

## Chapter 4 Nepal

# A Country of Minorities

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*with*

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It is commonly asserted that Nepal is a country of minorities because it is home to 125 different caste/ethnic groups who speak 123 recognized languages, follow 10 different religions and live in three distinct ecological zones (CBS, 2012). Geographically, the population is distributed into two near equal groups of those living in the southern Tarai plains and those living in the hills and mountains, but there is no majority group in terms of caste/ethnicity or language. Hindus, however, form a majority at 81 per cent of the population although there are great internal variations in terms of caste/ethnicity and language among those who profess Hinduism.

The historical trajectory of the country has given rise to a dominant minority in the form of hill-origin, upper-caste groups, now called the Khas-Aryas, comprising 31 per cent of the population. The other macro-ethnic categories of Dalits, Adivasi Janajatis and Madhesis are in a subordinate position vis-à-vis the Khas-Aryas but at the same time the Janajatis and upper-caste Madhesis exhibit similar traits of dominance towards Dalits.

These different groups are spread across Nepal and there are only a few areas where any one of them is in a majority. There are also significant

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overlaps between and among these groups. For instance, there are Dalits who are also Madhesis while there are also a significant number of Janajatis whose origins, along with those of the Madhesis, are in the Tarai (plains) belt of Nepal (CBS, 2012). Despite this diversity, large sections of the population are either inherently marginalized, like Dalits; historically denied access to influence, like the Adivasi Janajatis or ‘indigenous nationalities’; or not considered full citizens of Nepal, like Madhesis (DIFD, 2006). There are also religious minorities who, too, have been marginalized due to their religious identity such as Muslims nearly all of whom face exclusion like Madhesis (Sijapati, 2012) and, more recently, Christians.

There is no universally accepted definition of minorities, but the one that has received wide circulation was provided in 1977 by Francesco Capotorti, the Special Rapporteur of the United Nations Sub-commission on Prevention of Discrimination and Protection of Minorities:

A group numerically inferior to the rest of the population of a State, 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 maintain, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (United Nations Human Rights Office of the High Commissioner 2010).

In Nepal, the term ‘minorities’ was used for the first time in the 2007 Interim Constitution<sup>1</sup> to denote groups requiring special protection from the state.<sup>2</sup> The Constitution of Nepal 2015 also uses ‘minority group’ and ‘minorities’ for the same purpose but has expanded the number of such groups.<sup>3</sup> Unlike the 2007 Interim Constitution, however, the 2015 Constitution actually defines what constitutes a minority:

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1. Nepal has enacted seven constitutions so far in 1948, 1951, 1959, 1962, 1990, 2007 and 2013.
  2. Article 35(14) of the Interim Constitution of Nepal 2007 lists them as: ‘landless squatters, bonded labourers, persons with disability, backward communities and sections, and the victims of conflict, including women, Dalits, indigenous tribes (Adivasi Janajati), Madhesis and Muslims’ Source: [www.lawcommission.gov.np](http://www.lawcommission.gov.np). Activists prefer ‘indigenous nationalities’ as a translation of ‘Adivasi Janajatis.’
  3. Namely, ‘socially or culturally backward women, Pichhada class, minorities, the marginalized, farmers, labours, youths, children, senior citizens, gender and sexual minorities, persons with disabilities, persons in pregnancy, incapacitated or helpless, backward region and indigent Khas Arya,’ [www.lawcommission.gov.np](http://www.lawcommission.gov.np).

**Table 1. Groups Identified as Minorities for this Report**

Groups	Population
Adivasi Janajatis (Mountain, Hill and Tarai)	35.8 per cent (26.1 per cent Hill-Mountain Janajatis and 9.75 per cent Tarai Janajatis).
Madhesis	Including the Tarai Dalits in this category, Madhesis constitute 19.23 per cent of the total population of Nepal. If Tarai Janajatis are included as well, the Tarai-origin population would be 28.97 per cent. Excluding Tarai Janajatis and Tarai Dalits, the rest of the Madhesi population is 14.77 per cent of the population.
Dalits (Madhesi Dalits and Hill Dalits)	12.58 per cent (8.1 per cent Hill Dalits and 4.5 per cent Tarai Dalits).
Muslims	4.4 per cent.
Christians	1.4 per cent.

Source: Groups taken from Sharma (2014); Sharma (2008); CBS (2012).

Note: The Census figures are generally contested by all the minority groups listed in the table, with each claiming a higher share of the population.

[E]thnic, 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<sup>4</sup>.

At the time of writing this report it was not clear which of the 125 caste/ethnic groups would qualify as a ‘minority’. However, following a UN document on minority rights that states that the main requirement to be counted as a minority group is to be in a non-dominant position (United Nations Office of the High Commissioner, 2010), this chapter uses this definition to consider the country’s ethnic, linguistic and religious groups – Dalits, Janajatis, Madhesis, Muslims and Christians –all of whom are in a non-dominant position in one way or another (see Table 1).<sup>5</sup>

## Historical context and constitutional provisions

The modern state of Nepal was created by Prithvi Narayan Shah in the mid-to-late 18th century. Its consolidation during the Rana regime (1846-1951) was based on the organizing ideology of the Hindu caste system and nation-

4. ‘Part - 34, Definitions and Interpretations,’ The Constitution of Nepal 2015.

5. The 2015 Constitution also used the terms ‘minority/minorities’ and ‘marginalised’ consistently in tandem, providing further cause to equate ‘marginalised’ with ‘minority’ in the case of Nepal.

al integration was attained through a default ‘unification’ of diverse groups. As a unifying framework, the caste system codified in the Muluki Ain (National Code) of 1854, subsumed the different languages, customary laws and religious, social and cultural traditions found in the country into one overarching framework informed by Hindu religious law. Further, it also ranked the different social groups in Nepal according to Hindu concepts of ritual purity and pollution, thus institutionalizing inter-group discrimination and marginalization (Gaige, 1975).

Nepal has undergone major shifts in its constitutional and legal framework since the end of the Rana rule, starting with the abortive 1948 Constitution by the dying regime and through the Constitution of 2015. It took until the 1990 Constitution, when the country shifted from an autocratic monarchy-based system to a multi-party democracy, for statutory recognition of Nepal’s great socio-cultural diversity as well as the inherent inequities inherited from the past.

### ***The 1990 constitution***

The 1990 Constitution declared Nepal a ‘multi-ethnic, multi-lingual, democratic, independent, indivisible, sovereign, Hindu, Constitutional Monarchical Kingdom’ and granted ‘equality before law and equal protection of law.’ It made special provisions to secure the interests of ‘women, children, incapacitated persons or those who belong to a class of socially, economically and educationally backward groups.’<sup>6</sup> Despite these positive developments, the Constitution contained provisions that were discriminatory towards different groups. For instance, Hindu statehood was retained, privileging Hindu norms and values; Nepali language was declared the

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6. Hence, Article 26(2) stated: ‘The State shall...pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.’ Likewise, Article 26(10) stated: ‘The State shall pursue a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health, and employment.’ But the 1990 Constitution had no reference to Dalits, Adivasi Janajatis and Madhesi as historically marginalized groups. Because of the absence of any specific reference to these groups, a case was filed in the Supreme Court against the affirmative action policy of the government relating to a scholarship grant for higher education. The dispute arose because it was claimed that Dalits and Adivasi Janajatis were not clearly mentioned in the 1990 Constitution as the targeted beneficiaries of the policy. There was only a vague provision of special measures for those who were economically and socially backward. Since no law had been enacted pursuant to this provision the policy was challenged. The Supreme Court issued a directive order in 2004 for the enactment of a law to implement the provision for affirmative action.

language of the nation even though other native languages were to be allowed in schools up to the primary level. Hence, though Articles 11.2 and 11.3 mentioned religion, race, sex, caste, tribe or ideological convictions as the bases for non-discrimination, language was not mentioned. Further, Article 112.3 restricted the mobilization of socio-cultural groups for collective welfare and empowerment and constrained political choices (Lawoti, 2005).

### ***The interim constitution 2007***

The Interim Constitution (IC) of 2007 marked a significant departure from the 1990 document. One of the key objectives of IC, which itself had emerged from the Comprehensive Peace Agreement (CPA) between the state and the Maoists after a decade-long conflict, was the commitment to progressive restructuring of the state. As a result, IC declared Nepal to be a secular,<sup>7</sup> democratic, federal state in an attempt to address the ‘problems’ that the state had been facing on the basis of class, ethnicity, religion and gender while undertaking ‘an inclusive, democratic and progressive restructuring of the state.’<sup>8</sup> Its 4th amendment in May 2008 abolished the monarchy and declared Nepal a federal republic. Similarly, IC also emphasized the need to strengthen national unity by maintaining cultural diversity through the promotion of healthy and harmonious social relations. It also explicitly recognized Dalits, Adivasi Janajatis and Madhesis as historically marginalized groups requiring special treatment from the state.<sup>9</sup>

The Fundamental Rights enshrined in IC were: right to life; right to a (criminal) justice system; right against preventive detention; right against torture; right against exploitation; and right against exile. The provisions relating to inclusion incorporated in IC were: right against untouchability and racial discrimination (Article 14), positive discrimination for Dalits, women, indigenous/ethnic groups, Madhesis, farmers and other socially and economically marginalized communities (Article 13[3]); and proportional

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7. Nepal was declared a secular state in May 2006 following the Second People’s Movement against a monarchy that had usurped power in the previous years.

8. Preamble, Part 1, Article 3, 5; Part 3, Article 13, 14, 1; Part 4, Article 33, 35 (3); Part 7, 63 (3.a) and (4.5); Part 16, Article 142 (4), Part 17, Article 138 of the Interim Constitution of Nepal 2063 (2007).

