kshatriya* (the warrior) beneath them, followed by *Vaishya* (the merchant) at the third rank and *Sudra* (the untouchable or impure) at the lowermost position in the societal hierarchy. The *Muluki Ain* (Country Code), in 1854, constituted differential privileges, rights and duties to these higher, middle and lower caste groups. Although the caste-based hierarchy and discrimination was abolished in 1963 and anti-discrimination have been an integral part of last four constitutions, public institutions, social structures and the mainstream polity are still predisposed by the same dogmatism.

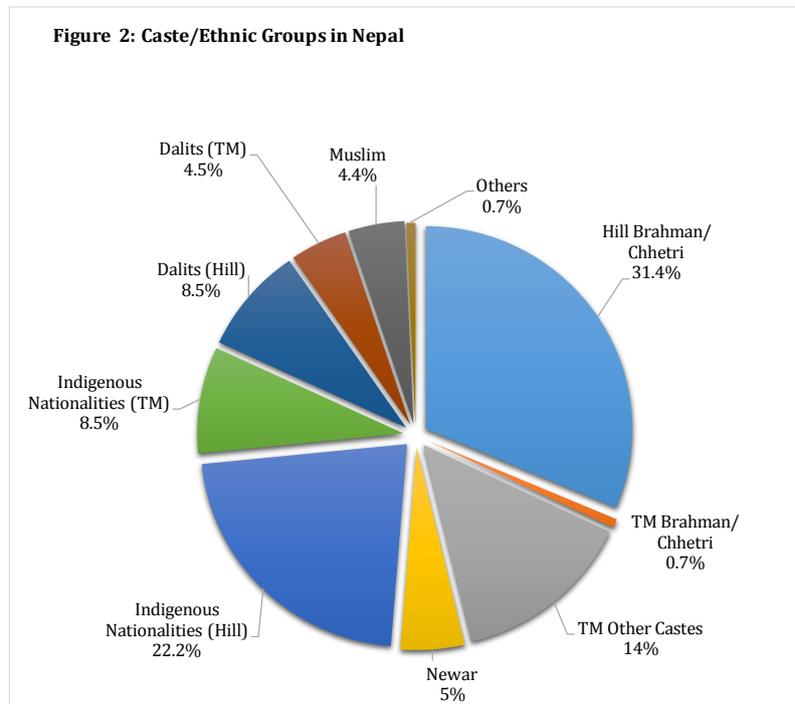
Since the restoration of democracy, in 1990, the minority and indigenous nationalities started venting their aspirations publicly. Continuity of ‘one language and one culture’ policy and ignorance from ‘democratic’ elites in post-1990 years drove the excluded groups and regions at the margin of a democratic system. When ruling parties were busy in ‘engineering’ market-centric liberal democracy in Kathmandu, the Maoists synchronised the insurgency tactics with the dispersed aspirations of identity, equality and self-determination. The aspirations were further consolidated through elevating the socially-excluded men and women in higher ranks of different political and military structures, recognising minority and indigenous history and literature in the cultural activities, declaring ethnic identity-based autonomous territories and finally asserting the exclusion agenda in the Comprehensive Peace Accord in 2006 and the Interim Constitution, 2007.

Chapter Two already discussed the advantages and downfalls of the constitutions in Nepal. This chapter is divided into two parts. The first part focuses on the milieus of women, indigenous nationalities, *Madheshi* and *Dalits*. The second part scans the periodic policies in Nepal from minorities' perspective. During 1956-2015, thirteen periodic plans have been applied in the country. The review circumnavigates the policies since 1991. In the end of this chapter, we conclude whether policies in Nepal are guided by the democratic aspirations of social justice, equitable distribution of resources and end of exclusion through the systemic socio-economic transformations.

NEPALESE MINORITY AND INDIGENOUS NATIONALITIES

The national population, 26,494,504, represents 125 caste/ethnic, 123 linguistic, and 10 religious groups in addition to 2 percent of the national population with some kind of disability.²⁸ Only 18 caste/ethnic groups represent more than 1 percent of the national population each. 20 groups have a population between 230,000 and 100,000. Likewise, 15 have a population between 100,000 and 50,000 and 38 groups represent a population of 5,000-50,000 individually. More than 34 groups have populations less than 5,000 each. The largest caste group is Hill *Chhetri*

who represents 16.6 percent of the national population. The second largest group is Hill *Brahman* (12.2%), followed by *Magar* (7.1%), *Tharu* (6.6%), *Tamang* (5.8%), *Newar* (5.0%), *Kami* (4.8%), *Musalman* or *Muslim* (4.4%), *Yadav* (4.0%), *Rai* (2.3%) and *Gurung* (1.9%) (CBS, 2011a). Comparing the social groups of Nepalese population, Hill Brahman/ Chhetris constitute 31.4 percent of the total population whereas Tarai/ Madhesh Brahman/Chhetris (TMBC) represent only 0.7 percent (Figure 2). Although indigenous nationalities (IN) is the largest social groups representing 35.7 percent of the total national population, the population is shared by Newar (5%), Hill IN (22.2%) and TM IN (8.5%). Officially, Dalits are 13 percent of the national population or 3,435,987 in number; Hill Dalits cover 65, and TM Dalits represent 35 percent. TM Other Castes (TMOC) share 14.2 percent, and Muslims cover 4.4 percent and remaining 0.7 percent of the national population is shared by other smaller and unidentified groups.



Source: CBS, 2011

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National Census 2011, correspondingly, enlisted Hinduism with the largest followers, 81.3 percent, followed by Buddhism (9%), Islam (4.4%), *Kirat* (3.1%), *Christianity* (1.4%), and *Prakriti* (0.5%) in addition to Bon, Jainism, Bahai and *Sikhism* (Table 1). It further records that out of the 123 languages spoken as mother tongue in Nepal, Nepali language has the largest percentage of speakers, 44.6%, followed by *Maithili* (11.7%), *Bhojpuri* (6%), *Tharu* (5.8%), *Tamang* (5.1%), *Newari* (3.2%), *Bajjika* (3%), *Magar* (3%), *Doteli* (3%) and Urdu (2.6%). 1.9 percent

²⁸ Detail report of the National Population and Housing Census, 2011, can be downloaded at http://cbs.gov.np/sectoral_statistics/population/national_report (16/04/2016)

of the total population has some kind of disability with 36.3 percent of persons with disability have physical disabilities. 65.9 percent of the total population are literate with 75.1 percent men and 57.4 percent women.

These impressive figures certainly put Nepal among the rank of diverse countries in the world. However, the socio-economic and political structures and practices, largely manifested by the notion of ‘Nepali nationality’ based on Hindu religion and Nepali language, had instituted various forms of discrimination and marginalisation. Those exclusive practices fostered handful number of social groups as ‘superior’ to the rest of the larger number of population based on their non-dominant identities. The process of unification and state building in Nepal resulted in ethnic stratification on unequal terms and the high-caste Hindus, residing in central hills, benefitted from the political power sharing with the rulers (Hangen, 2007). Hangen argues that those beneficial included *Khas*, living in the hill regions since as early as second millennium B.C., *Thakuri*, members of the landed gentry, and *Hill Brahman*, both of whom supposedly emigrated from India around the twelfth century. Nepali scholars contextualise the division of caste and ethnic groups²⁹ as ‘superior and inferior’ groups or ‘majority and minority’ (Hachhethu, 2003). Hachhethu further asserts that Nepali language and Hindu religion are deeply linked with the roots of Hill Brahmin and Chhetri; and their population, language and religion are in dominant position; 31.4, 44.6 and 81.3 percent respectively, in addition to their sway in the society and state. Moreover, so, the HBC are dominant, or majority group and rest of the populations are in the minority.

However, not all HBC share the same privileges of being at the top of social and political configurations. There is also a sizable number of them, in particular in the hills of Far and Mid-West development regions, who suffer from impoverishment. Also, the difference between Hill Brahman and Hill Chhetri is considerable in areas such as sharing development indicators and representation in state organs. The inconsistency between and within social groups is marked in all caste/ethnic groups in Nepal, which is explained in Chapter 4. However, this is largely a flaw of centralised and top-down governance system that upholds exclusion not just by caste,

Table 1:
Caste/Ethnic, Linguistic and Religious Groups in Nepal

SN	Caste/Ethnic	Population (%)	Linguistic	Population (%)	Religious	Population (%)
1	Hill Brahman/Chhetri*	8,318,454 (31.4)	Nepali	11,826,953 (44.6)	Hindu	21,551,492 (81.3)
2	Tarai/Madhesh/Brahman/Chhetri	177,987 (0.7)	Maithili	3,092,530 (11.7)	Buddhist	2,396,099 (9.04)
3	Newar	1,321,933 (5.0)	Bhojpuri	1,584,958 (6)	Islam	1,162,370 (4.4)
4	Tarai/Madhesh Other Castes	3,771,860 (14.2)	Tharu	1,529,875 (5.8)	Kirant	807,169 (3.1)
5	Indigenous Nationalities (Hill)	5,875,017 (22.2)	Tamang	1,353,311 (5.1)	Christian	375,699 (1.4)
6	Indigenous Nationalities (Tarai/Madhesh)	2,253,194 (8.5)	Newari	846,557 (3.2)	Prakriti	121,982 (0.5)
7	Dalits (Hill)	2,256,249 (8.5)	Bajjika	793,416 (3)	Bon	13,006 (0.05)
8	Dalits (Tarai/Madhesh)	1,179,738 (4.5)	Magar	788,530 (3)	Jain	3,214 (0.01)
9	Muslim	1,164,213 (4.4)	Doteli	787,827 (3)	Bahai	1,283 (0.005)
10	Others	175,859 (0.7)	Urdu	691,546 (2.6)	Sikh	609 (0.002)

* The Constitution of Nepal, 2015 included Sanyasi and Thakuri with Hill Brahman and Chhetri and named them as Khas Arya. Inclusion of Thakuri and Sanyasi with Hill BC increases the latter’s population from 28.7 percent to 31.4 percent.
(Source: CBS 2011)

²⁹ The caste groups, Jat in Nepal, are Caucasoid Hindus who speak Indo-European languages such as Nepali, Maithili and Bhojpuri. The indigenous ethnic groups, Janjati or Jati in Nepal, are Mongoloid, primarily practice non-Hindu religions and speak Tibeto-Burman languages such as Gurung, Tamang and Magar.

ethnicity, religion and language but also on geographical remoteness and deep-rooted culture of nepotism and corruption in the country.

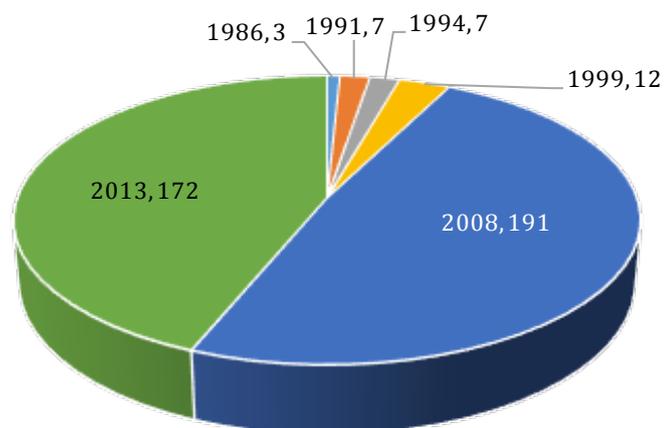
Women

Women constitute over half of the national population in Nepal and have recently enjoyed some positive trends in the areas of maternal health, literacy, economic opportunities, and political representation. The affirmative policies and programmes of the government have been helping in gradual progress regarding women empowerment and their representation in decision making. Establishment of the Women and Children Office (WCO) in all 75 districts, formation of National Women's Commission (NWC), adoption of Gender Responsive Budgeting (GRB), establishment of a gender unit in the Office of the Prime Minister and Cabinet of Ministers (OPM-CM), provision of a Gender Focal Point (GFP) in the sectoral ministries and support to integrate the Gender Equality and Social Inclusion (GESI) in government policies and programmes are some of the key developments towards gender equality in Nepal (Acharya, 2016).

Despite the notable improvement in the overall situations of women for last two decades, Nepalese women still face multiple layers of discrimination and exploitation. The challenges can be broadly divided into two categories; one that is based on gender and the other based on social exclusion. Gender-based discrimination has many forms. For instance, Nepal Demography and Health Survey (2011) shows that only 46 percent of married women participate in the decisions related to own health, major household purchases and even visits to family and relatives (MoHP, 2011). Only 30 percent of the employed women receive earning in cash or in-kind payment compared to 81 percent among the employed men. 61 percent of the women are not paid for their work at all. Having women's individual ownership of assets ensures their economic empowerment and social protection. However, only 6 percent of the women age 15-49 own a house and 10 percent land alone.

One of the key factors that augment women's vulnerability to gender-based violence is the dependency on men. For instance, the citizenship provision in Nepal does not allow a woman as a sovereign individual and her identity comes from the father. The child a woman born can only receive naturalised citizenship if the father of the child is not known or is a foreign national. The underlying social, economic, cultural and gender norms force many women to the absolute form of exploitation. For instance, the *Badi* community in the mid-West is forced to commercial sex work due to social and economic hardships and over a quarter of such women are young girls (GON, 2012). *Chhaupadi* is a social tradition among the Hindu women in the western Nepal that force them to live outside of the house, mostly under a shed with inhuman conditions, during the menstruation period, that last at least four days. The disparity flows across many social, economic and political areas.

Figure 3: Women in Parliament (1986-2013)



Source: UNDP, 2009; ECN, 2008, 2013; UNRCO, 2013

The Constituent Assembly 2008 enjoyed the highest number of women representation in Nepalese parliamentary history; having 33 percent out of 601 members (Figure 3). However, the women, mainly HBC, top many of political and constitutional appointments by their po-

litical connection. A study of Gender Development Index (GDI) and Gender Empowerment Measure (GEM) between 1996 and 2006 showed the growth of GDI and GEM in all three ecological regions in Nepal; Mountain, Hill and Tarai (Mishra, 2012) and found that the hill region had enjoyed unceasing higher GDI and GEM values from the year 2000 to 2006 comparing to the mountain and Tarai regions.

