

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

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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.