9. The 1990 Constitution recognized the existence of different ‘communities’ in the country when dealing with the right to culture and education (Article 18), different ‘denominations’ when dealing with the right to religion.

representation of women, Dalits, Madhesis, indigenous/ethnic groups and other oppressed groups in the state structures (Article 21).

### ***Constitution of Nepal 2015***

The latest Constitution of Nepal was promulgated on 20 September 2015 only to be immediately contested by the Janajatis and Madhesis, giving rise to a prolonged agitation in the Tarai. The major issues of contention were a demand for more proportional representation (PR) seats, demarcation of electoral constituencies on the basis of population, re-organization of the proposed federal units and amending discriminatory citizenship laws, along with the demand that past agreements between the government and different groups be honoured. Compared to IC, the 2015 Constitution reduced the proportion of PR seats in Parliament from 56 per cent to 40 per cent while the issue of proportional inclusion was not mentioned in the case of accommodating minorities in different state structures. As a response to the Tarai agitation, the Constitution was amended in January 2016 and the principle of proportionate inclusion in state bodies (Article 42) was introduced while the demarcation of electoral constituencies would consider population as the main basis and geography as the second point (Article 84).

## **Methodology and data collection**

This chapter looks at the state of Nepal's minorities in a historical context and examines the last three constitutions of Nepal that can be considered relatively inclusive: the 1990 Constitution, the Interim Constitution of 2007 and the 2015 Constitution. It analyses how the current Constitution measures up to international standards vis-à-vis minority rights. Using publicly available data, it delves into specific themes:

- i. Right to life and security with a focus on the criminal justice system;
- ii. Right to non-discrimination and equality by looking at indicators of socioeconomic attainments in education, health, poverty and employment;
- iii. Right to participation, providing an overview of the representation of minorities in national government institutions; and
- iv. Right to culture and identity with an overview of the denial and attainment of identity and cultural rights.

The information presented in this chapter is derived from sources such as national censuses and surveys as well as human development reports

from different years to provide a comparative perspective on the status of each group. Data on representation in various state organs was collected from the respective bodies and also from reports from organizations working on minority issues as well as other available literature.

## **Limitations**

A study of minorities is inherently complex, particularly in a country like Nepal that is home to numerous minority groups, which have not yet been recognized as such. A major challenge was the difficulty in obtaining caste/ethnicity and gender-disaggregated data on the various indicators considered. Lack of standardized data on violence did not allow for a systematic study in comparative terms. The biggest limitation, however, is the absence of almost any kind of data on Christians. Nepal's rapidly changing political context was also challenging, particularly since it had a direct bearing on the content of this chapter.

## **Right to life and security**

Articles 3 and 9 of the Universal Declaration of Human Rights (UDHR) provide for right to life and security of every individual and protection against arbitrary arrest, detention or exile. These principles were subsequently translated into Article 9 of the International Covenant on Civil and Political Rights (ICCPR). These reminders are especially relevant for post-colonial regions like South Asia where the debate on human security has remained at the level of rhetoric and has not fed into policymaking even as groups demanding a more people-centred conception of security have challenged its 'military-centred' conceptions (Bajpai, 2000). In particular, struggles to re-define nationalism vis-à-vis increasing ethno-nationalist demands and the radical redefining of structural arrangements in Nepal have resulted in the 'securitization' of the state and the failure to institutionalize people-centred policies and bringing human security to the fore. The state has invested the security forces with unprecedented power, resulting in the abuse of power at the cost of suffering of the most marginalized.

## **Structures and functions of the criminal justice institution**

All three constitutions—1990, 2007 and 2015—guarantee the right to justice to all citizens and require anyone detained to be informed about the grounds for arrest as well as be produced before a court of law with-

in 24 hours of the arrest. Article 14(4) of the 1990 Constitution provided protection against torture, and even though it mentioned compensation to the victim it was silent on punishment for perpetrators. Nepal also acceded to the United Nations Convention against Torture in 1991, and Article 26 the Interim Constitution and Article 22 of the 2015 Constitution provide for the 'right against torture'; they also say that any such act would be punishable by law and the victim would have the right to compensation.

At the same time, there are multiple shortcomings in Nepal's criminal justice system that not just promote impunity and foster human rights' abuses but also stand in contravention of the spirit of all the three constitutions. Some of these include extant legal provisions from an authoritarian past. For instance, Section 22 of the 1989 Public Security Act (PSA) grants immunity to state officials for any acts committed 'in good faith' in the course of their duty. PSA allows people to be held in preventive detention for up to 90 days on the orders of a local authority, which is normally the Chief District Officer (CDO). This period can be extended to six months with permission from the Home Ministry. Likewise, the equally draconian Anti-State Crimes and Penalties Act 1989 (ASCPA) contains provisions that are in clear breach of the Constitution as well as international obligations such as ICCPR (Amnesty International, 2003).

Nepal has not yet defined what constitutes crimes against humanity and extrajudicial killings. The Enforced Disappearances Enquiry, Truth and Reconciliation Act 2014, enacted to look into excesses committed during the decade-long Maoist conflict, defines gross violations of human rights but abstains from including provisions in line with the Rome Statute, such as Article 7 that specifies 'crimes against humanity' consisting of, among others, 'imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law' and 'persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender.'<sup>10</sup> The 2014 Act only mentions murder, abductions, enforced disappearances, physical and mental torture, mutilations, physical disabilities, rape and sexual violence and any kind of acts inconsistent with international human rights or humanitarian laws or other crimes against humanity. The act, however, also contains provisions for amnesty even in the most serious cases of human rights violations and that, too, without the

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10. The Enforced Disappearances Enquiry, Truth and Reconciliation Act 2014; Rome Statute Article 7. Retrieved from: <http://www.preventgenocide.org/law/icc/statute/part-a.htm> .

consent of the victim. These provisions were retained over the objections of the National Human Rights Commission (NHRC) although with the Supreme Court having nullified some of them it is not clear how the act will be implemented.<sup>11</sup>

The 1959 Army Act contained provisions for a court of inquiry board and a court martial for violations of the act. But nothing in the 1959 Act or any other law requires the army to release full and complete details of court martial proceedings or other such judgments, even if a first information report (FIR) has been filed and the civilian police has commenced criminal investigations on the matter. This has obstructed investigations into alleged extrajudicial executions and other abuses. For instance, in the well-known Maina Sunar case, in which a 15-year-old Dalit girl was killed by the Nepal Army in 2004, the army's refusal to share the findings of the court martial with the police and her family, despite a court directive, is a case in point (Amnesty International, 2013). In another example, in 2015 the Bardiya district police office refused to register FIRs in six cases of political killings during the Maoist conflict, despite a 2014 order from the Appellate Court in Nepalgunj.<sup>12</sup> Similarly, the widespread torture and at least 200 disappearances after arrests by security forces in Bardiya district during 2001 to 2003, in which the vast majority of victims were from the disadvantaged Tharu community, indicates the vulnerability of marginalized groups to atrocities at the hands of security forces (International Crisis Group, 2010). More recently, during the agitation in the Tarai following the promulgation of the 2015 Constitution, more than 50 people, most of them of Tarai origin, lost their lives (Human Rights Watch, 2015).

Although difficult to come by, there is some evidence that members of minority groups fare worse at the hands of the security forces. As a report of the Nepali human rights organization, Advocacy Forum, on the situation in the Tarai details detainees belonging to groups such as Muslims and other Tarai groups are more likely to be tortured while those from Bahun-Chhetri groups are least likely to face the same fate (Kathmandu Advocacy Forum, 2010)

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11. The Enforced Disappearances Enquiry, Truth and Reconciliation Act 2071; Rome Statute Article 7. Retrieved from: <http://www.preventgenocide.org/law/icc/statute/part-a.htm> .

12. Advocacy Forum, Asian Human Rights Commission, the Redress Trust, World Organization against Torture, 'Submission to the United Nations: Universal Periodic Review,' 23rd Session of the Working Group on UPR, Human Rights Council, 22 March 2015.

## Grievance redressal mechanisms

As stated earlier, Nepal's justice delivery system faces major shortcomings. Most cases never make it to the courts. Criminal cases reported to the police are most often dealt with by the police itself. Since there is no accountability for failure to investigate cases, there is little incentive for the police to register and investigate cases.<sup>13</sup> Many civil cases are mediated through traditional or informal means, while others do not reach the courts because citizens do not understand the court system, the legal process, or more broadly, their rights as citizens. There has been little systematic education to raise awareness about the role of the courts, how they can protect citizens' rights, or what rights citizens possess. Judicial independence is further hindered by political pressure as well as the general perception that judicial appointments are driven by political partisanship (James et al., 2015).

Confidence in the justice system's institutions is further weakened by the historic exclusion of many groups. The police, courts and government prosecutors' offices consist predominantly of men from 'upper castes' who lack sensitivity towards the social diversity of Nepal. Excluded groups face cultural resistance and structural barriers in entering professions in the judicial sector. While most lawyers begin their careers with unpaid 'apprenticeships', women and men from marginalized groups often lack financial or other means of social support to complete this stage. They find it difficult to break into professional networks dominated by men from the traditionally dominant castes. The judicial sector, hence, does not represent Nepal's social diversity, reducing confidence about fair treatment among the marginalized (James et al., 2009). This situation has, however, started changing with the provision of reservations in government service since 2007, but its impact is yet to be felt fully in terms of having such groups better represented in the higher echelons of the judicial service.