The identity, issue and needs of women population in Nepal vary across geography, caste, class and profession. In broader linguistic term, the gender issues in Nepal can be classified into two categories; Indo-Aryan and Tibeto-Burman. Women in the Indo-Aryan speaking groups suffer more from different treatments and subordination whereas the women in Tibeto-Burman speaking groups have fewer constraints regarding mobility, marriage, livelihood, and economic opportunities. Women from minority and indigenous groups have more predicaments than their counterparts in the dominant groups. Exposure to media, for example, varies across caste and ethnicity. 11 percent of hill/mountain women have access to the sources of media comparing to less than 2 percent among the Madheshi women (Bennett et al., 2008). Poor access to radio, newspaper and television seriously affect women's exposure to news and information creating barriers for basic health issues, political participation and even income opportunities.

Improvement in women's access to employment opportunities is also not necessarily shared across the diverse women population. For instance, Dalit and Muslim women had almost no benefits from the combined group of professionals, technicians and associates in 2001, and the trend remains intact even in 2011 with the highest proportion of Hill/Tarai Brahmin/Chhetri and Newar, 31 percent and 11 percent consequently (Acharya, 2016: 120-121). The Ministry of Women, Children and Social Welfare (MoWCSW) and National Women Commission (NWC) are two crucial agencies in Nepal to protect and promote women's rights and to mainstream women agenda across the government systems. However, both have overlooked or 'largely failed' in considering the needs and priorities of women from minority and marginalised groups (Bennett 2006).

The achievements regarding political rights and representation in decision making, however, do not spontaneously lead to social and economic empowerment. Indifference concerning the political, social and economic disparity across caste and ethnic groups fragments unified women agenda. Generalisation of women issue is one of the key challenges in formulating effective policies and programs. To remain inspired by the achievements so far, Nepalese woman leaders have to share the dividends with women from diverse social groups as well. Moreover, gender disparity is not just concerned with the women but with the whole of society. Consequently, any efforts of women empowerment and gender equality should be integrated into the broader framework of societal transformation with clear milestones as inherited characteristics.

Indigenous nationalities

In 2002, the National Foundation for Upliftment of Aadibasi/Janjati Act (HMG, 2002a) defined the indigenous nationalities as, *"a tribe or community as mentioned in the Schedule having its own mother language and traditional rites and customs, distinct cultural identity, distinct social structure and written or unwritten history."* The Act enlists 59 indigenous nationalities (IN); 18 from the mountain, 24 from hill and 17 from Tarai ecological regions. However, indigenous experts claim that the definition does not meet the standards set by the experts (Bhattachan, 2012). They further argue that although all nationalities are not indigenous peoples, in practice, they all are classified as indigenous. Relatedly, in the latest attempt to refine the list, the government formed a taskforce to review the list of indigenous nationalities in 2010, and the task force submitted a recommendation to enlist 22 additional groups. The recommendations drew criticism from indigenous groups concerning the proposal of renaming existing groups. For instance, Rana Tharu was proposed to be separated from Tharu, and Kulung, Yamfu and Aathpahariya from Rais (Bhattachan, 2011). The government, however, did not implement the

recommendations. The census in 2011 recorded 35.7 percent of the national population as indigenous nationalities (IN) which, many groups and experts claim as ‘inaccurate data’ as the number could be as high as 50 percent. By social, economic and cultural backgrounds, IN are categorised in 5 groups; advanced, disadvantaged, marginalised, highly marginalised, and endangered. The advanced groups consist of *Newar* and *Thakali*.

There are huge differences within the indigenous groups. *Raute* and *Chepang*, for instance, are nomads;³⁰ and a large number of recently abolished bonded-laborers, *Kamaiyas* and *Kamalari*, were Tharus and despite their significant percentage in the national population (6.6%), they still lag behind in many of development indicators and national politics (Chhetri 2005; Guneratne 2010). *Newars*, with a complex caste hierarchy of 20 or more groups in Kathmandu valley, have been an integral part of the ruling arena (Gellner, 2005). They, *Newars*, mainly follow Hinduism and Buddhism and are traditionally divided into 6 caste categories with many similarities to typical Hindu caste system; priestly, high, middle/farmer, lower/service, impure but touchable and impure and untouchable. When the identity movements of IN heightened, an organisation of Hill *Chhetri*, claimed that they are also indigenous and so need to be enlisted in order to ‘protect their identity and prevent discrimination against’ them (ICG, 2011). Similar to the diversity within IN population, development indicators, socio-economic status, geographic location, and political representation also vary. Nonetheless, despite the differences, IN commonly demands the recognition and respect for indigenous identity, culture, tradition, knowledge, group specific proportional representation, education in mother tongue, access and control over natural resources. They also strive for autonomy and right to self-determination in addition to ethnic identity-based federalism.

Madheshi

Unlike indigenous nationalities, Dalits, or other social groups, *Madheshi* is not any specific caste or ethnic group. They reflect a broader diversity of social, linguistic and religious groups. *Madheshis* consist of Hindu castes, such as *Maithil Brahman/ Chhetri* and *Dalits*; indigenous nationalities, such as Tharu; and religious groups such as Muslim.³¹ In a broader term, *Madheshis* are the regionally organised, non-Nepali speaking caste and ethnic groups, residing mainly in Tarai³² districts in the southern plains, and who share common languages and cultures and suffer discrimination and marginalisation due to their kinship across the border and non-hill looking appearance (Karna, 2009). Tarai represents geographic and administrative definition whereas *Madhesh* is a cultural connotation of the inhabitants. To better understand the identity politics of *Madheshis* and their issue, a brief recap of history can help.

During the 17th century, the modern-day Tarai was divided into various principalities and served as a natural defence line due to few population and hugely dense forest. After the unification, Tarai became the most exorbitant acquisition of Nepali rulers because of land revenues, royalty from timber exports, levies on pastures and export of elephants (Ojha, 1983). Ojha further revealed the strategic importance of Tarai in the fulfilment of Nepali rulers’ obligatory precondition for territorial expansion as the resources from Tarai helped finance the growing military expenses during 18th and early 19th centuries. In 1815, a treaty, known as *Sugauli Treaty*, was signed between British’s East India Company and Nepal to end second British invasion during Anglo-Nepalese War during 1814-1816. Nepal lost almost one-third of its territory but later received few areas back, currently in the western Tarai, as a ‘reward’ to help British suppression of the Indian freedom struggle in 1857, known as *Sepoy Mutiny*.

³⁰ See more information about the endangered and highly marginalized indigenous nationalities at <http://www.un.org.np/oneun/undaf/endangered> (10/12/2015).

³¹ See Ansari, T.A. (1988) and Siddique, M. (2001) for details on Muslim in Nepal.

³² The term ‘Madhesh’ is also used in lieu of Terai/Tarai. Generally speaking, Terai/Tarai denotes one of the ecological region in Nepal alongside the hill and mountain whereas Madhesh reflects the social and cultural aspects of the people who primarily live in Terai/Tarai but differ from those with origin in hill/mountain and speak Nepali as mother language. Recently, the use of Madhesh/Tarai is commonly practiced to reflect the residents of Tarai including hill-origin and migrated people. For detail background on Tarai/Madhesh, see Sah’s Social Inclusion of Madheshi Community in Nation Building (2007) and Pathak & Upreti’s Tarai-Madhes: Searching for Identity Based Security (2009).

Since the early 1950s, the government ran a malaria control program supported by US government (WHO, 2010) and the state-sponsored resettlement programme, until the mid-1980s, encouraged migration from hills to Tarai in an attempt to congeal control over the agricultural and industrial region (Miklan, 2009). During 1964-1974 only, 77,700 ha. of land was distributed under official resettlement plan whereas additional 237,600 ha. of forests were, furthermore, encroached by the incomers (Kansakar, 1985). Kansakar further reported that the spread of deforestation during 1922-1977 reached almost 60 percent and the population in Tarai increased over 163 percent. Net migration from hills to Tarai continued and reached 6.4 times by 1981 (Gartaula & Niehof 2013). Since then, Tarai has become the liberal host of continued influx of migrants from hills in a quest for better living conditions, economic opportunities, political aspirations in addition to the relief from cold weather, which in recent years turns not so affable due to deforestation, desertification, flood, erosion and unplanned human settlements alongside the major river basins such as Koshi, Kamala, Bagmati, Narayani, and Seti (Acharya et al., 2008; Dixit et al., 2007; MoSTE, 2014; NEAU, 2015). In absence of well-versed policy and programmes to better integrate the incoming population with the receiving communities, Tarai is, eventually, turned into a hotspot for social, economic, and cultural differences susceptible to tranquil manoeuvring by the ruling elites, both in Kathmandu and locally.

Diversity within *Madheshi* population correlates with the varying level of empowerment and representation. The ‘unification’ of the state greatly wedged the social, cultural and economic configurations in Tarai and has produced multiple layers of difference and discrimination across *Madheshi* groups. Lately, some of the groups such as Tharus, Muslim and Dalits seek their distinct identity concurrently staging collective campaigns demanding identity, inclusion and fair share in the power.³³ However, the commonalities in issue bring the factions together, time and again, while staging the protest against the unified ruling elites.

The epistemic community has failed to clear blurry portray of *Madheshis* until 2007 when *Madhesh Revolt* vibrated the national and international communities to pay attention to their grievance (ICG, 2007). Although *Madheshis’* demand³⁴ is not a neoteric incident, they certainly are one of the most flouted political itineraries in Nepal’s modern history. Discrimination, citizenship issues, access to public resources and opportunities in social and economic sectors are their age-old demands, and some of the issues exist since 1950s (Kumar, 2015). *Madheshis* are categorically striving for the end of ‘internal colonisation’, respect for their cultural and social identity, representation in proportion of their population, and power sharing through federal governance system (Druzca, 2014; Gellner, 2007; Hachhethu et al., 2008; Shneiderman & Turin, 2012). It was the 2007’s *Madhesh Revolt* that, undoubtedly forced the state to recognise them as one of the key stakeholders should Nepal strive for inclusive, peaceful and stable democratic future (Lawoti, 2016; Pandey, 2013).

Dalits

The division of social groups into four *Varnas*; *Brahman*, *Kshatriya*, *Vaisya* and *Sudra* secured the highest seat to the *Brahmans* and the lowest to the *Surdras*. The division further arranged caste and sub-caste groups under each of the *Varnas*. *Sudras* were considered as the labour class and assigned the tasks of serving other three groups. They were not allowed to study *Vedas* or even hear the sacred chants. The lowest of the *Sudras* became ‘impure’ who were treated as

³³ The differences within *Madheshi* groups were not notably highlighted at the national level until the *Madhesh Revolt* in early 2007 and rise of *Madheshi* in the first CA Election in 2008 as fourth largest political force which remained influential in national parliamentary politics before the promulgation of new constitution in September 2015. For last 8 years, *Madhesh*-based parties have split in multiple factions shattering their bargaining capacity. Recent demonstrations and strikes, mainly in Terai, demanding their issues in the new constitution through amendment, have helped them regaining the ‘influence’ in national political sphere but it may be early to conclude the result of this ‘influence.’ In addition to the national and regional politics of ‘divide and conquer’, there are also genuine stimulus for the urge to seek distinct identity than *Madheshi*. Since 1990s, due to various movements, state allocated few affirmative measures targeting the minority and indigenous nationalities, including *Madheshi*, which lack efficient mechanism in terms of ‘fair’ distribution of the opportunities.

³⁴ See the evolution and dynamics of Nepali state formation and how it had triggered the exclusion of *Madheshi* in Gaige’s Regionalism and National Unity in Nepal (1975).

untouchable. Caste-based discrimination, including untouchability, was expanded during 14th century by King *Jayasthili Malla* to reshuffle *Newar* community in Kathmandu into 64 castes based on their occupation and this, with influence from *Hindunisation* and *Sanskritisation*, led to the emergence of *Newari Dalits* such as *Pode*, *Chyame* and *Kusle* at the bottom of the *Newar* caste hierarchy (UNDP, 2008). The Civil Code, or *Muluki Ain*, in 1854, further restructured the caste system into four broad categories declaring 18 castes as untouchable with bottom 10 as Dalits.³⁵ The Code was eliminated in 1963, but the social and cultural practices remained as an integral part of Nepalese society. The Code was further amended in 2006 widening the definition of ‘crime’ that includes any forms of untouchability and discrimination based on caste, class or religion. In 2011, government enforced the Caste-based Discrimination and Untouchability (Offence and Punishment) Act, 2068 (AD), which considers untouchability and caste-based discrimination as criminal offence and violation of such law, in either public or private areas, results in punishment and penalties (GON, 2011a).

Dalits constitute 13.2 percent of the national population (CBS, 2011a), which, for long is challenged by Dalit activists claiming that actual number above 20 percent. Discrimination in the census process and veiled surname of many Dalits are the biggest challenges behind Dalits’ reduced population (Darnal, 2005; ISDN, 2008). National Dalit Commission enlisted 26 sub-castes (7 hill and 19 Tarai/Madheshi) under Dalits, with Kami as the largest (4.8% of the total national population).³⁶ Since Dalit is not a homogenous group, their population is divided, and heterogeneity extends to religion, language, and region. Based on these characteristics, Dalits in Nepal can be divided into the Hill, Newar and Terai. Occupation, geography and sex add additional layers to the intra-Dalit social dimension which excludes the issues Dalits face with non-Dalits (Kanaujiya, 2012; Lamsal, 2008; Anon, 2011).

Discrimination and untouchability are two major challenges Dalits have been facing even before the unification of the country. Issues of Dalits can be better illustrated by social; such as caste-based discrimination, illiteracy, gender, citizenship and regional disparities, economic; such as the highest frequency of poverty, health; such as higher mortality rate and lower life expectancy, political; such as significant exclusion in the political spheres, and development; such as improvement in traditional skills and advancement of socio-economic conditions (Barr et al., 2007; Dahal et al., 2002; Khanal et al., 2012; Kharel, 2007). Similarly, there is also a need for appropriate legislation and policies, backed by wider advocacy campaigns to implement those policies, and a robust monitoring and review mechanisms (ILO, 2005). Scattered efforts, intra-group discrimination, donor-funded implicit projects, party-aligned movements, and lack of solidarity with other rights-based peaceful campaigns are weakening Dalits’ aspiration for equality. Like women, Dalits are also a part of the population, across all geographic regions, and they need a broader support base as standalone efforts may help to make uproars but do not assist them to secure the leadership.

INCLUSION IN THE POLICY PLANNING

Nepal officially began periodic planning process in 1956. The First Five-Year Plan focused on national economy and the possibility for growth by concentrating on agriculture, irrigation, power, health, education in addition to land reform and resettlement (HMG, 1956). It could not be fully implemented as the parliament was dissolved in 1960. The next plan, 1962-1965, was introduced in the interim. The third and fourth plans, 1965-1970 and 1970-1975, increased the role of local Panchayat (HMG, 1965; HMG, 1970). Decentralisation was introduced, districts were divided into three groups based on the recommendations of Decentralization Commission, and development grants were allocated based on the number of village *Panchayat* within each district and geographic region. Although social and economic developments were included, poverty was integrated into the Fifth Plan, 1975 (HMG, 1975). Sixth and seventh plans contin-

³⁵ In Sanskrit, the word Dalit literally means ‘oppressed’.

³⁶ See the list at <http://www.ndc.gov.np/site/cms/4> (14/09/2015)

ued the previous trends with more expenditure, and foreign aid was reaching 66 percent (HMG, 1980; HMG, 1985). The need for a woman-focused national policy was felt in the sixth plan and further defined in the seventh plan.

The People's Movement-I, 1990, restored the multi-party democracy and election of Legislative Parliament was held in 1991. The government had to deal with the leftovers from Panchayat System, including public expenditure which increased from 7.6 percent of the Gross Domestic Product, or GDP, in 1974/75 to 11.5 percent in 1989/1990. In fact, it was just the beginning of heightening public expenditure which still continues. The growth in the per capita income was extraordinarily low, 0.8 percent during 1964/65- 1989/90 (HMG, 1992). Despite the slow growth rate, foreign aid and loans were on the rise which was later declared as 'unproductive.'³⁷ Apart from the substantial burden of the past, it was an opening of a new horizon full of hopes.

The Eighth Five-Year Plan (1992-1997) introduced market-oriented liberal economy as the foundation for sustainable economic growth. Social justice was integrated into the decentralised development approach. Despite the high aspirations, among the minorities and indigenous nationalities, the Plan literally failed in recognising them beside the arrangements of some basic program for women, children, Raute, Sarki and bonded-labours. The Eighth Plan, in a nutshell, was entirely focused on laying the foundation of market-centric liberal democracy. The Plan overlooked the need of a systematic institutional change to share democratic dividends with the wider population. Five years later, in 1997, a review recognised the lack of clear vision on decentralisation and an effective institutional mechanism for local development negatively impacting the development of backward areas and ethnic groups (HMG, 1997). The Review further highlighted political instability as one of the key challenges followed by governments' weakness in good governance, the rule of law, public accountability and people's participation. Not much was done despite the self-realisation and the Maoist Insurgency begun in 1996 citing inability of the system to serve the interests of its people.

The Ninth Five-Year Plan (1997-2002) adopted an aim of poverty reduction from 42 percent, in 1996, to 10 percent, by 2016/17 (HMG, 1997). 7.2 percentage of average annual growth of the GDP and 100 percent literacy rate was projected for the following two decades. The balance between growth and equity was recognised as the basis for economic growth and sustainable development. Backward areas, disadvantaged and 'ignored' groups were primarily targeted. This was the first time when the state officially confessed the marginalisation of excluded groups from national policy system. Celebrating King Birendra's 26th year of the reign, the elected parliament enacted Local Self-Governance Act in 1999 (HMG, 1999). The Act still serves as one of the key legal documents for laying out excluded groups' participation in local development.

During the Ninth Plan, some significant developments occurred; *Kamaiyas* (bonded-labour) were freed, and National Academy for Indigenous Peoples, National Women Commission and National Dalit Commission were established. However, the insurgency jeopardised the implementation of ninth plan leading to the diversion of development budget to security forces. The GDP growth limited to 3.6 percent, the population below poverty line remained 38 percent against the set target of 6 percent for the GDP and 32 percent decline in the poverty incidence. Regular expenditure increased to 9.3 percent, in annual average, mainly because of the increase in salary and other expenses of the government officials and security forces (HMG, 2002b).

The Tenth Five-Year Plan (2002-2007) continued focusing on poverty alleviation but adopted

³⁷ In 1972/73, the foreign assistance had 37.4 percent of contribution in the total development expenditure, which increased to 61.1 percent in 1989/1990. However, the increase in the foreign aid also contributed in increasing burden on Nepal as the 20.8 percent of the total foreign loan in 1972/73 rose to 75.1 percent in 1989/1990. The government concluded that the actual utilisation of the foreign loan was considerably low despite the increase in the volume; the growth in the debt obligation of 2 percent in 1972/73 increased to 42.9 per cent of GDP in 1989/1990 (HMG, 1992). The government's inability to use the foreign aid towards development priorities and in a coordinated manner were recognised as major challenges for the country.

Poverty Reduction Strategy Papers (PRSP). Social exclusion was identified as one of the three key aspects of poverty besides income-based poverty and human development. Poverty and HDI were considered effective tools to mitigate poverty among the excluded communities. The Plan also highlighted the primary role of state in the empowerment of Dalits, indigenous nationalities, ‘blind and disabled’, and recognised women as the ‘focal point’ of development.

Between 1990 and 2006, 14 prime ministers ruled the country, in addition to the king’s direct rule in 2002 and 2005. The People’s Movement-II, during the first quarter of 2006, changed the political landscape. The parliament restored, republic replaced monarchy, and the prior system and policies were held primarily responsible for the exclusion of minority, indigenous nationalities and other socially excluded groups and regions. The following sections look closely at the national planning processes in the post-monarchy era whether ‘new’ policy planning has learned from past mistakes of side-lining the minorities.

Three-Year Interim Plan (2007/08-2009/10)

‘New Nepal’ inherited a country devastated by decade long armed conflict: two armies; thousands of families with someone killed, disappeared and displaced; and mounting public expectations for reform in the public institutions. Meanwhile, the poverty rate declined at 31 percent (with income inequality, Gini coefficient, increased from 0.34 to 0.41) and Nepal ranked at the 138th position of the HDI, the lowest position in South Asia (GON, 2008a).

Although the previous plans had attempted to focus on women, indigenous nationalities, Dalits and other excluded regions, Madheshi, for the first time in Nepal’s periodic planning history, was recognised as a priority group. The Three-Year Interim Plan (TIP) aimed at laying the foundation for a ‘Modern, Prosperous and Just Nepal’ by establishing peace and reducing unemployment, poverty and inequality (GON, 2008b). The TIP 2007 is considered a breakthrough regarding inclusive planning process in Nepal. Although the LSGA (1999) laid the foundation for participatory development planning process, the term ‘participatory’ remained vague and contingent at the ‘discretion’ of political leadership, policy planners and development administrators. Discretionary development planning and implementation process favoured some and excluded others, and that fact is evident in the poverty incidences, income inequalities and disparities within caste and ethnic groups (next chapter reviews the development indicators and disparity across regions and groups).

The TIP adopted 6 strategies with priority to the economic well-being of the women, Dalits, indigenous nationalities, and Madheshi among others. A separate chapter on Social Justice and Inclusion was integrated recalling the national commitments to over twenty international treaties and instruments (GON, 2008c). The Chapter, on Social Inclusion, highlighted the plights of minority and indigenous groups and thus adopted a long term vision of ‘*building an Inclusive...* ’ Nepal. The TIP 2007 set progress measurement targets for the excluded groups as well with 10 percent increase in the Human Development Index (HDI), 10 percent increase in the Human Empowerment Index (HEI) of the excluded groups and 10 percent increase in the Gender Empowerment Index (GEI) for the excluded women. Further arrangements were integrated to guide the state in ensuring gender equality and social inclusion of the excluded groups. Mainstreaming of the excluded groups in all parts of development processes and outcomes, proportional representation in all decision-making bodies, provision of special programs, policy discrimination in favour of the excluded groups were remarkable policy provisions.

A mid-term review witnessed the decline in poverty incidence, at 25 percent, but an increase in the income inequality, Gini Coefficient (increased to 0.46 from 0.41) (GON, 2011b). Nepal remained at 138th position of the HDI in the world. Economic growth remained at 4.5 percent

against the 5.5 percent target. Various identity movements, CA-I Election, and the emergence of pro-reform forces (e.g. *Maoist* and *Madheshi* parties) were perceived as the obstacles in full realisation of the TIP 2007. Theoretically, the entire plan was based on rights-based approach to poverty reduction with a focus on inclusive development. It was practically a technocratic framework that attempted to accommodate political aspirations in quantifiable indicators. Despite the shortcomings, nevertheless, the TIP 2007 ‘embraced’ inclusion as the core of socio-economic development with due political participation of the excluded groups.

Three-Year Interim Plan (2010/11-2012/13)

The Interim Plan (2010/11-2012/13), or TIP 2010 further elaborated the concept of gender and inclusion. The approach of Gender Equality and Social Inclusion (GESI) was elaborated and group specific sections for women, Dalits, Madheshi, indigenous nationalities, persons with disability (PWD) were defined. It laid out the detailed plan for each of the groups. In addition to the above group specific measures, the TIP 2011 also elucidated the need for a ‘balanced development’ to bridge the disparities across different ecological and administrative regions. Since poverty alleviation had remained the core of periodic plan for long, the TIP 2010 added further measures to deal with poverty inside the minority and excluded groups (GON, 2011c). Inclusion was integrated as an effective tool to reach the excluded groups. However, lack of disaggregated data and empirical knowledge were recognised (and still is) as a major hurdle to design and implement effective policy programs targeting the excluded groups and regions.

Three-Year Interim Plan (2013/14-2015/16)

Political uncertainty crippled the state institutions. Five governments, led by CPN (United-Maoists), Nepali Congress and CPN (UML), failed to manage the diverse interests into the constitution-writing process since 2008. The CA dissolved in May 2012 and a technocratic government, led by the (then) head of the Supreme Court, held the second round of CA election in November 2013. In the absence of clear roadmap, the conventional economic growth agenda re-emerged as the core of new interim plan, 2013-2015. As usual, past governments were accused of the failure of achieving stipulated indicators. Despite the reduction in poverty population, income inequality was still a significant threat to poverty reduction. For example, only 24.4 percent of the people living below the poverty line had access to primary education, and less than 16 percent of the poor had access to public health facilities (GON, 2013a). The new government, led by NC, endorsed the Plan for 2013-2015, taking a major shift from political empowerment and inclusive development of the excluded groups to ‘graduating’ from the list of Least Developed Countries (LDC) to the Middle-Income Countries (MIC) by 2022.

A new goal for poverty reduction was set; reduction to 18 percent and 6 percent of annual growth rate. Despite inclusive development remaining one of the strategies, group specific sections or provisions were removed in the plan. NGOs were expected to help the government in mainstreaming excluded groups (GON, 2013b). Despite the limitations regarding intra and inter-groups differences, the Plan mixed all groups together and set ambitious targets. A brief plan of state restructuring was proposed to ensure a ‘balanced development’ approach.

During the TIP 2013 period, the poverty declined to 21.6 percent (against the 18 percent target), and the GDP growth rate remained at 2.9 percent (3.1% less than set target). Evaluating the result of positive measures, the women representation in the legislative, executive and judiciary reached at 29.9, 17.5 and 3.0 percent (GON, 2016). Similarly, gender-responsive budget (GRB) reached at 22.3. However, the government failed to measure any development concerning other socially excluded groups.

CONCLUSIONS

The periodic plan, in principle, provides a broader framework with a clear direction to utilise the potential of a country. It is also a reflection of the state priorities and plans for the better future. Nepal planned, implemented and reviewed 13 periodic plans during 1956 to 2015. Each plan had some special features. The First (1956-1960) and Second (1960-1965) plans caught in the fight between the palace and political parties. The Third (1965-1970) and Fourth (1970-1975) instituted the role of Panchayat System. Although decentralisation was endorsed in the meantime, it was in 1999 when the LSGA was enacted. Poverty alleviation was the gift of Fifth (1975-1980) plan which sustained in the Sixth (1981-1985) and Seventh (1985-1990) plans as well. Women agenda was recognised in the sixth plan and elaborated further in the seventh plan which witnessed the climax of Panchayat era.

The Eighth (1992-1997) plan was the first after the reinstatement of multi-party parliamentary democracy. It laid out the basics of development for backward regions and communities but predominantly focused on laying the foundation of the market-centric liberal democracy. The Ninth (1997-2002) plan continued on poverty-locus despite the early warning of bloody war fuelled by rising inequality across caste/ethnicity and regions. The government tried to address the grievances, by adopting poverty reduction strategy paper (PRSP) in the Tenth (2002-2007) plan.