Criminal proceedings and decisions by quasi-judicial authorities take place behind closed doors and generally without defence lawyers or by following standardized procedures, public hearings and witnesses. Such practices also impede the process of fair trials. Quasi-judicial authorities such as CDOs and district forest officers (DFO) often do not have even the basic training in legal or judicial matters and are not independent since they are also part of the executive branch of the government (Adhikari, 2013).

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13. Advocacy Forum, Asian Human Rights Commission, the Redress Trust, World Organization against Torture, 'Submission to the United Nations: Universal Periodic Review', 23rd Session of the Working Group on UPR, Human Rights Council, 22 March 2015.

There are only limited legal aid services available to disadvantaged Nepalis: the first is where the Supreme Court appoints and supervises a member of the bar as a 'stipendiary advocate' in most courts; and the second, launched under the Legal Aid Act of 1997 and administered by the Ministry of Law and Justice, relies on legal aid committees set up in collaboration with local bar cells in each district to assess legal aid applications and appoint private lawyers to act for those granted assistance. However, both schemes are poorly funded and the absence of a system for monitoring their effectiveness translates into only a low level of assistance to those eligible to use such services (James et al., 2009).

## **Right to non-discrimination and equality**

In Nepal, social and gender identity determine individual and group access to assets, capabilities and voice. In this regard, poverty outcomes, including indicators of economic well-being, human development and voice and political influence reflect the results of discrimination and inequality faced by minorities due to historical and cumulative discrimination and exclusion in Nepal (DFID, 2006). Being party to international agreements such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Nepal has an obligation to right these long-standing inequities since these instruments require ratifying states to grant all people 'the right of self-determination...[to] freely determine their political status and freely pursue their economic, social and cultural development' (Article 1, ICESCR) and to do all it can to eliminate such discrimination (Article 2[2], ICERD).<sup>14</sup>

In 2007, Nepal also became the only country in Asia to ratify the Indigenous and Tribal Peoples Convention 1989 (ILO Convention 169) along with the United Nations Declaration of the Right of Indigenous Peoples

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14. Article 2(2) of ICERD states, States parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

15. This was part of the agreement with the agitating Nepal Federation of Indigenous Nationalities (NEFIN) and the Indigenous Nationalities Joint Struggle Committee in September 2007.

(UNDRIP).<sup>15</sup> However, the National Action Plan on ILO Convention 169 has not been implemented yet and is pending cabinet approval since being drafted in 2009. Likewise, the Committee on Natural Resources, Economic Rights and Revenue Allocation of the first Constituent Assembly had called for inclusion of the provision '[t]o ensure prior use rights to the indigenous, ethnic and other communities in natural resources and their use' in the Preamble to the Constitution ([http://www.ncf.org.np/upload/CA/concept\\_paper\\_Natural\\_Resource.ENG.pdf](http://www.ncf.org.np/upload/CA/concept_paper_Natural_Resource.ENG.pdf)). But the dissolution of that CA meant such provisions calling for greater social inclusion in the Constitution died a quiet death.

On the other hand, the 2015 Constitution has continued to uphold the principles of non-discrimination and equality while the practice of untouchability has been made a punishable offence. In practice, however, the government has not been able to fully safeguard all these rights. Additionally, the 2015 Constitution fails to guarantee collective rights over traditional territory, land and resources in line with UNDRIP and ILO 169, which the Adivasi Janajatis have demanded as inalienable individual rights in the Constitution.

## **Cases of identity-based violations**

The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act was adopted by Nepal in 2011. This act states that if any one commits or causes to commit any act of discrimination shall be deemed to have committed caste-based discrimination and untouchability, and is liable for punishment.<sup>16</sup> However, the mechanisms to eliminate such discrimination are not effective and only a few cases relating to untouchability have been lodged in the courts.<sup>17</sup> Most police officers are either unaware that caste-based discrimination is a crime or they are reluctant to file cases in the name of maintaining social harmony and instead tend to pressure victims

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15. This was part of the agreement with the agitating Nepal Federation of Indigenous Nationalities (NEFIN) and the Indigenous Nationalities Joint Struggle Committee in September 2007.

16. Caste-Based Discrimination and Untouchability (Offence and Punishment) Act 2011 (2068). Retrieved from [http://www.ilo.org/wcmsp5/groups/public/--ed\\_protect/--protrav/--ilo\\_aids/documents/legaldocument/wcms\\_190732.pdf](http://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--ilo_aids/documents/legaldocument/wcms_190732.pdf).

17. 'The NHRI Nepal Joint Submission for The Second Universal Periodic Review of Nepal' submitted to the United Nations Human Rights Council, Geneva, and submitted by the National Human Rights Commission, the National Women's Commission and the National Dalit Commission on 22 March 2015.

to withdraw their complaints. According to one report of the 18 registered cases related to caste-based discrimination and untouchability that reached the courts, none of the perpetrators was sent to jail and instead they were imposed paltry fines with small compensations provided to the victims. In fact, in two incidents the victims were forced to change their cases of physical assault stemming from caste discrimination into cases of slander under the less serious State Case Act 1990 and Libel and Slander Act 1959 (Kisan et al., 2015).

According to the Office of the Attorney General's annual reports, 10 cases related to untouchability were taken to the courts in the fiscal year 2014-15, which represent a decline from the 14 in the previous year (Pun, 2015) and indicate either lack of awareness or foot-dragging on the part of police officials who often cite the absence of rules and regulations to implement the act.

The Nepal Social Inclusion Survey (NSIS) conducted by Tribhuvan University recorded that incidents of violations of the rights and security of Dalits and Muslims took the form of both verbal abuse and physical violence, while psychological abuse was reported to be the highest against Madhesi Dalits, Hill Dalits and Muslims. The latter groups also faced discrimination by being barred from entering private homes (CDSA, 2014a) (*see Box 1*).

## **Socioeconomic status of minority<sup>18</sup> groups**

### ***Multidimensional Exclusion Index (MEI)***

The Multidimensional Exclusion Index (MEI) developed by the World Bank measures the status of social exclusion/deprivation of 80 different caste/ethnic groups<sup>19</sup> along health, income, education and empowerment-related indices. The MEI is a tool developed to measure exclusion using three dimensions; economic life, social services and civic and social participation (Bennett and Parajuli, 2011).

According to the MEI measure, the Chepang-Raji-Raute-Kusunda cluster is the most excluded/deprived in Nepal with a MEI value of 0.53, whereas the Marwaris are the least excluded with a MEI value of 0.04, followed

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18. Details are given in Annex 2. Data on minorities in Nepal.

19. The 80 different caste /ethnic populations are classified into four categories: highly excluded, excluded, included and highly included.

### **Box 1. Setbacks and reasons for hope**

#### *Discrimination against Madhesi Dalits*

The Teacher's Service Commission had announced the fulfilment of the quota of three Dalit science teachers for the secondary level for the country's western region. There were only three applicants for the post, including Gulab Chandra Chamar (a Madhesi Dalit), as evident in the list of applicants provided on the website of the Western Regional Education Directorate. When the results were published, Gulab's name was missing and in his place was someone from a Hill Dalit community. Gulab's application form as well as his examination paper had both gone missing, and when he sought clarifications the officials refused to respond (<http://taraihumanrights.org/Details.php?news=106>).

#### *Caste-based Discrimination*

A couple was banished from their village in Gorkha district for inter-caste marriage. A Dalit boy named Ganesh married Jyoti, a Thakuri (hill high-caste) girl. The Thakuris not only evicted the couple from the village but also all members of Ganesh's family. The couple were to sit for their 12th Grade examination from the village school but were not allowed to do so and Ganesh's brother was also barred from attending school (Singh, 2016).

#### *Justice for Dalits*

There are some instances where some cases have been decided in favour of Dalits. For instance, in the attempted rape case of Maya Sarki in July 2013 in Belbari VDC of Morang, Maya and Manoj Bishwokarma, a local Dalit rights activist were publicly humiliated for accusing a local of a crime. Following investigations by the CDO's office and the Morang district court, in April 2014 the court penalized nine offenders with a fine of NPR 15,000 each (Kisan et al., 2015).

by the Thakalis, Kayasthas, Newars and Hill Bahuns. Musahars are the second-most excluded/deprived group with a MEI value of 0.47.

### **Poverty headcount ratio**

According to the Nepal Human Development Report (NHDR) (2014), poverty incidence or the poverty headcount rate for Nepal was 25.2 per cent. However, as can be expected, poverty levels varied according to social identities and locations—the highest incidence of poverty was among Hill Dalits (43.6 per cent) and Tarai Dalits (38.2 per cent), followed by Tarai middle

castes (28.7 per cent), Hill Janajatis (28.3 per cent), Tarai Janajatis (25.9 per cent), Muslims (20.2 per cent) and Tarai Brahmins (18.6 per cent). Hill Bahuns and Newars had the lowest incidence of poverty at approximately 10.3 per cent.

### ***The Human Development Index (HDI)***

In 2014, Nepal's HDI score was 0.458, the lowest in South Asia apart from Afghanistan.<sup>20</sup> Within Nepal, HDI scores varied significantly between minority groups and the rest of the population. Muslims had the lowest HDI value (0.422), followed by Dalits with an HDI value of 0.434 and Janajatis (excluding Newars) at 0.482. In contrast, the Bahuns/Chhetris had the highest HDI value of 0.557. In terms of intra-group differences, HDI for Madhesi Dalits was lower (0.400) than Hill Dalits (0.446); Tarai Janajatis (0.473) fared worse than Hill Janajatis (0.509).