The Eleventh (2007-2010) plan was built on the success of *People's Movement-II*, *People's War* and identity movements such as the *Madhesh Revolt*. Issues of minority, indigenous and other socially excluded groups were recognised and integrated into the plan. It attempted to create a 'roadmap' for inclusive transformation. Group-specific strategies, programmes and measures were codified in the Twelfth Plan (2010-2013). Growing frustrations, primarily over identity-based power sharing demands, failure of first CA and the election of the second one, resulted in the revival of 'old-school' agenda back in Thirteenth (2013-2015) plan. While inclusive and 'balanced' development remained on the list of priorities, the nub of the Plan was to graduate from least development countries list.

Issue of minority and indigenous groups has gained wider recognition in the post-1990's constitutions and laws, but national policies are still searching for appropriate strategies that can ensure an inclusive and 'balanced development'. Some positive indicators are achieved regarding health, education, infrastructure, connectivity and income prospects. However, the rising inequality in opportunity, resources and development achievements need more robust planning and accountable institutions. Achieving equality through poverty reduction may sound appealing, but the biggest gap in the poverty reduction-focused planning process is that it seeks to promote social inclusion through anti-poverty policy. The anti-poverty policy focuses on poor and excluded groups rather than the preconditions and institutions that manifest poverty or new patterns of exclusion. Without challenging the exclusionary norms and structures, absolute poverty may decline but relative poverty will remain as a key determinant of inequality and unrest. A question remains unresolved. Is Nepal able to realise the inclusive agenda through 'old-school' and exclusionary public institution? Next chapter, Reality Check, digs deeper into the issue.



Chapter 4

Reality Check

INTRODUCTION

Nepal is relatively slow in development achievements and economic growth, if not inverted. In Human Development Index (HDI), Nepal scored 0.378 in 1990 and lately reached at 0.538 in 2011 securing 145 ranks among the 188 countries.³⁸ The HDI growth rate between 2010 and 2014 was 0.78 which was less than half of the growth rate achieved during the peak of insurgency and democratic transitions during 2000-2010; 1.64. The Gross Domestic Product (GDP) growth remained progressive throughout the decade, from \$3.6 to \$18.8 billion during

³⁸ Human Development Index (HDI) is a composite index, introduced by the UN in 1990, that measures average achievement in three basic dimensions of human development, health, literacy and living standard. See <http://hdr.undp.org/en/data> for details on HDI. (20/04/2016)

1990-2011.³⁹ Moreover, the Gross National Income (GNI) per capita \$210 in 1990 increased to \$610 in 2011. However, Nepal is still one of the 48 Least Developed Countries (LDC) in the world.⁴⁰

The population of people living below the poverty line in Nepal has declined from 41 percent in 1995 to 23.8 percent in 2014 (CBS, 2011b; GON, 2016). However, Multidimensional Poverty Index (MPI) shows 26.6 percent of the population in Nepal as poor in addition to 14.4 percent living near multidimensional poverty, in 2014 (UNDP, 2015). The UN further reports that although Nepal progressed in the HDI in 2015, i.e. 0.558, the HDI falls to 0.407 due to inequality. A loss of 27.0 percent in the HDI value occurred due to inequality in the distribution of the HDI dimension indices; life expectancy (health), education and income.⁴¹ While poverty reduction remains the focus of Nepal's growth and development strategies, growing inequalities between minority and dominant groups and their unequal access and participation in decision-making instruments have also received considerable attention since 1990s.

The People's Movement in 1990 served as an outlet for the aspirations of equality and end of discrimination based on caste, ethnicity, language, religion and regions. Unfortunately, not much progress occurred regarding recognising and addressing the grievances of minority and indigenous nationalities until 2007. The Interim Constitution, 2007, not just recognised the exclusion as one of the root causes of armed conflict and underdevelopment, it also influenced the subsequent national policies to integrate social inclusion as one of the top priorities of the nation. The subsequent plan (Eleventh Plan; 2007-2010) presented a comprehensive framework for inclusive state transformation, amendment in Civil Service Act instituted reservation for excluded groups in the public service, quota system was introduced in the CA election, and GESI became an essential approach to help the state in facilitating inclusive transformation.

This chapter quantitatively assesses the outcome of affirmative measures in government and non-government sectors. The discussion is divided into four parts. The first section reflects on the development and poverty indicators, development aid disbursement and inclusivity in development organisations and projects. The second part reviews the status of caste/ethnic representation in state organs; legislative, judiciary, civil service and security forces. The demographic overview of federal provinces constitutes the third part. In the end, a synopsis of diversity in key public institutions is presented regarding the inclusivity of minority and indigenous nationalities.

DEVELOPMENT, AID AND INCLUSION

Analysing the HDI values across eco-development regions, in 2011, Kathmandu Valley stands at the top whereas the West, Mid-West and Far-West mountains are at the bottom, just above the Mid-West and Far-West hills. However, the West-Hill, Mid/Far-West Tarai, Eastern and Central Hills and mountains are performing better than Eastern and Central Tarai

Table 2: Changes in HDI by Regions (2001-2011)

Regions	Population		HDI	Population		HDI
	Number	%	2001	Number	%	2011
Far Western region	2,191,330	9.5	0.404	2,552,517	9.63	0.493
Mid-Western region	3,012,975	13.0	0.402	3,546,682	13.39	0.503
Western region	4,571,013	19.7	0.491	4,926,765	18.60	0.553
Central region	8,031,629	34.7	0.490	9,656,985	36.45	0.558
Eastern region	5,344,476	23.1	0.493	5,811,555	21.93	0.542
Terai	11,212,453	48.4	0.478	13,318,705	50.27	0.521
Hills	10,251,111	44.3	0.512	11,394,007	43.01	0.569
Mountain	1,687,859	7.3	0.386	1,781,792	6.73	0.496
Nepal	23,151,423	100	0.504	26,494,504	100	0.541

Source: CBS 2001, 2011; HDR 2004, 2014 NPC/UNDP, Nepal

³⁹ For details about GDP and poverty, see <http://data.worldbank.org/country/nepal>. (20/04/2016)

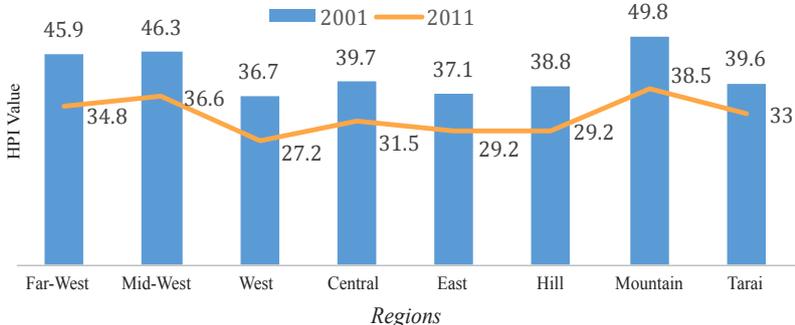
⁴⁰ Country is considered LDC regarding their low GNI, poor human assets and high economic vulnerability. See, <http://unctad.org/en/Pages/ALDC/Least%20Developed%20Countries/UN-list-of-Least-Developed-Countries.aspx> (20/04/2016)

⁴¹ For details about multidimensional poverty and inequality-adjusted HDI and how these are measured, see http://hdr.undp.org/sites/default/files/hdr2016_technical_notes.pdf (21/04/2016)

(UNDP, 2014). Comparing the HDI (Table 2), development and ecological region-wise, we can see the disparities. The lower HDI reflects the weaker state of human development whereas the higher shows the improved level of empowerment. In 2001, the Mid-Western region had the lowest position (0.402) followed by Far West (0.404). Mountain eco-region was the least progressing comparing to Hill and Tarai. However, Mid-West topped the Far-West region in 2011. The Eastern region declined from the top (0.493) to third rank (0.542) in 2011. On the contrary, the Central region, which scored third ranking with 0.490 in 2001 progressed to the top in 2011 scoring 0.558 despite the population growth by 2.5 percent. Hills consistently remained above the national average during 2001-2011 followed by Tarai, and both of the ecological regions observed population growth except in Mountain region witnessing the decline.

The HDI shows the increase in opportunities and choices whereas the Human Poverty Index (HPI) focuses the denial as a result of income and capability deprivation. The national value of the HPI for Nepal is 31.12, in 2011 (UNDP, 2014: 21). Similar to the lead position in HDI, Hill region has been able to dominate the HPI as well, throughout 2001 to 2011 (Figure 4). It remained as an ecological region with lowest in HPI opposite and above the national average 39.6 in 2001 and 31.12 in 2011. Mountain and Tarai have scored less than the national HPI. The decline in the HPI also maintained the disparity. For example, the value of the decline in the HPI was 8.48 for Nepal, 11.3 for Mountain, 9.6 for Hill and the least changes occurred in Tarai with just 6.6 (Figure 4). Regarding the development regions, the higher HPI value in 2001 was in Mid-West (46.3) and Far-West region (45.9), which declined to 36.6 and 34.8, respectively, in 2011. Western Development Region experienced the least HPI values among the five development regions, 36.7 in 2001 and 27.2 in 2011. Central and Eastern regions remained constant in the HPI ranking during this period. However, change in the HPI value was significant in Far-West, by 11.1 deductions. The value declined by 9.7 in Mid-West, 9.5 in West, 8.2 in Central, and the slowest in Eastern region with 7.9 which was less than the national value.

Figure 4: HPI Values by Development & Ecological Regions (2001-2011)



Source: CBS 2001, 2011; HDR 2004, 2014 (UNDP/Nepal)

Table 3: HDI by Caste/Ethnicity (2006-2011)

Caste/ethnicity	HDI	
	2006	2011
All Nepal	0.509	0.541
All Brahman/Chhetri	0.552	0.538
Hill Brahman	0.612	0.557
Hill Chhetri	0.514	0.507
TM BC	0.625	0.536
TM other castes	0.450	0.460
All Dalits	0.424	0.434
Hill Dalits	0.449	0.446
TM Dalits	0.383	0.400
Newar	0.616	0.565
All IN (excluding Newar)	0.494	0.482
Hill INs	0.507	0.509
TM INs	0.470	0.473
Muslim	0.401	0.422
All Hill/Mountain Groups (including Newar)	0.531	0.422
All TM Groups (including Muslim)	0.448	0.511
Others	0.559	0.586

(Source: HDR 2009, 2014 NPC/UNDP, Nepal)

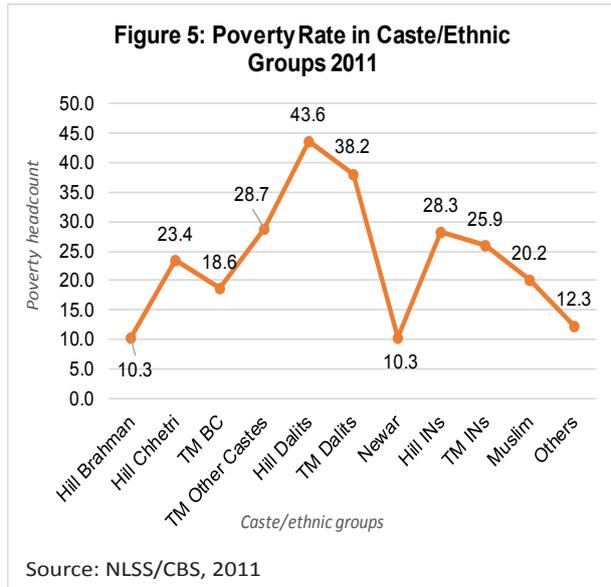
Differences in the HDI and HPI are not merely limited to the ecological and development regions in Nepal. This is more persistent between and within the caste/ethnic groups. The disparities in human development have continued for longer than what is illustrated here (Table 3), as noted by the Human Development Report since 1998 (UNDP, 2014). Newars have remained at the top of the HDI so far Brahman and Chhetri, both Hill and TM, have enjoyed the human development above national value. Dalits, indigenous nationalities (excluding Newar) and Muslim have ranked below the national HDI value. Nevertheless, the inequality between and within these

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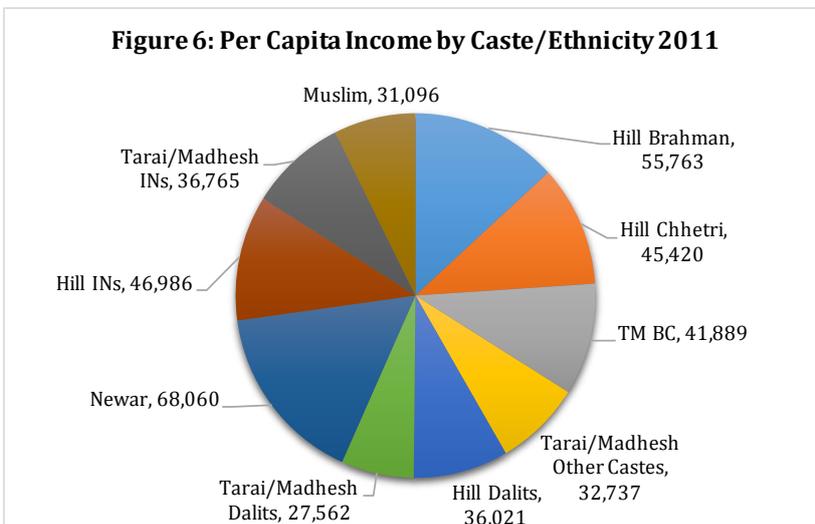
groups are notable. Hill indigenous nationalities rank better than TM indigenous nationalities whereas Hill Dalits stand higher than Muslim and TM Dalits. During 2006-2011, the HDI value for Nepal improved by 0.032 whereas it declined notably in TM Brahman/Chhetri, Hill Brahman and Newar by 0.089, 0.055 and 0.51 respectively. Moreover, for the same duration, the HDI favours Muslim, TM Dalit and TM Other Castes by an increase in the human development; 0.021, 0.017 and 0.010 respectively. Nonetheless, TM Dalits and Muslim have remained at the lowest rank throughout this period. As the HDR 2014 asserts, the significant disparity in the education, health conditions and opportunities in social and political lives results in the inequality in HDI values.