### ***Education***

According to NHDR (2014), Nepal's adult literacy rate was 56.5 per cent. However, there were significant variations across different groups. The literacy rate of Janajatis overall was 66.93 (Hill Janajatis, 68.45 per cent; Tarai Janajatis, 62.48 per cent). Muslims had the lowest literacy rate (43.56 per cent), followed by Dalits (52.48 per cent) and Madhesi castes (55.49 per cent). Disaggregated further, literacy rates for Madhesi Dalits was only 34.50 per cent, significantly lower than Hill Dalits (61.93 per cent). Although all groups have seen significant attainments in higher levels of education, Hill and Tarai Dalits remained the lowest at the tertiary level with 2.1 per cent each followed by Tarai Janajatis at 3.1 per cent (CDSA, 2014b).

The percentage share of teachers from Dalit and Janajati groups by level and gender was also lower compared to their share in the population. Dalits made up only 4.9 per cent of the teachers at the basic level (Grades 1 to 8) while Janajatis did better at 28.1 per cent (DoE, 2015). The DoE Flash Report does not provide comparable data for other minority groups, although this percentage was much lower in proportion to their shares in the national population at 12.58 per cent for Dalits and 35.8 per cent for Janajatis.

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20. The Nepal Human Development Index (NHDI) measures long and healthy life, knowledge and standard of living. Healthy life is measured by life expectancy, knowledge is measured by adult literacy and mean years of schooling and living standard is measured by the gross national income (GNI) per capita in purchasing power parity.

## **Employment**

According to the 2011 Census Tarai Janajatis (72.9 per cent) had a higher rate of involvement in agricultural-related employment, followed by Hill and Tarai Dalits (69.3 and 69.4 per cent respectively) and Hill Janajatis (66.5 per cent). The figures for Hill Bahuns/Chhetris and Tarai Brahmins/Rajputs were 54.6 per cent and 39.6 per cent respectively and within the Hill Bahun/Chhetri group, the situation of Chhetris at 71.5 per cent was comparable to Tarai Janajatis whereas only 59.2 per cent of the Bahuns were engaged in agriculture (CDSA, 2014b).

## **Health**

The Nepal Demographic Health Survey (2011) showed that people from the Tarai faced greater problems in accessing healthcare despite travel being relatively easier in the region compared to the hills and mountains. Muslim women (86.3 per cent) and Tarai Dalit women (85.3 per cent) faced severe problems of accessibility, followed by Hill Dalits (79.2 per cent) and Hill Janajatis (72.9 per cent). Muslims (318), Madhesis (307) and Dalits (273) had the highest maternal mortality rates (MMR) per 100,000 live births, and while Janajatis (207) also fared better, Bahuns/Chhetris (182) and Newars (105) had the lowest MMR (Government of Nepal, 2013).

## **State programmes**

The 9th Plan (1998-2002) laid the foundation for introducing 'social inclusion' in government programmes and policies. It had a separate chapter on Janajatis with regard to their integration in society and in a first-ever instance it mentioned providing 20 per cent of the employment opportunities in the public sector to women ([http://npc.gov.np/images/download/ninth\\_eng\\_2.pdf](http://npc.gov.np/images/download/ninth_eng_2.pdf)). Moving ahead, the government adopted 'social inclusion' as one of its major policy objectives in the 10th Five-Year Plan (2002-07) (also known as the Poverty Reduction Strategy Paper). The 10th Plan envisaged social inclusion as the third pillar of poverty reduction and sought to include marginalized sections of the population and backward regions into the mainstream of development and also to make visible progress in reducing existing inequalities (Government of Nepal, 2007). The Three-Year Interim Plan (2007-10) also came up with special programmes for disadvantaged groups, including women, Dalits, Janajatis and Muslims (Government of Nepal, 2007). The Interim Plan, drawn up concurrently with the Interim Constitution 2007, introduced for the first time reservations for Dalits, women, Muslims, Madhesis and Janajatis to increase their participation in the education, health and employment sectors. The Interim Plan also

allocated budgets for each group—NPR 13 billion for Dalits, NPR 15 billion for Janajatis, NPR 10 billion for Madhesis and NPR 1.5 billion for Muslims. The current Three-Year Plan (2013-16) also has programmes to identify and amend legal and policy provisions aimed at marginalized groups.

Building on the goals and achievements of the previous periodic plans, the government's budget for 2014-15 (Ministry of Finance, 2014) has provisioned monthly stipends of NPR 1,500 to 3,000 for students belonging to low-income groups from Dalit, Chepang and Raute communities who have passed the School Leaving Certificate Examination with a first division from public schools. Similarly, announcements have been made that the government will bear all the costs for students from Dom, Badi, Chamar, Musahar and Dalit communities pursuing graduate-level studies in engineering and medicine. In addition, the budget speech also ensures that scholarships will be provided to intelligent, disabled, conflict-affected, liberated *kamlari* (former female bonded child labourers), marginalized and Dalit students.

Some vague provisions vis-à-vis Madhesis have also been inserted: 'Suitable mechanism of addressing Madhesi issues and mainstreaming them at various levels of the state will be developed. A policy of getting participation of Madhesi community in the process of programme preparation, implementation and monitoring related to the Madhes will be followed' (Government of Nepal, 2007). The said mechanism has been left undefined, hence it is difficult to measure any achievements in this regard.

The political context played an important role in shaping the focus of Nepal's different development plans. The 9th Plan was adopted when the Maoist insurgency was rising while the 10th Plan tried to head off the Maoist insurgency that was beginning to reach its peak. The 11th Plan was the most inclusive since it was formulated in the backdrop of the CPA and the 2006 People's Movement, both of which had inclusion at their core. However, these advances fizzled out in the 12th and the 13th Plans, and the emphasis reverted as earlier more towards poverty in general.

### **Government structures**

Gender Equality and Social Inclusion (GESI) units have been established in a number of key ministries to address the issue of marginalization of different social groups.<sup>21</sup> Gender itself had been given priority with the establishment of a Gender Responsive Budget (GRB) committee in the Ministry of Finance (Ministry of Finance, 2012) while a Gender Equity and Environ-

ment Division (GEED) has been functional in the Ministry of Agriculture and Cooperatives since 1992. These units, however, have still not integrated other dimensions of exclusion in their mandate. Even where GESI units/sections have been established, these are afflicted by the same problems that made the Gender Focal Persons ineffective – institutional failures to link their responsibilities to the core functions of ministries, inadequate technical qualifications of staff and lack of specific funds for activities.

A positive development with the 2015 Constitution is the statutory provision for various minority commissions—the Women’s Commission, Dalit Commission, Janajati Adivasi Commission, Muslim Commission, Madhesi Commission, Tharu Commission and an Inclusion Commission—although these have been given a mandate of only 10 years after which their fate will be re-evaluated. So far, the duties and responsibilities of these commissions have not been spelt out apart from the case of the pre-existing Dalit Commission and Women’s Commission.

## **Education**

In terms of education, Nepal has taken progressive measures such as adopting Education for All (EFA) as a national campaign. With the prime objective of ensuring access and equity in primary education, enhancing the quality and relevance of primary education and improving efficiency and institutional capacities, EFA has adopted both a pro-poor approach and targeted gender mainstreaming, while Dalit students have been singled out as the prime beneficiary group. The School Sector Reform Programme (SSRP 2009-15) (Ministry of Education, 2009), which complemented EFA, however, provided for special assistance only to Dalits (and residents of Karnali zone). An important aspect of SSRP is its institutionalization of traditional education systems such as madrassas, gumbas/vihars and gurukuls/ashrams to enable these bodies to meet the national standards of formal education. However, the Multilingual Education Implementation Guidelines 2009 are being implemented in only 24 schools even though the aim was to operationalize multilingual education in 7,500 schools by 2015 (Ministry of Education, 2009).

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21. These include the Ministry of Finance, Ministry of Health and Population, Ministry of Urban Development, Ministry of Women, Children and Social Welfare, Ministry of Cooperatives and Poverty Alleviation, Ministry of Agriculture and Cooperatives and the Ministry of Federal Affairs and Local Development. The Ministry of Education has an Inclusive Education section and a Gender Equity section.

## Right to participation

The aim of minority rights' regimes set forth in international instruments such as ICCPR is both right to diversity and removal of structural barriers to equal opportunities and participation by members of minority groups. Recognizing that different groups have in the past faced multiple discriminations, Nepal sought to address such historical inequities through constitutional and legal frameworks. Additionally, realizing that formal equality or 'equal treatment' is not always sufficient to ensure equal rights and opportunities for historically disadvantaged groups, special measures including affirmative action policies, have also been introduced to 'level the playing field' for members of such groups.

### Legal and policy framework

#### *Constitutional provisions*

The Preamble of the 2015 Constitution commits the state to creating 'an egalitarian society on the basis of the principles of proportional inclusion and participation to ensure equitable economy, prosperity and social justice'. Accordingly, specific provisions in the Constitution to promote participation of minority groups include:

- Article 40(1), giving Dalits the right to proportionate participation in all agencies of the state.
- Article 70, which requires that the President and the Vice-President belong to different gender or macro-ethnic categories.
- Articles 83, 84, 88(2) and 176, which provide for a parliament at the federal level and assemblies at the provincial, while ensuring a degree of inclusiveness within the legislative bodies.

#### *Legal provisions*

The 2007 amendment to the Civil Service Act 1991 set aside 45 per cent of the civil service positions for different marginalized groups. Accordingly, 15 per cent of all the seats are reserved for women, 12 per cent for Janajatis, 10 per cent for Madhesis and 4 per cent for Dalits (and 2 per cent for the disabled and 2 for 10 districts identified as backward). The only comparable earlier legislation is limited to the Local Self-Governance Act 1999 that stipulated that village, municipal and district councils have at least one Dalit member.

## ***Progress in Increasing Participation***

### ***Political Representation***

In the three parliaments in the post-1990 period, only one Dalit had been elected. Their representation under the existing first-past-the-post (FPTP) system was 0.5 per cent in 1991 and nil in both 1994 and 1999. Even in the 2008 Constituent Assembly, which is considered a landmark for its inclusivity, Dalits managed to secure just 2.9 per cent of the seats under that system, a figure that went down to 0.8 per cent in 2013 (Vollan, 2015). Representation of all the other minority groups was considerably better and with the introduction of quotas in the proportional representation (PR) part of the CA elections of 2008 and 2013, their presence became more pronounced although with the exception of Tarai Janajatis overall it went down in the second CA.

Although better than that of Dalits, political representation of Muslims too has been far from satisfactory. No Muslim candidate was elected in the 1959 elections and the king nominated one Muslim to the national legislature in 1960 and 1963. Two Muslim candidates were elected to the national legislature, the Rastriya Panchayat, in 1981, while there was only one nominated member in the 1986 Rastriya Panchayat (Gaborieau, cited in Sijapati, 2012). Muslim representation was steady in the years after 1990: 2.4 per cent in 1991, 2.4 per cent in 1994 and 2.0 per cent in 1999. The 2008 CA saw 16 Muslims elected including, for the first time, four Muslim women (*see Table 2*).

The record in the executive branch, however, has not been altogether encouraging despite all the focus on creating a more inclusive polity. The first cabinet formed after the promulgation of the 2015 Constitution reflected this regressive tendency, with nearly two-third of the members of the cabinet belonging to the dominant Khas-Arya group (*see Table 3*).

In fact, the record of previous cabinets in the transitional period (2007 to 2015) is also quite mixed. None of the cabinets demonstrated the kind of inclusiveness that has been possible in the two constituent assemblies (*see Figure 1*).

### ***Representation in government structures***

Historically, there has been poor representation of minorities in the administrative structures of the state such as the civil services, the judiciary

**Table 2. Representation in the Constituent Assembly 2008 and 2013 (Caste/Ethnicity)**

Caste/Ethnicity	2008				2013			
	First-Past-The-Post		Proportional Representation		First-Past-The-Post		Proportional Representation	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Hill Castes	99	41.3	94	28.1	132	55	102	30.4
Hill Mountain Janajatis	61	25.4	90	26.9	46	19.2	89	26.6
Tarai Janajatis	17	7.1	28	8.4	21	8.8	32	9.6
Hill Dalits	6	2.5	29	8.7	1	0.4	26	7.8
Madhesi Dalits	1	0.4	15	4.5	1	0.4	11	3.3
Madhesi Caste	50	20.8	69	20.6	34	14.2	61	18.2
Muslims and Sikhs	6	2.5	10	3.0	5	2.1	14	4.2
<b>Total</b>	<b>240</b>	<b>100.0</b>	<b>335</b>	<b>100.0</b>	<b>240</b>	<b>100</b>	<b>355</b>	<b>100</b>

Source: NHDR (2009); Vulliam (2015).

Note: This data does not include the 26 nominated seats.

and security forces. The presence of Janajatis is substantial in the security services although that is generally limited to some Hill Janajati groups only.

However, after the 2007 amendment of the Civil Service Act and the provision of quotas, there has been some progress although not to the extent possible as evidenced in the 2009-12 period, when unavailability of appropriate candidates and the poor performance of those who attempted to get in resulted in less than 40 per cent of the seats set aside for minority groups being filled up (Awasthi and Adhikary, 2012).

Since Muslims are not considered a separate category for reserved quotas, there is no information on how the new provision has affected their participation in government service.

Security forces, mainly the Nepal Army, have remained inherently exclusive vis-à-vis Madhesis. The presence of Madhesis in the security forces has remained practically negligible. To rectify this situation, in 2007 the Nepal Army established a new battalion to include Madhesis (Nepalnews.com, 2015), but the participation of the Madhesi community in the Nepali Army continues to remain low.

### ***Citizenship***

The 2015 Constitution retained citizenship provisions that directly discriminate against women by declaring that, ‘in case of a person born to Nepali woman citizen married to a foreign citizen, he/she may acquire naturalized citizenship of Nepal as provided for by a Federal law if he/she is having the permanent domicile in Nepal and he/she has not acquired citizenship of the foreign country.’ This impinges on equal citizenship rights for women to confer full citizenship to their children since naturalized citizens are not allowed to hold any constitutional positions. This provision is particularly discriminatory towards Madhesis because cross-border marriages are highly prevalent in the Tarai and so children born to Madhesi women and domiciled in Nepal will forever be denied the opportunity to rise to the high levels of governance.

## **Right to culture and identity**

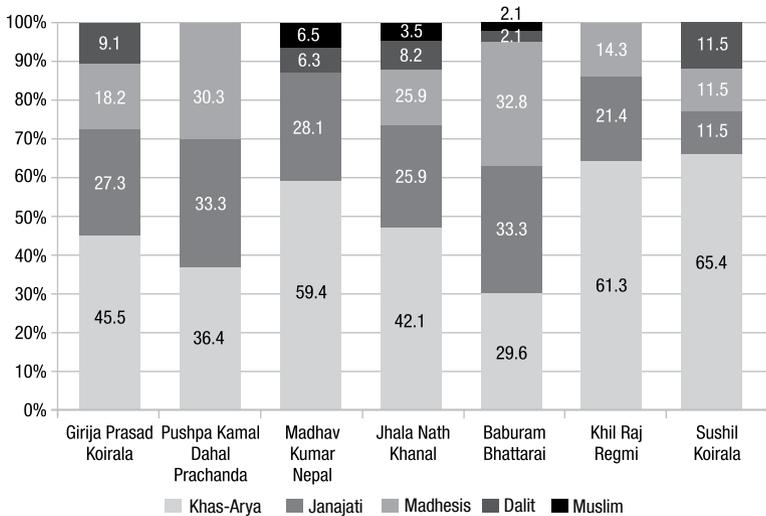
Despite acceding to ICCPR, which states that where ‘ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of this group, to enjoy

**Table 3. Social Composition of First Council of Ministers formed after the 2015 Constitution**

Caste/Ethnicity	Number of Ministers	Percentage
Khas-Arya	25	62.5
Hill Janajati	5	12.5
Tarai Janajati	2	5.0
Tarai Caste	5	12.5
Hill Dalit	1	2.5
Tarai Dalit	1	2.5
Muslim	1	2.5
<b>Total</b>	<b>40</b>	<b>100</b>

Source: <http://www.opmcm.gov.np/en/council>.

**Figure 1. Social Composition of Council of Ministers under Prime Ministers, 2007-2015**



Source: Dhruba et al., (forthcoming).

Note: The figures represent the number of individuals who were nominated as ministers and does not reflect the duration of their office terms.

their own culture, to profess and practice their own religion or to use their own language' (Article 27), in law and practice, the Nepali state continues to place curbs on these rights. Historically, this began with the process of sometimes-forced adoption of the Nepali language and Hindu religion. Ever since the emergence of Nepal as a modern nation-state in 1769 and through the end of the Panchayat system (1960-90), the rulers have promoted a doctrine of 'one nation, one culture, one language, one religion' to the exclusion of minority languages (Turin, 2007). Till 1991, discussions about ethnic difference or inequalities were jailable offences (Miklian, 2008). Under Panchayat rule, the supreme status ascribed to Nepali language left little incentive for mother tongue Nepali speakers to learn minority languages, while political, educational, developmental and administrative activities required speakers of other languages to learn Nepali (Turin, 2007). Many members from Janajati groups from the middle hills adopted both the language (Nepali) and the culture of the dominant group in this period.

The 1990 Constitution provided a slight departure from this policy by preserving Nepali as the 'language of the nation' but also designating all languages spoken as mother tongues in the country as 'national languages' and guaranteed the right to primary education in these languages (Gellner, 2015). The latter right, however, was never brought into practice by the state, and neither were the 'national languages' accorded any kind of official sanction. A well-documented case is that of the independently arrived decisions in 1997 by the Kathmandu municipality to use Newari and by the Dhanusha District Development Committee and Rajbiraj municipality to use Maithili as languages of communication in addition to Nepali. The Supreme Court ruled that the use of regional languages by local bodies was unconstitutional and illegal (Turin, 2007), and there has been no judgment so far to reverse this decision. But in an indication of how far the ground has shifted over time, following the uproar by Vice-President Parmananda Jha taking his oath of office in Hindi, ruling on a case filed before it, the Supreme Court decided that taking the oath in one's mother tongue was not unconstitutional, and Jha took his oath once again—in Maithili. Given that the 2015 Constitution provides federal units to determine one or more languages in addition to Nepali as the official language, a start has been made in some district courts to appoint, at government expense, interpreters.<sup>22</sup>

In terms of religious freedom in an apparent step back from the Interim Constitution, which had categorically defined Nepal as a secular state, the

## Profile of a vulnerable minority:

### Musahars

Musahars are a historically marginalized and highly excluded Dalit caste group from Nepal's Tarai region. This case study describes the current status of Musahars in Nepal and provides an overview of their historical background and how they continue to be discriminated against and marginalized by landowners and the state.