Nepal Living Standard Survey further reasserts the inequality across caste/ethnic groups. The

poverty headcount or the incidence or rate was 25.2 percent in Nepal, in 2011(CBS, 2011b:5-10). Dalits have the most number of people living below poverty line, 43.6 percent in hills and 38.2 percent in TM. TM Other Castes and Hill indigenous nationalities follow Dalits in poverty incidence with 28.7 percent and 28.3 percent respectively (Figure 5). Newars (10.25%) have the least share of poverty, whereas Hill Chhetri (23.4%) ranks higher in poverty rate than Hill Brahman who is second in the list of caste/ethnic group with poverty population, i.e. 10.34 percent. The imbalance is dramatic within hill caste and ethnic groups. Hill Chhetri have over 13 percent more poor population than Hill Brahman and Newar. Hill Dalits have the widest difference, over 33 percent, with Hill Brahman and Newar. Moreover, the difference between Hill indigenous nationalities and Hill Brahman and Newar is more than 17 percent. On the contrary, the gap is less between TM Other Castes and TM indigenous nationalities, about 7 percent. However, TM Dalits experience more than 19 percent poverty incidence rate than TMBC. The inequality is also notable between Dalits and indigenous nationalities. Hill indigenous nationalities have less than 15 percent rate of poverty comparing to Hill Dalits whereas TM indigenous nationalities have 12 percent gap with TM Dalits. On the other side, poverty among



Muslim population is 20.2 percent which is over 9 percent more than Hill Brahmans and Newars but less than 18 and 6 percent comparing with indigenous nationalities and Dalits in Tarai.



Source: HDR 2014, NPC/UNDP, Nepal.

Income inequality is more alarming than HDI and poverty rate. Newars' per capita income (NRs. 68,060) is the highest among all other caste and ethnic groups followed by Hill Brahman at the second rank with NRs. 55,763

(Figure 6). Although Hill Chhetri occupies the third position from the top in the list, the gap with Newars and Hill Brahmins is significant with NRs. 22,640 and NRs. 10,343 respectively. TMBC (NRs. 41,889) stand below the Hill indigenous nationalities (NRs. 46,986) but above TM Other Castes (NRs. 32,737). Hill Dalits' PCI is NRs. 36,021 which is less than a quarter comparing to Newars, less than half to Hill Brahman but NRs. 8,459 more than TM Dalits who rank at the lowest rank in the PCI by caste/ethnic group in Nepal.

Development aid disbursement trends

Notwithstanding poverty alleviation remaining the top priority, only 18.2 percent decline in overall poverty population occurred in Nepal during FY 2003/04 and FY 2013/14; 42 percent to 23.8 percent (MOF, 2016). The GDP grows to US\$21 billion in FY 2014/15 with per capita GDP of US\$762. From 11 percent contribution in FY 2004/05, remittance now contributes to 28 percent or US\$5.9 billion, of the GDP, in FY 2014/15. On the contrary, internal revenue could not progress beyond 19 percent or US\$4.2 billion of the GDP whereas government expenditure is US\$ 6.2 billion that consumed 29 percent of the total national GDP in FY 2014/15. Education, health, local development, energy and road transportation have remained the top five priorities in the sector-wide allocation of aid, over 56% of the total. Nepal also tried to improve the policy coherence in meeting its goal of poverty reduction and graduating from LDC.

The Foreign Aid Policy (FAP) was first adopted in 2002 to streamline the fragmented foreign assistance in the country. It was revised in 2014 with a focus on helping the government to graduate from LDC by 2022. In 2014, Nepal introduced a Development Cooperation Policy, aims at mobilising foreign aid in the ‘priority areas’ of the government in ‘selective manner’, and it introduced a minimum threshold for grant, and loan, US\$5 million and US\$ 10 million respectively (MOF, 2014: 5-10). Despite the introduction of FAP and DCP, the country is still not ready to synchronise the scattered institutional approaches to working on national ambitions, such as poverty reduction.

In May 2012, Nepal established a ministry, Ministry of Cooperative and Poverty Alleviation (MoCPA), to lead poverty reduction policy and efforts. But, the ministry is probably the least-resourced and poorly-mandated agency comparing to other ministries. For instance, four years since the establishment, the ministry has just started to develop and sanction a common framework, National Poverty Alleviation Policy (NPAP), in early 2016. The existing poverty programmes are scattered, and are being implemented by over 15 government ministries.⁴²

Table 4: Budget Allocation and Expenditure Trends
FY 2010/11-2014/15

Fiscal Year	Government's total annual budget (US\$)*		Total foreign aid (US\$)	
	Allocation	Expenditure	Allocation	Expenditure
2010/11	3,071,818,182	2,685,122,064	796,142,227	527,252,555
2011/12	3,499,090,909	3,083,340,773	907,153,509	471,757,764
2012/13	3,680,224,545	3,260,345,282	662,042,727	429,084,082
2013/14	4,702,181,818	3,949,301,327	1,029,454,545	534,118,255
2014/15	5,619,090,909	4,736,824,791	1,126,363,636	503,465,809

* If US\$ is equivalent to NRs. 110.00
Source: MoF (2016), DCR 2014/15: pp. 43-44.

In addition to the lack of coordination, duplication of efforts, and the politicisation of development programmes, the foreign aid-dependent development ambitions also suffer from

⁴² <http://kathmandupost.ekantipur.com/news/2016-01-28/govt-drafts-new-policy.html> (09/03/2016).

top-down aid bureaucracy which tries to concentrate on ‘one-door policy in line with national priorities.’ Moreover, spending of development budget has been a key challenge, both for the government and the donors due to the lack of efficient policy coherence, robust programme design and implementation capacity.

The annual state budget allocation increased from US\$ 3 billion in FY 2010/11 to US\$ 5 billion in FY 2014/15 (Table 4). The expenditure rate of the government total annual budget remained

Table 5: Regional Disbursement of Foreign Aid

FY 2013/14-2014/15

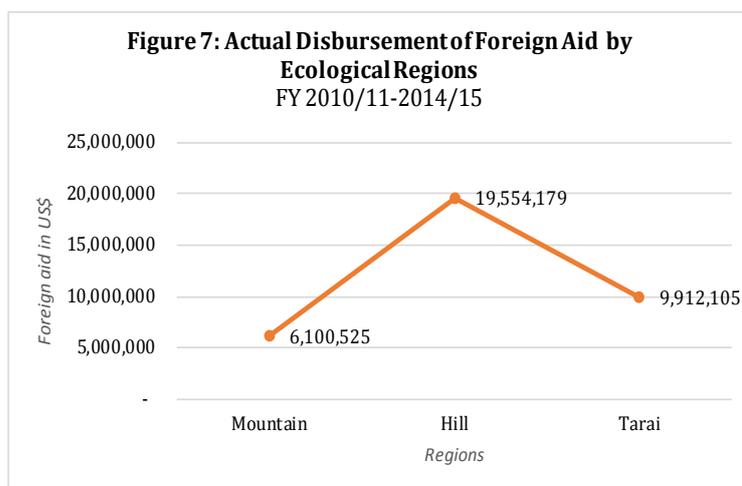
Development regions	Disbursement (US\$)	Population (2011)	Per capita disbursement	Poverty headcount rate
Eastern				
FY 2013/14	115,543,152	5,811,555	20.0	21.4
FY 2014/15	122,937,841		21.2	
Central				
FY 2013/14	174,060,609	9,856,985	18.0	22.0
FY 2014/15	262,435,633		27.2	
Western				
FY 2013/14	123,185,646	4,926,765	25.0	22.3
FY 2014/15	95,954,539		19.5	
Mid-Western				
FY 2013/14	132,641,542	3,546,682	37.0	31.7
FY 2014/15	107,780,035		30.4	
Far-Western				
FY 2013/14	86,175,235	2,552,517	34.0	45.6
FY 2014/15	96,707,337		37.9	
Total	1,317,421,569	26,694,504		23.8
FY 2013/14	631,606,184			
FY 2014/15	685,815,385			

Source: MoF, DCR 2013-14: p.10, 2014-15: p. 16.

above 83 percent throughout these years. Due to the continuous efforts of the governments for last few years, especially with the introduction of DCP in 2014, the foreign aid contribution increased significantly, from US\$ 796 million in FY 2010/11 to US\$ 1.1 billion in FY 2014/15. What is more alarming than the growth in the foreign assistance in line with the national ‘priorities’ is the gap between government budget spending and foreign aid expenditure in the same fiscal year. For instance, the difference between the two budgetary sources in 2010/11 was less than 22 percent which gradually began to widen in the following financial years, i.e. 36 percent in 2011/12, 23 percent in 2012/13, 32 percent in 2013/14 and the widest gap in 2014/15 with almost 40 percent. In other words, the government’s performance regarding development budget expenditure reduced by US\$ 23 million in 2014/15 despite the increase of US\$ 330 million in the aid budget during 2010 and 2014/15. These deficiencies of the spending not just reflect the internal weaknesses of state establishments despite the rise in the number of public servants and general expenditures, but also display the triviality of aid providers to witness ‘snail pace’ of development programmes. Moreover, the consequence is not just limited to the poor performance of state mechanisms but also further marginalisation of aid-awaiting poor and socially excluded communities as foreign aid constitutes a large section of the state’s development efforts.

Within the disbursed development aid, the distribution framework lacks coherence between demand and supply. The disbursement of foreign aid also varies by development regions. To address the issue, the government has recently started scrutinising the external assistance through Aid Management Platform (AMP). However, in the absence of robust policy planning and efficient implementation mechanisms, the AMP cannot serve as ‘quick fix’. The gap between poverty incidence and per capita disbursement also sustains the discrepancy between objective and results. In FY 2013/14, Far-West and Mid-West stood behind in the per capita disbursement, with 11.6 percent and 5.3 percent respectively (Table 5). On the contrary, the gap was less than 3 percent in East and West Regions in addition to 4 percent in the Central. The devastating earthquake in April and May, 2015, changed the previous disbursement course resulting into Mid-West and West experiencing the decline by 5-6 percent whereas Central got almost 10 percent increase.

In practice, however, the real aid disbursement speaks a different story. US\$ 35 million of aid is actually disbursed in 75 districts during FY 2010/11-2014/15. Out of the US\$35 million, Mountain districts received the lowest amount, US\$ 6 million or 17.2 percent (Figure 7). Mountain region houses 7 percent of the national population and scores lowest in the HDI (0.440) comparing to Hill or Tarai regions. Similarly, Tarai, with 50 percent of the inhabitants in Nepal and with HDI value of 0.468, received 27.9 percent of the foreign aid disbursement or US\$ 9 million. Consisting 43 percent of the national population, and scoring highest in the HDI, Hill benefits from the biggest share of the foreign aid in the country, i.e. 55 percent or US\$ 19 million during 2010/11-2014/15.⁴³

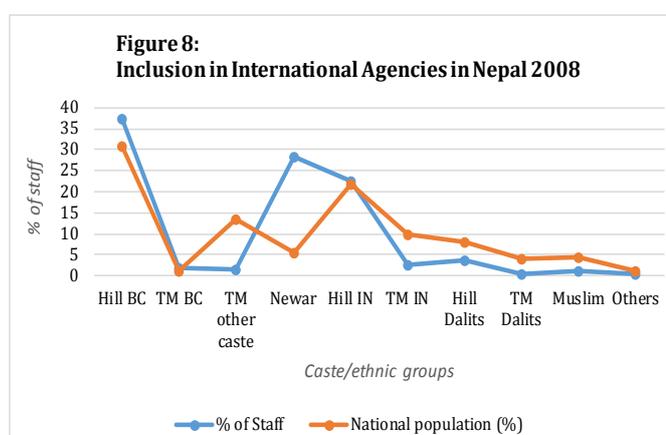


Source: AMP/MoF, Nepal. 2016.

Diversity in international development organisations

In a survey, conducted by Social Inclusion Action Group (SIAG) in 2008 covering 30 international development agencies in Nepal, found a surprising picture of Nepal-based foreign agencies. This was probably the first time, international organisations tried to look ‘within’ with an aim to realise the ‘rhetoric of diversity awareness’ into possible actions of respect for differences and ‘create space for coexistence’ (SIAG, 2008: iv).

The survey found that Hill caste/ethnic groups constitute 91.8 percent of the national staff whereas TM caste and ethnic groups, together, survive in less than 7 percent even if their representation in the national population (2001) was 28.3 percent (Figure 8). This percentage in the overall population excludes Muslim who has 4.3% of the national population but only 1.2% in the workforce. Within Hill groups, Newars entertain the most opportunities with 28.3 percent which is 22 percent more than their share of the national population. Hill IN are at 28 percent of the workforce whereas TM IN are 0.5 percent. Hill Dalits are at 3.6 percent which is still more than the combined representation of TM BC and Other Caste Groups.