The origin of Musahars in Nepal is linked to the history of Musahars in India. Musahars believe that they are the descendants of the Kol tribe of the Chhota Nagpur Plateau in eastern India. Being landless, their ancestors migrated to Bihar in the 12th century to serve as agricultural labourers and remained the largest labour force there (Kumar, 2006). The term 'musahar' is derived from *masa*= 'flesh' and *hera*= 'seeker' (Dahal et al., 2014). However, it has since been distorted by the mainly Hindu Brahmin *jamindars* (Kumar, 2006), to mean 'rat-eaters'.

Musahars are found mainly in the eastern and central Tarai districts of Siraha, Saptari, Dhanusha, Sunsari, Morang, Udayapur, Mahottari, Bara, Parsa, Sarlahi, Rautahat and Nawalparasi. According to the 2011 Census, Musahars formed 0.89 per cent of the population of Nepal and constituted the second-largest Tarai Dalit group. Although there is a lack of records about the history of Musahars in Nepal, it is believed that they entered and settled in the plains of Nepal during the Rana regime working as labourers—clearing forests for agricultural land and working for the extension of the railways between Nepal and India. As labourers, Musahars were bonded to the *jamindars* in the Tarai during the Rana regime and were treated as untouchables (Dahal et al., 2014; Salter and Gurung, 1999). Musahars claim that they have no specific ritual occupations among the Hindu caste groups and that they are an ethnic group with their own distinct cultural identity and proximity to the Bhil and Munda tribes in India (Giri, 2012).

### Discrimination and Marginalization of Musahars

According to the Census 2011, the literacy rate among Musahars was only 21.8 per cent, which was far below the national average of 65.9

... contd. ...

2015 Constitution qualified ‘secularism’ to mean ‘religious, cultural freedom including protection of religion and culture handed down from time immemorial’, the latter being an explicit reference to Hinduism with its use of the term ‘sanatan’ in the Nepali original of ‘time immemorial’. Further, the cow has been retained as the national animal, which impinges on the food culture of some indigenous and religious groups (Constitution of Nepal, 2015). The Nepali state has long punished members of Janajati communities who kill cows for consumption with jail terms extending up to 12 years. In 2013 and 2014 alone, at least 38 individuals belonging to Janajati groups were either serving prison time or facing prosecution on charges of cow slaughter (Ghale, 2015).

## Religious minorities of Nepal

### Muslims

According to the 2011 Census, Muslims in Nepal constituted the third largest religious group with a 4.39 per cent share of the population. Muslims have registered consistent growth over the years from their share of only 2.54 per cent in 1952.<sup>23</sup> Muslims in Nepal are primarily rural, with 85 per cent residing in rural areas (CBS, 2014).<sup>24</sup> They form the largest population group in five Tarai districts—Banke (21.10 per cent), Rautahat (19.47 per cent), Kapilvastu (19.42 per cent), Parsa (15.41 per cent) and Bara (13.43 per cent). In five other Tarai districts, Dhanusha, Mahottari, Sarlahi, Sunsari and Siraha, Muslims constitute the second largest group (CBS, 2001).

Muslims fare poorly on major socioeconomic indicators. The literacy rate of Grade 5 and above is only 43.6 per cent among Muslims (as compared to the national average of 65 per cent). Muslims have only 3.24 mean years of schooling—the least for any social group in Nepal. Their per capita income of US\$695 is also among the lowest; although minimally better than Yadavs and Madhesi Dalits (US\$671 and US\$616 respectively), it is substantially lower than the national average of US\$1,160 (NHDR, 2014) (*See also Annex 1.*)

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22. For instance, the Chitwan District Court has provided for interpreters in 11 different languages while it was reported that the Panchthar District Court has appointed interpreters for 14 languages. <http://kantipur.ekantipur.com/news/2016-04-04/20160404073956.html> and <http://gorkhapatraonline.com/news/28569>.

...Profile of a vulnerable minority continued ...

per cent. Further, the National Social Inclusion Survey (2012) revealed that only 0.69 per cent Musahars had attained education up to the intermediate level. According to the Multi-Dimensional Exclusion Index, Musahars were located at the very bottom among all the caste and ethnic groups in Nepal (Bennet and Parjauli, 2011). Political participation of Musahars at all levels was negligible as was their presence in the civil services (NHDR, 2009).

Musahars have been economically, politically and culturally marginalized. The practice of untouchability continues to be a major problem for the community since it leads to their exclusion even from public places such as drinking water sources. Landlessness is a major cause of the economic and political marginalization of Musahars (Dahal et al., 2014), who dependent on the landowners for their survival. After the 2001 abolition of the *haruwa-charuwa* practice, which bound them to their landlords, Musahars have started working as free labourers, making their living as agricultural labourers, by fishing, selling firewood and pulling rickshaws.

Specific socioeconomic developments programmes targeted at Musahars are lacking. On the contrary, development interventions such as those relating to community forestry and national parks have ended up displacing and further marginalizing Musahars from their livelihoods (Paudel et al., 2007).

### **Poor over Generations**

Fifty-year-old Bombholi Sada is a resident of Babhangamakatti village in Saptari district. His father, Bechan Sada, spent his entire youth and old age as a servant for an affluent family in the village. Bombholi also spent his entire youth as a cowherd for others. His late brother, Sakunta, worked as a labourer until he was killed in a machine accident in Punjab. Not only Bombholi and Sakunta, but all the five sons of Bechan spent their lives as labourers. Bombholi's grandfather also worked as a servant until he died. Bombholi's son works as a tractor labourer. No one in his family has received any education. Bombholi said, 'For many generations, we have been working for others and we have remained poor and we have survived somehow.'

... contd. ...

### ***The National Muslim commission***

Despite the history of Muslim settlements in Nepal going back to the early 16th century, until recently there was no recognition of Muslims as a separate religious and cultural group. Equal citizenship was not granted to Muslims by the Nepali state until 1962. Muslims were categorized as ‘impure but touchable’ in the caste hierarchy codified in the Muluki Ain (National Code) of 1854 (Hoefer, 2004). Acknowledging the extent of marginalization of the Muslim community, on 5 April 2012, the cabinet approved the formation of a Muslim Commission, which was given constitutional status by the 2015 Constitution (<http://www.nmc.gov.np/>).

### **Christians**

Christians make up another small religious minority in Nepal and currently account for 1.4 per cent of the total population.<sup>25</sup> It is believed that the first Christians came to the Kathmandu Valley in 1628 (Whelpton, 2005) and Christian missionaries have been arriving intermittently from the beginning of the 18th century (Lindell, 2002). After his conquest of Kathmandu Valley in the mid-18th century, Prithvi Narayan Shah expelled all the Christians along with the new converts. These exiled Christians settled in Bettiah in the Indian state of Bihar and returned to Nepal only after the demise of the Rana regime in 1951 (Rongong, 2012).

In 1947, Father Marshall Moran, an American Jesuit, arrived in Kathmandu to supervise the BA examinations at Tri-Chandra College, which was then affiliated to Patna University. Responding to entreaties by Kathmandu’s elite, the priest set up the St. Xavier’s School for boys in Kathmandu in

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23. Many Muslims and even Hindus in Nepal claim that the total population of Muslims reported in the Census is incorrect and that the precise figure for Muslims is anywhere between 6 to 10 per cent of the population. In the report ‘Indian Ethnic Groups in the Nepal Tarai. Ansari (1980), showed that the population of Muslims living in Sunsari district was more than 50,000, which is three times the number reported in the 1971 Census (19,373). The often-cited reasons for the under-representation of Muslims include: fear of being discriminated for being Muslim; use of Census data for possible conscription in the army; and imposition of more taxes (see also Siddique 2001, Dahal 1978). These reasons imply that Muslims strategically under-represent themselves, but as a 2014 Census of a VDC in Parsa district found, the 6.7 per cent Muslim population had been reported as zero (Ayub et al 2014).

24. Although Muslims can be divided into Hill Muslims and Tarai Muslims, the latter are so small that they were not even enumerated in 2011. In 2001, they numbered just 4,893 compared to the national Muslim population of 975,873.

*...Profile of a vulnerable minority continued ...*

Eighty-year-old Dular Sada of the same locality is in his twilight years. His father, Pachu and grandfather, Faagu, worked in the village. Until he got old, Dular worked at digging soil in the fields. His nephew, Bhutai, is also working as a labourer. 'In our family, there has been no difference from the time of grandfather till now. We earn during the day, eat at night, and start again in the morning. Fate has been like that. What can we do?'

'Leaders promise a lot during elections, but they have never come back and helped in improving our livelihoods,' said Dewan Sada, the leader of the locality.

Another local, Bulan Sada, said, 'Our main problem is land. Since we do not have land, we cannot even take the facilities provided by the government.'

The only Musahar who has achieved a high political position is Asarfi Sada from Saptari. He was a nominated member of the legislature-parliament in 2007-08. He is currently a leader of the UCPN (Maoist).

*Source: Jha (2016).*

1951 (Messerschmidt, 1977), marking the formal entry of Christians back into Nepal. A school for girls run by Catholic nuns, St. Mary's School, was established in 1954.

### ***Caste discrimination and Christianity***

It is claimed that growing poverty and religious and caste discrimination have contributed to the growth of Christianity. Although the focus has been on people from the 'lower castes' converting to escape an exploitative caste hierarchy, statistics indicate that people from all castes and ethnicities convert to Christianity. However, even among Christians, converts from

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25. Now Nepal has one of the fastest-growing Christian populations in the world, according to the World Christian Database, which tracks global trends in Christianity (<http://www.npr.org/sections/goatsandsoda/2016/02/03/463965924/why-nepal-has-one-of-the-worlds-fastest-growing-christian-populations>).

'lower caste' groups continue to be discriminated against (Bhattachan et al., 2009), while top positions in the Christian community are disproportionately occupied by converts from Hindu 'high-caste' backgrounds (Shah, 1993).

There is a dearth of writing on the Christians of Nepal. What is clear though is that Christians began their work in the name of modernization and contributed to different sectors such as education, health services, communication and transportation. But the Nepali state has always viewed Christians with suspicion with regard to proselytism, particularly during the Panchayat years. At the end of the Panchayat system in 1990, there were 30 persons serving jail sentences for conversion-related charges and another 200 had cases pending against them in different courts. All of them were granted amnesty when the interim government was formed. But, the 2015 Constitution continues to retain the discriminatory clause against Christians by considering proselytising a crime (Article 26[3]).<sup>26</sup> The ambiguity in the Constitution regarding what constitutes 'forceful conversion' and the right of an individual to change one's religious faith has provided the state with leverage against Christian communities and organizations. In another blow to the Christian community, coinciding with the promulgation of the 2015 Constitution, the practice of declaring Christmas a national holiday that had started after 2007 has since been stopped.

There have also been some attacks on Christians by right-wing Hindu groups who blame them for the introduction of secularism in 2006. In 2008, a Roman Catholic priest was killed in eastern Nepal and in 2009 an explosion in a church in Kathmandu killed three people. While physical attacks have ceased after members of the self-styled National Defence Army were arrested, Christians in Nepal still feel discriminated against and treated like untouchables (Timsina, 2013).

## Conclusion and recommendations

Nepal was under monarchical rule for a long time with most powers reposed in the king. In its efforts to institutionalize a monolithic state, the monarchy suppressed minorities and the diverse cultures of Nepal by denying

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26. Article 26 (3) states: 'While exercising the right as provided for by this Article, no person shall act or make others act in a manner which is contrary to public health, decency and morality, or behave or act or make others act to disturb public law and order situation, or convert a person of one religion to another religion, or disturb the religion of other people. Such an act shall be punishable by law.'

Good practice case study:

## Nepal Federation of Indigenous Nationalities

Since the re-introduction of multi-party democracy in Nepal in 1990, the issue of identity politics has strengthened people's claims on every structure of the government (Lowati, 2005). The shift in discourse to 'inclusion' within the 'mainstream' political and social institutions has become central in challenging structural inequalities based on caste, ethnicity, gender, religion and region (Gellner, 2003). One of the leading organizations in this struggle has been the Nepal Federation of Indigenous Nationalities (NEFIN).

### Brief history of NEFIN

NEFIN began life as the Nepal Federation of Nationalities (NEFEN), which was formed in 1990 as an umbrella organization of indigenous people (Onta, 2006). The founding members of NEFEN included eight organizations representing Gurung, Limbu, Magar, Newar, Rai, Sherpa, Sunuwar and Tamang communities. During the pre-1990 period, organizations representing different Janajati groups had been formed such as Chwasa-Pasa (1924), the Tharu Kalyankarini Sabha (1949) (Krauskopff, 2003), the Nepal Tamang Ghedung (1957), the Nepal Bhasa Manka Khala (1979) and the Nepal Langhali Sangh (1982) (Tamang, 2004). But NEFEN paved the way for a national-level network.

NEFEN changed its name to NEFIN in 2001. It currently consists of 48 organizations representing communities distributed throughout the Tarai, Hills and Himalaya of Nepal. The recognition of NEFIN's work has led to its involvement in different international fora such as the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the Asian Indigenous People's Pact (AIPP). Over time, with the help of international development partners, NEFIN has also led and coordinated projects with a particular focus on empowerment among which are the Janajati Empowerment Project (JEP and JEP-II) supported by the Department for International Development and Enabling State Programme (DfID/ESP), the Janajati Social and Economic Empowerment Project (JANSEEP) with Care Nepal and the European Union (EU) (JANSEEP) and the Sustainable Development of Disadvantaged Ethnic Communities in Nepal (SAMARTHYA) with Action Aid and EU.

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them fundamental rights to culture, language, citizenship and identity. This made Nepal's transition to democracy challenging since democratic consolidation, which is largely determined by participation in power-sharing and by addressing and reducing social inequalities, has yet to see significant progress. Although Nepal has made progress in its overall development indicators, it still fares badly in economic growth as compared to its South Asian neighbours, with the marginalized sections faring even worse. Dalits in particular fare badly on all socioeconomic indicators as well as on indicators of political participation. Nepal has acceded to most of the international conventions relating to minority rights even though it is yet to meet all its obligations under them.

Nepal made significant progress in its constitutional provisions with the Interim Constitution of 2007. Some of these gains were reversed with the 2015 Constitution. That this has not been fully accepted by marginalized groups such as the Madhesi is an indication of the state's failure to recognize and address the interests of minority and marginalized groups. The weakness of the state in ensuring fair distribution of resources, development flows and power-sharing among all sections of the population is clear. The deep-rooted marginalization of minority groups is also due to incoherent development plans and their ineffective implementation.

## **Recommendations**

- i. There is a need for a robust and categorical definition of 'marginalized' and 'minorities' with clear listings of caste, ethnic and religious groups. Further, these categories should be used in all sectors and for affirmative action to ensure effective representation.
- ii. Although government agencies have started disaggregating data by ethnicity and gender since the 1991 Census, there is a need for greater disaggregation of all relevant national data based on similar criteria. Given their increasing numbers, the data should also deal with Christians as a separate category.
- iii. The provision of different commissions in the new Constitution to address issues of minorities is a positive step and included in the duties and responsibilities of these commissions should be to defining the types of inclusion that will address the demands of these groups and monitor progress of the same.
- iv. The periodic development plans need to focus on gauging progress along different socioeconomic indicators by minority and marginalized

... Good practice case study continued ...

## **Campaigns and interventions**

Focusing on the need for the inclusion of this huge mass of population within the mainstream developmental agenda, NEFIN's demands in the main were (Bhattachan and Bhattachan, 2003):

- right to self-determination,
- ethnic autonomy,
- equal language rights, including a tri-lingual language policy and education in the mother tongue,
- secularism, and
- affirmative action.

It is a measure of NEFIN's advocacy work, along with other political processes that by the end of the 1990s, the Government of Nepal had considered introducing the following (Subba et al., 2008):

- right to education in the mother tongue,
- reservations for Janajatis in higher technical education,
- use of local languages in local offices,
- secularism,
- special or proportional representation and ethnic autonomy,
- establishment of a foundation/academy to preserve and promote Janajati languages and cultures,
- positive discrimination in government jobs,
- removal of discriminatory provisions in the Constitution, laws, by-laws and policies,
- recognition of rights to natural resources,
- disaggregated data by ethnicity and caste, and
- ratification of ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

## **Interventions and impact**

The objectives of NEFIN have been to develop unity and fraternity among Janajatis while also developing their leadership and capacities (NEFIN.org). The establishment of District Coordination Councils (DCCs) has been instrumental in this context. So far, NEFIN has established DCCs in 69 districts (NEFIN.org), paving the way for strengthening Janajati political activism. This allowed NEFIN to play a prominent role in the 2006 people's movement that led to

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groups. Further, the plans need to build on previous iterations as there exist discontinuities between successive plans.

v. Constitution:

- The 2015 Constitution articulates sentiments for ending discrimination, but since it does not spell out clear pathways to promote equality, the government will have to take heed of the spirit behind the sentiments when designing specific interventions.
- Citizenship rights to women have been particularly discriminatory in Nepal. Multiple clauses in the Constitution ensure transfer of citizenship to children only through the father and curb women's right to transfer full citizenship rights to their children. The state, therefore, has the duty to repeal discriminatory clauses based on citizenship, avoid statelessness and prevent arbitrariness in conferring citizenship (Malla, 2016).

vi. Public Service:

- Since Dalits are particularly vulnerable to their human rights being violated, there should be a provision to include at least one Dalit representative in the National Human Rights Commission.
- The quota or reservation system should be strengthened by making special provisions to encourage members of marginalized communities to seek employment in civil service and public institutions.
- Political participation of Dalits, especially of Tarai Dalits, is bleak. Dalit inclusion should be mandatory at each level of government planning and implementation. The state should develop effective mechanisms for checks and balances to ensure that affirmative action in this regard is implemented.

vii. Implementation of International Standards:

- Nepal has rejected all the 29 recommendations on human rights made during the 23rd Universal Periodic Review held in Geneva in 2015, including those related to conventions on transitional justice and has refused to ratify the Optional Protocol to the Convention against Torture, International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court (Rai, 2016). Nepal should ratify these protocols and also adhere to pledges made for accountability and justice to the people.

... Good practice case study continued ...

the end of direct rule by the king and the end of the Maoist conflict (Shah, 2008).

After the political change of 2006, inclusion became a major agenda in Nepal's political discourse. The issues and demands of the Janajatis focused on state restructuring along the lines of federalism, autonomy with the right to self-determination, representation of Janajatis in government structures in proportion to their population and special representation for minority Janajati groups. Following a protracted struggle, NEFIN signed a 20-point agreement with the government in August 2007, which included a provision accepting ILO Convention 169 and UNDRIP. Around the same time, the Interim Parliament also approved revisions to the Civil Service Act 1993, which led to fixed quotas for Janajatis (and also others) in government jobs.

### **Lessons for advocacy**

Despite many challenges, NEFIN provides a number of lessons for advocacy. Changes in the provisions of the constitutions since the 1990s reflect effective advocacy on the part of NEFIN. NEFIN has successfully advocated for the definition and classification of indigenous/Adivasi Janajatis and also legitimized the definition via various protests, rallies, demonstrations, press conferences and publications (Tamang, 2004). However, the real strength of the organization – engaging in advocacy – became possible only through regular interactions at the grassroots level since its branches are spread across different districts and villages.