Caste/ Ethnic Groups	Number and % of staff				Population (%)
	Female	Male	Total	%	
Hill Brahman/ Chhetri	129	403	532	37.3	30.9
TM Brahman/Chhetri	6	23	29	2.0	1.0
TM Other Caste Groups	5	17	22	1.5	13.6
Newar	139	264	403	28.3	5.5
Hill INs	111	211	322	22.6	21.9
TM INs	8	28	36	2.5	9.8
Hill Dalits	14	37	51	3.6	7.9
TM Dalits	1	6	7	0.5	3.9
Muslim	3	1	17	1.2	4.3
Others	1	5	6	0.4	1.3
Total	417	995	1425		

Source: SIAG, 2008: p. 8

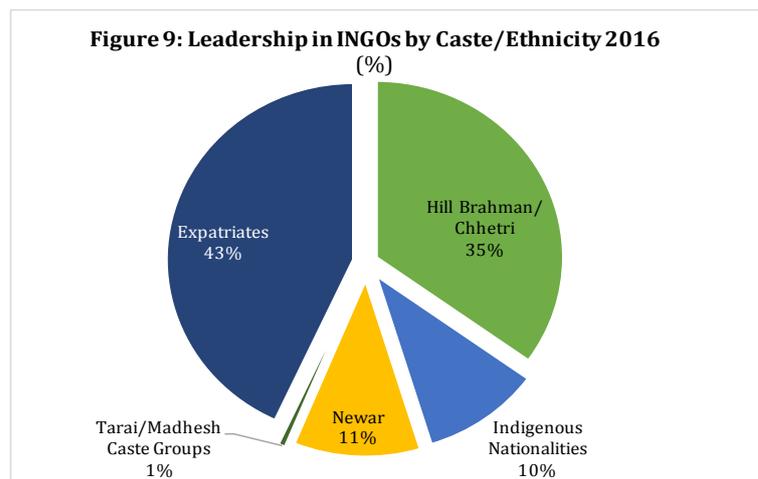
⁴³ <http://amis.mof.gov.np/viewTeamReports.do?tabs=false&reset=true&onlyFavourites=false> (20/05/2016)

The Survey further found that HBC, Newars and Hill IN, together, cover 92.3 percent of the total national staff in bilateral agencies, 93.2 percent in the multilateral organisations and 86.6 percent in the UN agencies. Representation of these three groups remained excessive in the senior and middle-level management positions as well. The most astonishing statistical finding, but not abnormal given the culture of nepotism and corruption among decision makers in almost all sectors, that the caste/ethnicity of senior or similar position holder had a ‘majority’ of staff from the same caste or ethnic group.

Some organisations, influenced by the survey, improved their recruitment policies to represent population diversity in their portfolios. For example, the UN, in Nepal, tried to adopt social inclusion in the system. In line with the Government of Nepal (GoN)’s Three Year Interim Plan (2007/08-2009/10), the UN integrates human rights, gender equality and social inclusion as one of the four priority areas in the existing UNDAF, Development Assistance Framework (2008-2010) (UNCT 2007). However, an evaluation of the relevant GESI indicators in 2012 found that the focus, in practice, was on gender only. Recommendations further stressed the continuation of traditional power structures and lack of access to power challenges women and socially excluded groups to equally benefit from opportunities and growth (UNCT, 2011). Despite the recommendations and changes in the organisational policies, international development agencies lag behind the government in terms of integrating social inclusion.

254 international non-government organisations (INGOs) are officially registered with the government in Nepal, with Social Welfare Council, to operate long and short-term programmes and projects (SWC, 2016). There are also numerous other international foundations, private firms and voluntary organisations with activity in many parts of the country. The number of such non-registered international actors rose dramatically after the signing of the peace accord in 2006 and devastating earthquakes in 2015. There is, however, no official information available with the government regarding such non-registered actors, their local partners or even activities.

Nonetheless, of these 254 registered INGOs in the country, inclusion does not seem important when it comes to their strategic positions, i.e. leadership and key managerial roles. 164 INGOs are led by international staff, and 90 are headed and managed by Nepalese (Figure 9). Of the 90 INGOs led or managed by Nepalese, just two groups occupy 98.9 percent; HBC representing 61.1 percent and indigenous nationalities with 37.8 percent. Of the 37.8 percent of indigenous nationalities-led INGOs, Newars alone share 50 percent. TM Caste Groups lead 1 percent or 2 INGOs. Of the two TMCG-led INGOs, one organization, working on democracy promotion, is already closed and the other is working on livestock management.



Source: List of INGOs (2072/73), SWC. 2016: pp. 1-16.

Primes of NGO projects

During FY 2013/14, SWC approved 1,311 programme/projects to be implemented by national NGOs in Nepal (SWC, 2015). The total value of the 1,311 projects was NRs. 10,267,977,369 or approximately US\$93,345,249. Muslim-led NGOs received approval for 7 projects representing 0.5 percent of the total approved budget of the 1,311 programme/projects (Table 6). TM Dalit-led NGOs have no project whereas Hill Dalits-led NGOs got 3.2 percent share. Hill IN-led NGOs signed the contracts for 251 projects worth US\$12 million whereas TM IN-led NGOs just had 5 projects or 0.5 percent. Although, Newar-led NGOs got approval for less number of projects comparing to Hill IN, the value of the total projects in the Newar-led NGOs is more than US\$7 million than that of the Hill IN. NGOs-led by HBC got approval to implement 676 projects or US\$51 million or 55.7 percent of the total approved projects.

The disparity within TM caste and ethnic groups are less than 0.3 percent whereas the sum of the total number of projects by the TM caste/ethnic groups was US\$1.9 million which is still less than the projects' value of Hill Dalit-led NGOs. Hill-based caste/ethnic groups represent 93.3 percent of the total value of the approved projects, TM based caste and ethnic groups are, altogether, limited to 2.1 percent, Muslim 0.5 percent and others 4.1 percent.

In the absence of disaggregated data about the composition of NGO board, staff, program areas and target beneficiaries, it is difficult to draw a clear picture. However, the information based on Table 6 principally intends to assess the diversity in the NGOs

or leadership positions as it can facilitate or create obstacles to the meaningful participation of socially excluded groups in development efforts. Due to insufficient level of awareness, and lack of protection mechanism and enabling environment to speak up, many excluded groups suffer from isolation and culturally-biased social behaviour which refrains them from fully participating in public life. Civil society organisations have the excellent opportunity to look beyond the discriminatory policy, instrument and practices and bridge the interface between excluded and marginalised groups and the mainstream of society. Diversity brings in different and unique capital probably never sought before. If acknowledged, they tend to be sincerer and accountable members of the society. Nepali and Nepal-based 'aid entrepreneurs' should not contravene the constitutional aspiration of building an inclusive society.

Table 6: Leadership of Approved Projects by Caste/Ethnicity

(FY 2013/14)

SN	Caste/ethnicity	# of project	Fund received (US\$)
1	Brahman/Chhetri	681	52,678,785
	Hill Brahman/Chhetri	676	51,951,808
	TM Brahman/Chhetri	5	726,977
2	Madheshi caste groups	14	693,397
3	Newar	231	19,938,971
4	Indigenous nationalities	256	12,709,196
	Hill INs	251	12,203,545
	TM INs	5	505,651
5	Dalits	69	3,033,050
	Hill Dalits	69	3,033,050
	TM Dalits	0	
6	Muslim	7	469,291
7	Others	53	3,822,559
	Total	1311	93,345,249

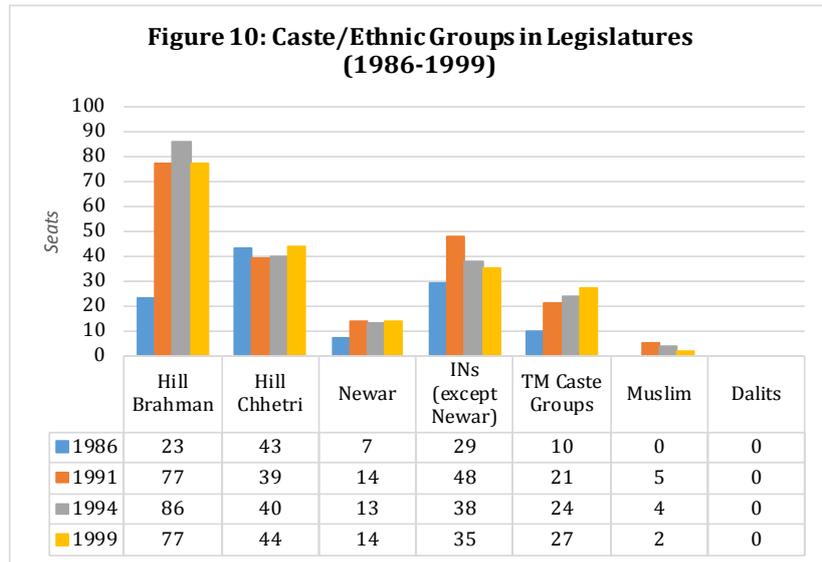
* Estimated value of the project if US\$1 is equivalent to NRs. 110.

Source: List of NGOs and their activities (FY 2070/71), SWC, 2015.

REPRESENTATION IN STATE ORGANS

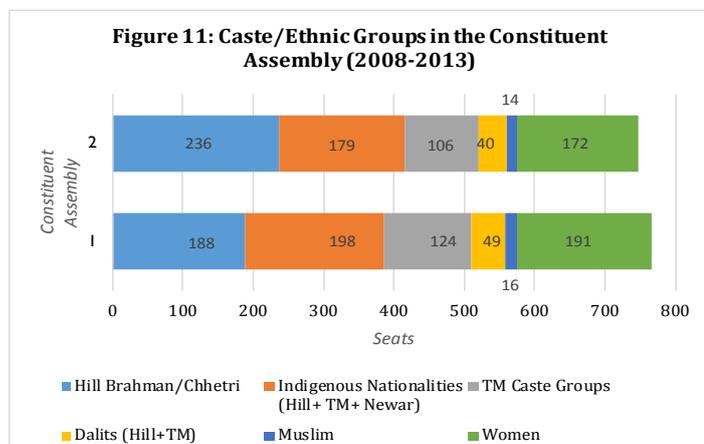
Legislatures

The ascendancy of Hill Chhetri in the national legislature was replaced by Hill Brahman since the restoration of democracy in 1991 and prevails even today. Hill Chhetri, who led the Panchayat government by 38 percent in 1986 shrunk to half (19%) in the Legislative Parliament, in 1991. Fascinatingly, Hill Brahman utilised the increase in the total parliamentary seats, from 23 in 1986 to 77 in 1991 (Figure 10). They not just crowned the number of posts but also sustained the leadership subsequently, from 21 percent in 1986 to 38 percent in 1991, 42 percent in 1994 and 39 percent in 1999.



Note: % may exceed 100 due to the round up the decimals.
Source: HDR 2009, NPC/UNDP, Nepal: p. 160.

The post-Panchayat politics also favoured Newars who were successful in consistently upholding over 6.2 percent presence in the parliaments. TM Caste Groups (except Dalits, Muslim and indigenous nationalities) witnessed gradual rise, in average, by 2 percent. On the contrary, indigenous nationalities (Hill and TM included) experienced a decline in the percentage of their seats in the parliaments despite an increase in number comparing to the pre-1991 houses. The legislatures before and after the restoration of democracy downright failed in accommodating even a single Dalit. Muslim got 5, 4 and 2 seats in 1991, 1994 and 1999 respectively. Women representation remained significantly negative with just 29 seats out of 720 members represented in the legislatures during 1986-1999.



Caste/ethnic groups	Constituent Assembly 2008						Constituent Assembly 2013					
	FPTP		PR		Total		FPTP		PR		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Hill Brahman/Chhetri	99	41.3	89	26.6	188	32.7	132	55.0	104	31	236	41
Indigenous nationalities	79	32.9	119	35.5	198	34.4	64	26.7	115	34	179	31
TM Caste Groups	48	20.0	76	22.7	124	21.6	37	15.4	69	21	106	18
Dalits (Hill+TM)	7	2.9	42	12.5	49	8.5	2	0.8	38	11	40	7
Muslim	7	2.9	9	2.7	16	2.8	5	2.1	9	3	14	2
Total	240	100	335	100	575	100	240	100	335	100	575	100
Women	30	12.5	161	48.1	191	33.2	10	4	162	48	172	30

* Of the total 601 seats in the CA, 26 are allocated for nomination. In 2008, political parties had nominated 5 HBC, 16 IN, 4 TMCG, and 1 Muslim whereas 12 HBC, 10 IN, and 2 TMCG got nomination in the second CA, by the end of August 2014.

Source: CA, 2014; ECN 2008, 2013; HDR 2009, NPC/UNDP: p. 74; INSEC 2013, p 197; Mabuhang, 2015: pp. 17-18; UNRCO, 2013.

The Comprehensive Peace Agreement (2006) laid the framework for inclusive representation, further instituted by the Interim Constitution (2007), with acknowledgement to the Madhesh Revolt (2007) that enforced the inclusion in the proportion of the population. Those political de-

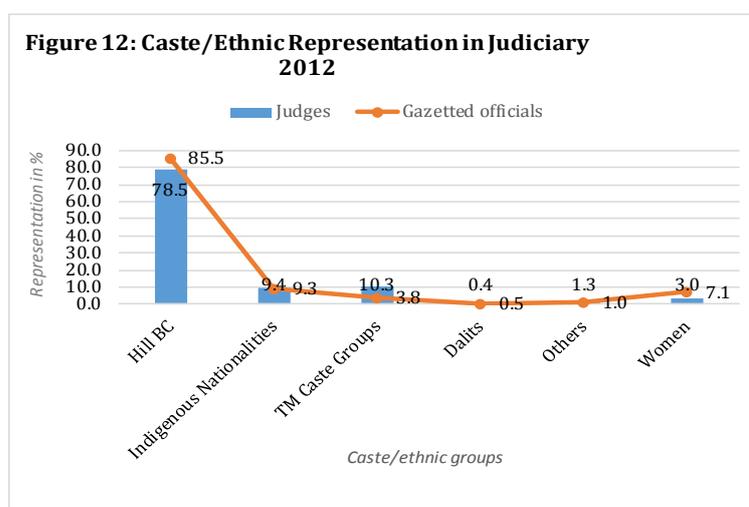
velopments led to the historically unique representation of Nepalese people in the Constituent Assembly in 2008 (Figure 11). For the first time indigenous nationalities (including Newar, Hill and TM), Dalits, Muslim, and women in addition to TM Caste Groups achieved 198, 49, 16, 191 and 124 seats respectively, in the legislative parliament. Representations from HBC, who had enjoyed 61% of seats in the previous parliament (1999), declined to 32.7 percent in 2008. Which, however, was still 4 percent more in proportion to their combined population in 2001.

The most remarkable achievements were made regarding Dalits and women who enjoyed 8.5 and 33.2 percent in the CA, 2008, comparing to nil presence of Dalits and just 6 percent seats for women in 1999. The inclusivity in the CA, nonetheless, could not survive in the following election of the CA-II, in 2013. HBC gained additional 48 seats totalling the HBC's share in the CA by 41 percent. All other groups lost the seats. IN and TM Caste Groups declined to 31 and 18 percent of seats correspondingly. Dalits lost 9 seats whereas Muslim shrunk to total 14 seats in the CA-II. The decline in the excluded groups' presence in the CA had many adverse consequences regarding negotiating their agenda in the final constitution. Chapter 2 already discussed the politics of majority-led constitution promulgation in Nepal. Furthermore, this representational issue is also likely to influence the post-constitution legislative processes.

Representation in Judiciary

The judiciary is one of the three fundamental pillars of a state and is often a mirror of how a state is 'manufactured' and operates. Judicial service in Nepal is no exception provided that there is not any specific legal obligation to represent 'fair' diversity in the judiciary. Of course, the Civil Service Act 1993 has a role to play in the recruitment but that does not necessarily touch the appointment at higher levels. It principally depends on the Judicial Council and the key political players how they interpret the concept of 'inclusive state' as enshrined in many parts of the constitution.

In addition to the judges, the formal judicial sector in Nepal consists of three groups; judicial, legal and public prosecutors group. The judicial service is probably the most exclusive state organs in Nepal if we see the caste/ethnic representation in 1,075 judges and gazetted officials (NJA, 2013). The presence of HBC is significant in judicial service with overall 84 percent representation in judges and gazetted officials (special, first, second and third class). Indigenous nationalities cover 9.3 percent followed by TM



Caste/ethnic group	Judges and officers (gazetted)					
	Judge	%	Gazetted	%	Total	%
Hill Brahman/ Chhetri	183	78.5	720	85.5	903	84
Indigenous Nationalities	22	9.4	78	9.3	100	9.3
TM Caste Groups	24	10.3	32	3.8	56	5.2
Dalits	1	0.4	4	0.5	5	0.5
Others	3	1.3	8	1.0	11	1.0
Total	233	21.7	842	78.3	1075	100
Women	7	3.0	60	7.1	67	6.2

Source: NJA, Nepal, 2013: p. 138

Caste Groups occupying 5.2 percent of the overall workforce (Figure 12). There is no judge from TMIN and only 8 percent of the 78 gazetted officials. Of the total 1,075 judges and gazetted officials, only 5 represent Dalits which is less than 1 percent. Comparing the caste/ethnic

participation, IN enjoy almost four times more opportunity in gazetted officials than judges whereas TM Caste Groups witness 6 percent decline.

Representation in Civil Services

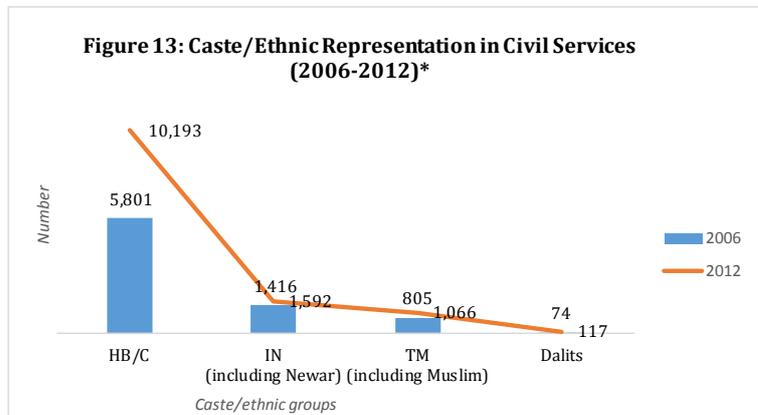
The second amendment to the Civil Service Act 1993 in August 2007 adopted an quota system for civil service in Nepal to allow more representation of Nepalese diversity in the public institutions (GON, 1993; 2007). 45 percent of the seats in the open call for public services are reserved for women, indigenous nationalities, Madheshi, Dalits, people with disability (PWD), and backward areas⁴⁴ with 33, 27, 22, 9, 5, and 4 percent respectively. The Amendment also requires the review of the impact of the quota system in civil service in 10 years.

Of the 12,971 civil servants in 2012- Special, First, Second and Third level/class- HBC represent 78.6 percent which is 7 percent (4,392 seats) increase from 2006 status (Figure 13). The number of officer-level and above rose by 37 percent during 2006-2012 whereas the presence of HB/C increased by 43 percent. On the contrary, the overall status of representation is a negative trend regarding indigenous nationalities, Madheshi and Dalits.

HBC exclusively influence the representation in Special and Second class officers where they represent 90 and 84 percent of workforce respectively. They, in general, cover more than 75 percent in all class categories.

Indigenous nationalities are sharing a big pie with Newars, which, however, declined in 2012. The highest representation of TM groups (with 41 Muslim), is in third class with 9.92 percent, and the least in the second class, with 1.43 percent, which is 9.6 percent decline from 2006.

117 Dalits are in civil service in 2012 which is hardly 0.9 percent increase from 2006. In a nutshell, the numbers in the officer-level workforce in civil service give a very exclusive picture of Nepal's public service which is more likely to remain intact for some period unless periodic review and overall reform is envisioned in the federal structures. The picture is, nevertheless,



Level (Class)	2006					2012				
	HBC	IN	TM	Dalits	Total	HBC	IN	TM	Dalits	Total
Special	30	8 (7)	0	0	38	49	3	2	0	54
First	293	71 (68)	30	3	397	387	75 (58)	49	1	512
Second	1,444	444 (374)	237	11	2,136	2,132	346 (620)	36	12	2,526
Third	4,034	893 (703)	538	60	5,525	7,625	1,169 (620)	940 (40)	104	9,878
Total	5,801	1,416	805	74	8,096	10,193	1,592	1,027	117	12,971

* Data excludes workforce in health services.

The number in bracket denotes Newar and Muslim under INs and Tarai/Madhesh (TM).

Source: SCBN/UNDP, 2012: p. 39.

⁴⁴ The reservation provision clarified Accham, Kalikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla districts as 'backward'. Likewise, women, indigenous nationalities, Madheshi and Dalits are required to be economically and socially 'backward' which is never clearly regulated in the recruitment process. This leads to a mix of development; those with access, capacity and time to participate, in the lengthy process of public service recruitment, entertain the opportunity. Unintentionally, this also raises the question whether the intended 'class' is genuinely benefitting from quota system. fuels the conflict whether the intended groups are benefitting or not. Not any empirical study is published since this quota system is endorsed. However, the existing status of representation in public institutions should be enough to demand for more than just reservation given the wider gaps in educational and poverty indices across caste/ethnic groups in the country.

significantly inclusive comparing to early 2000 when HBC shared 87 percent, Newars, Madheshi and other indigenous nationalities shared 8.7, 3.2 and 0.5 percent of the workshop in government service respectively (Gurung, 2007).

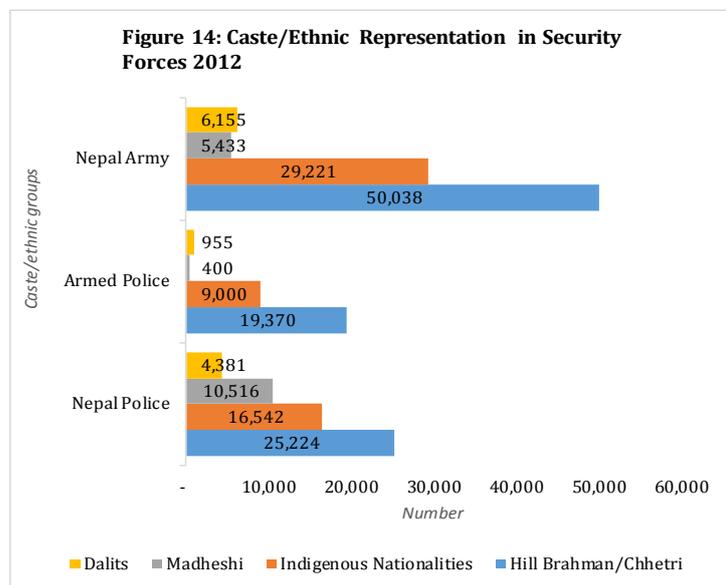
Representation in Security Forces

Of total 177,235 formal security apparatuses in Nepal, Dalits represent about 6.5 percent whereas Madheshis' participation is 9.2 percent (Figure 14). Madheshi Caste Groups and Dalits, together, occupy 15.7 percent in the security forces (Figure 14). 84.3 percent or 149,395 participants in the forces are shared between HBC and indigenous nationalities with HBC sharing the biggest portion with 63 percent. Of the total population of Nepal Army, Armed Police Force and Nepal Police, HBC lead the number by 55, 65 and 44 percent respectively. Indigenous nationalities' stake is 32, 30 and 29 in Nepal Army, Armed Police Force and Nepal Police correspondingly. Madheshis have the least influence in Armed Police Force and the most in Nepal Police, less than 19 percent of the total. Interestingly, Dalits dominate Madheshis in APF by 1.9 percent. Furthermore, Dalits have better attendance in Nepal Army comparing to Nepal Police and Armed Police. Looking at the diversity trends in the senior level officials in judiciary and civil service, it would not be a surprise if inclusion is limited to lower and non-decision-making positions. Although GESI is a common standard in most of the government and non-government entities, security forces do not see the usefulness of disclosing progress regarding GESI integration in their workforce.

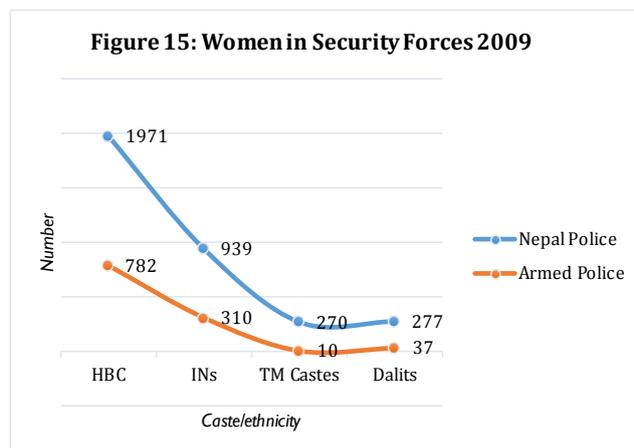
Looking at the gender perspective in security apparatuses, women constitute 1.6, 3.7 and 5.7 percent in Nepal Army, Armed Police

Force and Nepal Police respectively. The limited representation of women in security forces contradicts with Nepal's national and international commitments to have a fair share of women in the security, including the UN Security Council resolutions 1325 and 1820. As in most of the public offices, inequality is also considerable within women group in the security forces. Women

representation is considerably unequal: HBC occupy over 59 percent in the total number of women in the security forces; followed by indigenous nationalities, 27 percent; Dalits, 6.8 percent; and TM women at the bottom with 6.1 percent (Figure 15). Armed Police Force and Nepal Police witness highest percentage of HBC women, 68 and 57 percent respectively. On the contrary, Dalit women constitute 3 percent in Armed Police and 8 percent in Nepal Police whereas TM women get 7 percent in Nepal Police and less than 1 percent in Armed Police Force.



Source: SCBN/UNDP, 2012: p. 42.

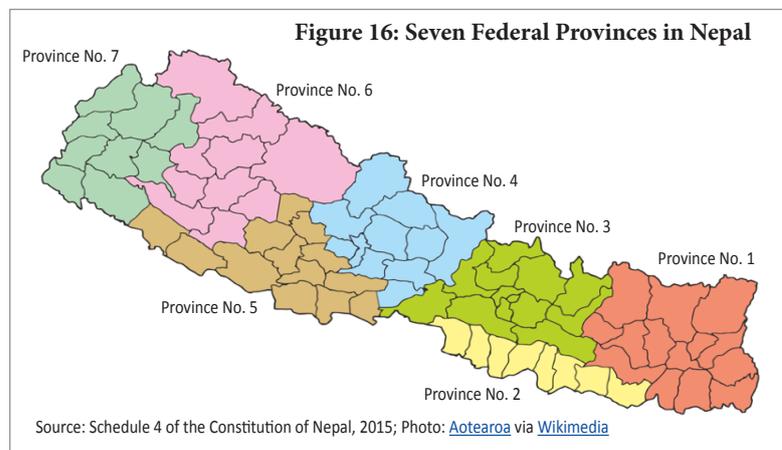


Source: SCBN/UNDP, 2012: p. 42.

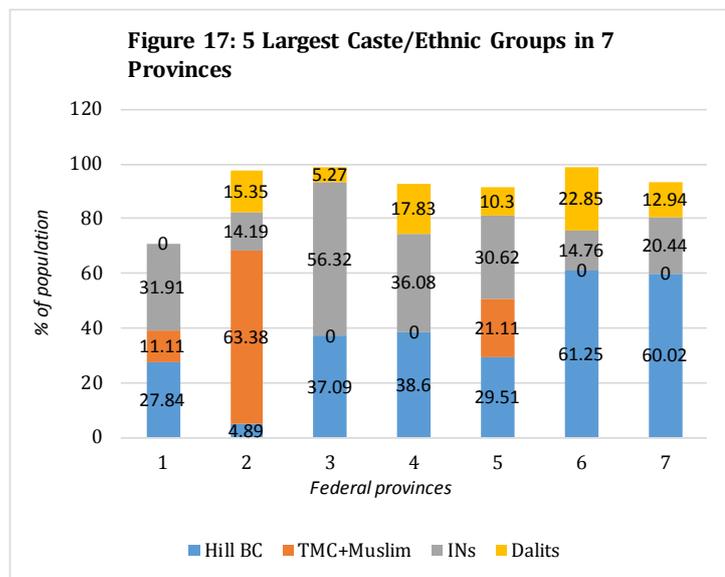
FEDERAL PROVINCES AND CASTE/ETHNIC COMPOSITION

State restructuring was one of the 40 points the Maoists demanded to be fulfilled before declaring the People’s War in 1996. Federalism was promoted, is still, as the most efficient approach to restructure the state to better represent local people, especially the identity-based and marginalised groups residing outside the Kathmandu valley. The Interim Constitution, 2007, was amended to ensure this and two round of Constituent Assembly remained divided regarding the forms, numbers and delineation of federal boundary. The Constitution of Nepal, 2015, adopts 7 provincial model in addition to local bodies as the new form of governance system (Figure 16). While the provincial house is expected to name the respective provinces, delineation of these provinces was not aimed at satisfying all identity groups in the country.⁴⁵

The bigger political parties, NC, CPN (UML), UCPN (Maoist), and MJAF-D, who predominantly led the constitution promulgation process till the end, claim that the foundation of these seven provinces is guided by the previous constitution, agreement with various groups and can best accommodate the diversity in the country. However, the caste and ethnic composition of these provinces can further sustain the existing power structures in the country, even in the new ‘structure.’ Looking at the caste and ethnic composition of the seven provinces, HBC dominate 6 out of 7 provinces (Figure 17).



HBC constitute the largest population group in first, third, fourth, fifth, sixth and seventh provinces with 27, 37, 38, 29, 61, and 60 percent of the relevant state population. Except in the second, IN are the second largest ethnic group in other 6 provinces. TM Caste Groups and Muslim, together, form the largest population in the second province, third in the first (11.11%) and fifth (21.11%) provinces. Dalits are second largest group in second and sixth provinces as well as third largest group in fourth and seventh provinces. Representation of indigenous nationalities varies across the provinces. For instance, Rai/ Kirant constitutes



⁴⁵The Himalayan Times, <https://thehimalayantimes.com/nepal/special-committee-decides-to-add-one-more-pradesh-detail-delineation-of-borders-by-federal/> (18/04/2016)

12.83 percent, and Limbu represents 8.05% out of the 31.91 percent of IN in the first province (Table 7). Similarly, not a single IN influences top 5 population groups in the second province whereas Tamang is the second and Newar is the fourth largest population clusters in the third province with 20.42 and 16.92 percent respectively. Magar is second (18.5%) and third in fifth and sixth provinces with 15.56 and 11.78 percent. Tharu is second largest population group in the seventh province but covers only 17.21 percent. Hill groups (BC, IN and Dalits combined) are the largest in all provinces with 48.72, 10.19, 98.68, 92.51, 55.37, 98.36 and 76.19 percent in first, second, third, fourth, fifth, sixth and seventh states whereas Tarai/Madheshi groups (BC, IN, other castes, Dalits and Muslim combined) form largest population in the second province only.

Table 7: Top 5 Caste/Ethnic Groups in the Federal Provinces in Nepal (2015)

Province	Largest 5 population groups									
	1 st	Pop. (%)	2 nd	Pop. (%)	3 rd	Pop. (%)	4 th	Pop. (%)	5 th	Pop. (%)
1	Hill BC ¹	1,262,544 (27.84)	Rai Kirant ²	578,404 (12.83)	TMCM	503,586 (11.11)	TM INs	500,246 (11.03)	Limbu	364,830 (8.05)
2	TMCM ³	3,425,258 (63.38)	TM Dalits	829,606 (15.35)	Tarai INs	480,490 (8.89)	Hill INs	286,158 (5.3)	Hill BC	264,009 (4.89)
3	Hill BC	2,050,844 (37.09)	Tamang	1,129,323 (20.42)	Hill INs ⁴	10,494,903 (18.98)	Newar	935,312 (16.92)	Hill Dalits	291,620 (5.27)
4	Hill BC	756,228 (38.6)	Magar	326,256 (18.5)	Hill Dalits	349,269 (17.83)	Gurung	218,971 (11.18)	Hill INs ⁵	125,320 (6.4)
5	Hill BC	1,383,232 (29.51)	TMCM	989,498 (21.11)	Magar	729,102 (15.56)	Tharu	705,709 (15.06)	Hill Dalits	482,696 (10.3)
6	Hill BC	953,153 (61.25)	Hill Dalits	355,659 (22.85)	Magar	183,283 (11.78)	Hill INs ⁶	38,554 (2.48)	Tarai INs	7,864 (0.50)
7	Hill BC	1,532,141 (60.02)	Tharu	439,267 (17.21)	Hill Dalits	330,241 (12.94)	Hill INs	82,377 (3.23)	TMCM	50,512 (1.98)
Nepal	Hill BC	31.25%	TMCM	15.03%	Magar	7.12%	Tharu	6.56%	Tamang	5.81%

1. Hill Brahman Chhetri includes Sanyasi and Thakuri which are defined as Khas Arya in the new constitution, 2015.
2. Aathpariya, Bantawa, Chamling, Khaling, Kulung, Loharung, Mewahang Bala, Nacchiring, Rai, Sampang and Thulung, Yamphu population has been added to this category. During the 2011 census, many ethnic groups who had earlier-identified as Rai began to disown the identity. However, many other members of these groups still identify as Rai. All of them identify as Kiranti.
3. Tarai/Madhesh Caste groups and Muslim (TMCM). TM Caste groups (Brahman, Chhetri and other caste groups) represent 51.8% and Muslim 11.58%. If TM Dalits are added with TMCM, the total population of these groups is 78.73%.
4. Excludes Newar and Tamang.
5. Excludes Gurung and Magar.
6. Does not include Magar.

Source: Adapted from Lawoti, M., (2016). Constitution and Conflict: Mono-ethnic federalism in a Poly-ethnic Nepal: p. 7.

Article 56 of the Constitution of Nepal (2015) seeks state restructuring based on the principles of pluralism, equality, inclusive representation and identity. The delineation of federal provinces does not necessarily synchronise with the constitutional doctrines of inclusivity and pluralism. Furthermore, the current delineation of federal boundaries and composition of caste/ethnic dimension does not spontaneously guarantee the 'fair share' and can further deteriorate the aspiration of excluded groups regarding their identity and self-rule. While it is a bit early to conclude whether the new provincial arrangements can certainly uphold the rights of minority and indigenous nationalities, it is not too late to ensure safeguard mechanisms for protecting and promoting minority rights to prevent further marginalisation and conflicts.

CONCLUSIONS

Continuous struggle and increased political awareness transformed the minorities and indigenous nationalities in ‘defiant’ communities demanding structural change that best represent their needs. Since 2007, various peaceful and violent protests occurred seeking fair share and even reparation for the past abuses. While some identity-based groups played well in the electoral game and made their way to the legislature, through the election and direct nomination, many groups are still waiting for their turn. Since exclusion is deeply rooted in all walks of life, minorities and indigenous nationalities often encounter with structural and institutional barricades in gathering enough resources and support for the adoption of inclusive policies and their effective implementation.

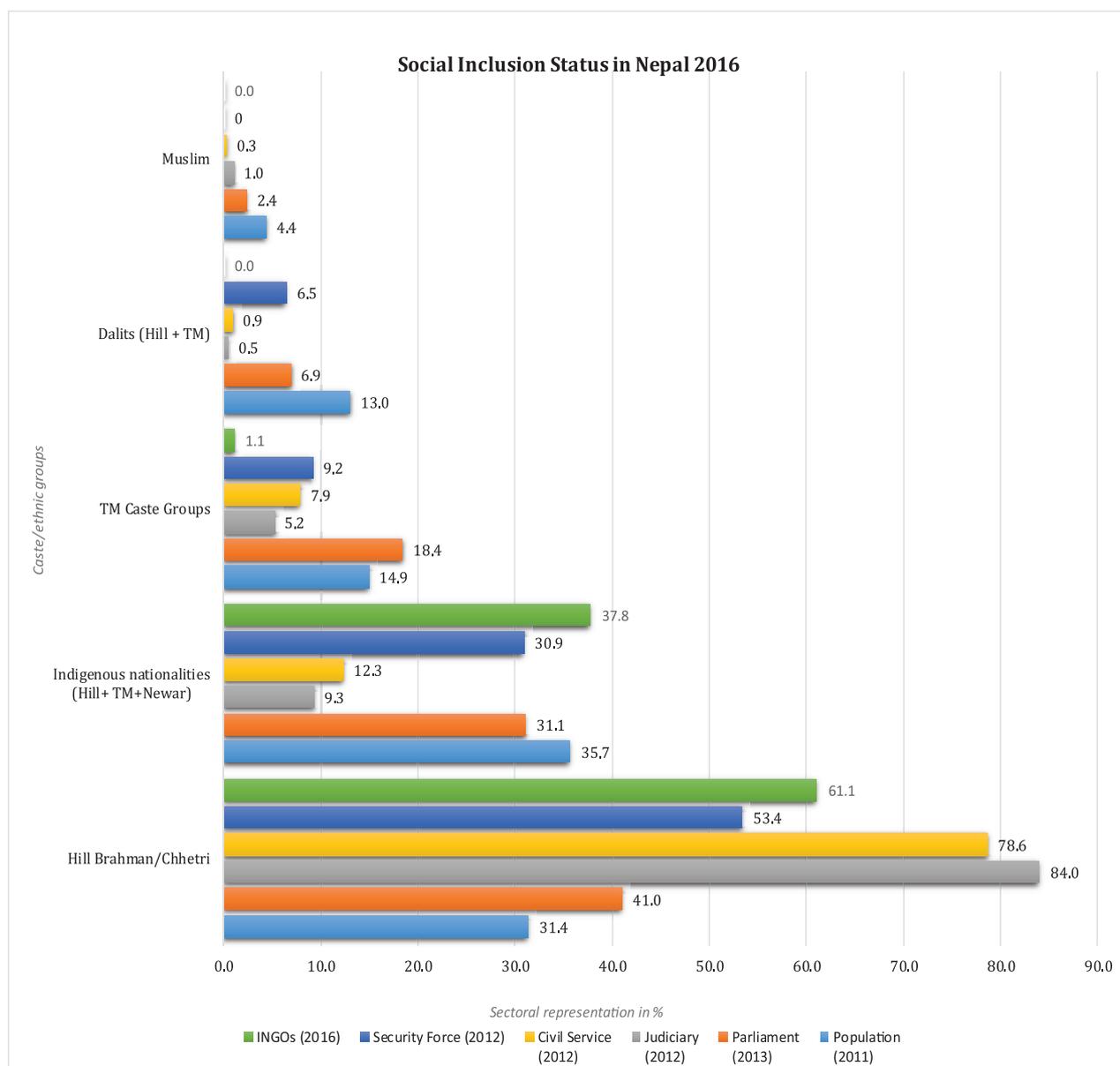
Some positive achievements can be observed in Nepal in terms of social inclusion in state and non-state entities. However, the achievements vary across caste/ethnic groups and regions. Although representing 4.4 percent of the population share in the country, Muslims have the lowest representation in parliament (2.4%), judiciary (1%), and civil service (0.3%). Dalits also suffer from exclusionary public institutions. They, Dalits, can only count their presence in the parliament (6.9%) and in security (6.5%), but they are still under-represented. Nonetheless, TM Dalits and Muslim are still at the bottom of representation in state bodies and INGOs. Despite better representation in the parliament (18.4%) in proportion of their population (14.9%), TM Caste Groups are not able to influence the changes in judiciary, civil service, security devices and INGOs where they are shrunk to 5.2, 7.9, 9.2 and 1.1 percentage of the pie, respectively.

Indigenous nationalities, largely Newars and Hill, have more success regarding representation in government and international NGOs. They are, however, significantly underrepresented in the judiciary (9.3%) and 12.3 percentage among the officer-level positions in civil services are less than half of their population. With 31 percent in parliament and 30.9 percent in security, indigenous nationalities are closer to their ‘fair’ participation. They, furthermore, cover 37 percent of the INGOs led by Nepalese in the country. However, the share of dividend within indigenous nationalities is considerably an issue to address. HBC, on the other hand and as figures reveal, no doubt enjoy the top positions in state bodies and INGOs (41% in parliament, 84% in judiciary, 78% in civil service, 53% in security and 61% in INGOs despite their share of 31% population in the country). However, the disparity between Hill Brahman and Hill Chhetri is also noticeable in terms of development dividends and public opportunities.

Succinctly, although Nepal has adopted many positive measures, the implementation is weak, and the efforts to social inclusion of minority and indigenous nationalities are vulnerable before the powerful blow of dominant groups. Representation of caste/ethnic groups in state and non-state entities has a direct link with the development and growth indicators. More representation means better living standards, easier access to public resources and opportunities. A shared vision for the future can only motivate the groups for appropriate structural change and the fair share of prosperity and public opportunities.



Social Inclusion Status in Nepal 2016



Caste/ Ethnic Group	Population (2011)		Parliament (2013)		Judiciary (2012)		Civil Service (2012)		Security Forces (2012)		INGOs (2016)	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
Hill Brahman/Chhetri	8,318,454	31.4	236	41.0	903	84.0	10,193	78.6	94,632	53.4	55	61.1
Indigenous Nationalities (Newar+Hill+ TM)	9,450,144	35.7	179	31.1	100	9.3	1,592	12.3	54,763	30.9	34	37.8
TM Caste Groups	3,949,847	14.9	106	18.4	56	5.2	1,027	7.9	16,349	9.2	1	1.1
Dalits (Hill + TM)	3,435,987	13.0	40	6.9	5	0.5	117	0.9	11,491	6.5	0	0
Muslim	1,164,213	4.4	14	2.4	11	1.0	41	0.3	-	-	0	0.0
Others	175,859	0.7	-	-	-	-	-	-	-	-	0	0
Total	26,494,504	100	601	100	1,075	100	12,970	100	177,235	100	90	100
Women	13,645,463	51.5	178	29.6	67	6.2	929	7.2	6,087	3.3	16	17.8

Source: Table 1; Figure 9, 11, 12, 13 & 14.

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