However, NEFIN has also had its share of problems. The most prominent of these was its falling out with the UK's Department for International Development (DfID), which had supported the Janajati Empowerment Project. Following a national strike in 2011 called in support of its position of federalism that would recognize identity as one of the bases for the division of provincial units, NEFIN was served a warning by DfID to refrain from the sometimes-violent street confrontations. NEFIN refused and DfID withdrew its support for a very effective awareness-raising programme.

Since then, NEFIN has been reduced to a shell of its former self. Growing interference by political parties has led to factionalism within NEFIN members and led to a weakening of the whole Janajati movement. Co-option of the organization's leaders and activists by established parties has challenged its legitimacy and also undermined all its previous efforts.

- International standards set by instruments such as ILO Convention 169 should be implemented to protect the rights of indigenous people. Existing initiatives of land reforms and management should incorporate a specific focus on the rights of indigenous people over land, territories and natural resources that they have traditionally owned or used, either individually or collectively. Accordingly, the state should obtain free and informed consent of indigenous people prior to giving approval to any project affecting their land, territories and other resources.

viii. Education:

- Nepal has not ratified crucial international documents like the UNESCO Convention against Discrimination in Education (1960). Existing plans for bilingual education should be enforced as a matter of priority in order to promote and develop lingual diversity and also to make teaching and learning processes more effective, including by allocating the required human and financial resources to allow for effective implementation of such programmes. This includes supporting madrassa education and accepting it as a formal educational institution up to the higher level.
- Nepal has implemented plans like EFA and SSRP, but access to education appears discouraging since groups such as Janajatis, Madhesis and Dalits still struggle to educate their children. In a welcome move, the government has been providing scholarships to Dalit children. What is required next is effective monitoring of the distribution of scholarships and creating a Dalit children-friendly environment in schools.
- Scholarships, food and uniforms in schools should be provided to Dalits, backward communities and the poor in order to reduce drop-out rates.

ix. Access to Justice:

- Studies show that the torture inflicted among Madhesis, Dalits and Janajatis is higher as compared to Bahuns, Chhetris and Newars (Advocacy Forum Nepal, 2012). Civil society as well as the state should invest in making core law-enforcing bodies such as the Nepal Police and the Armed Police Force more tolerant and sensitive towards the socio-cultural diversity of Nepal.
- Existing laws must be strengthened through amendments to guarantee that complaints are registered, investigations proceed in a timely

manner, investigators are shielded from political or other pressures and victims are afforded requisite protection.

x. Caste-based Discrimination:

- Mechanisms to eliminate caste-based discrimination should be made effective.<sup>27</sup>
- The government needs to repeal all discriminatory laws, regulations, rules, directives, policies and programmes that contravene the human rights of groups such as Dalits.

xi. Economic, Social and Cultural Rights:

- Special arrangements need to be made for the inclusion, protection and promotion of human rights of the Muslim community while recognizing their existence as a religious community with distinct customs, culture, language and way of life.

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overlaps between and among these groups. For instance, there are Dalits who are also Madhesis while there are also a significant number of Janajatis whose origins, along with those of the Madhesis, are in the Tarai (plains) belt of Nepal (CBS, 2012). Despite this diversity, large sections of the population are either inherently marginalized, like Dalits; historically denied access to influence, like the Adivasi Janajatis or ‘indigenous nationalities’; or not considered full citizens of Nepal, like Madhesis (DIFD, 2006). There are also religious minorities who, too, have been marginalized due to their religious identity such as Muslims nearly all of whom face exclusion like Madhesis (Sijapati, 2012) and, more recently, Christians.

There is no universally accepted definition of minorities, but the one that has received wide circulation was provided in 1977 by Francesco Capotorti, the Special Rapporteur of the United Nations Sub-commission on Prevention of Discrimination and Protection of Minorities:

A group numerically inferior to the rest of the population of a State, 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 maintain, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language (United Nations Human Rights Office of the High Commissioner 2010).

In Nepal, the term ‘minorities’ was used for the first time in the 2007 Interim Constitution<sup>1</sup> to denote groups requiring special protection from the state.<sup>2</sup> The Constitution of Nepal 2015 also uses ‘minority group’ and ‘minorities’ for the same purpose but has expanded the number of such groups.<sup>3</sup> Unlike the 2007 Interim Constitution, however, the 2015 Constitution actually defines what constitutes a minority:

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1. Nepal has enacted seven constitutions so far in 1948, 1951, 1959, 1962, 1990, 2007 and 2013.
  2. Article 35(14) of the Interim Constitution of Nepal 2007 lists them as: ‘landless squatters, bonded labourers, persons with disability, backward communities and sections, and the victims of conflict, including women, Dalits, indigenous tribes (Adivasi Janajati), Madhesis and Muslims’ Source: [www.lawcommission.gov.np](http://www.lawcommission.gov.np). Activists prefer ‘indigenous nationalities’ as a translation of ‘Adivasi Janajatis.’
  3. Namely, ‘socially or culturally backward women, Pichhada class, minorities, the marginalized, farmers, labours, youths, children, senior citizens, gender and sexual minorities, persons with disabilities, persons in pregnancy, incapacitated or helpless, backward region and indigent Khas Arya,’ [www.lawcommission.gov.np](http://www.lawcommission.gov.np).

**Table 1. Groups Identified as Minorities for this Report**

Groups	Population
Adivasi Janajatis (Mountain, Hill and Tarai)	35.8 per cent (26.1 per cent Hill-Mountain Janajatis and 9.75 per cent Tarai Janajatis).
Madhesis	Including the Tarai Dalits in this category, Madhesis constitute 19.23 per cent of the total population of Nepal. If Tarai Janajatis are included as well, the Tarai-origin population would be 28.97 per cent. Excluding Tarai Janajatis and Tarai Dalits, the rest of the Madhesi population is 14.77 per cent of the population.
Dalits (Madhesi Dalits and Hill Dalits)	12.58 per cent (8.1 per cent Hill Dalits and 4.5 per cent Tarai Dalits).
Muslims	4.4 per cent.
Christians	1.4 per cent.

Source: Groups taken from Sharma (2014); Sharma (2008); CBS (2012).

Note: The Census figures are generally contested by all the minority groups listed in the table, with each claiming a higher share of the population.

[E]thnic, 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<sup>4</sup>.

At the time of writing this report it was not clear which of the 125 caste/ethnic groups would qualify as a ‘minority’. However, following a UN document on minority rights that states that the main requirement to be counted as a minority group is to be in a non-dominant position (United Nations Office of the High Commissioner, 2010), this chapter uses this definition to consider the country’s ethnic, linguistic and religious groups – Dalits, Janajatis, Madhesis, Muslims and Christians –all of whom are in a non-dominant position in one way or another (see Table 1).<sup>5</sup>

## Historical context and constitutional provisions

The modern state of Nepal was created by Prithvi Narayan Shah in the mid-to-late 18th century. Its consolidation during the Rana regime (1846-1951) was based on the organizing ideology of the Hindu caste system and nation-

4. ‘Part - 34, Definitions and Interpretations,’ The Constitution of Nepal 2015.

5. The 2015 Constitution also used the terms ‘minority/minorities’ and ‘marginalised’ consistently in tandem, providing further cause to equate ‘marginalised’ with ‘minority’ in the case of Nepal.

al integration was attained through a default ‘unification’ of diverse groups. As a unifying framework, the caste system codified in the Muluki Ain (National Code) of 1854, subsumed the different languages, customary laws and religious, social and cultural traditions found in the country into one overarching framework informed by Hindu religious law. Further, it also ranked the different social groups in Nepal according to Hindu concepts of ritual purity and pollution, thus institutionalizing inter-group discrimination and marginalization (Gaige, 1975).

Nepal has undergone major shifts in its constitutional and legal framework since the end of the Rana rule, starting with the abortive 1948 Constitution by the dying regime and through the Constitution of 2015. It took until the 1990 Constitution, when the country shifted from an autocratic monarchy-based system to a multi-party democracy, for statutory recognition of Nepal’s great socio-cultural diversity as well as the inherent inequities inherited from the past.

### ***The 1990 constitution***

The 1990 Constitution declared Nepal a ‘multi-ethnic, multi-lingual, democratic, independent, indivisible, sovereign, Hindu, Constitutional Monarchical Kingdom’ and granted ‘equality before law and equal protection of law.’ It made special provisions to secure the interests of ‘women, children, incapacitated persons or those who belong to a class of socially, economically and educationally backward groups.’<sup>6</sup> Despite these positive developments, the Constitution contained provisions that were discriminatory towards different groups. For instance, Hindu statehood was retained, privileging Hindu norms and values; Nepali language was declared the

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6. Hence, Article 26(2) stated: ‘The State shall...pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.’ Likewise, Article 26(10) stated: ‘The State shall pursue a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health, and employment.’ But the 1990 Constitution had no reference to Dalits, Adivasi Janajatis and Madhesi as historically marginalized groups. Because of the absence of any specific reference to these groups, a case was filed in the Supreme Court against the affirmative action policy of the government relating to a scholarship grant for higher education. The dispute arose because it was claimed that Dalits and Adivasi Janajatis were not clearly mentioned in the 1990 Constitution as the targeted beneficiaries of the policy. There was only a vague provision of special measures for those who were economically and socially backward. Since no law had been enacted pursuant to this provision the policy was challenged. The Supreme Court issued a directive order in 2004 for the enactment of a law to implement the provision for affirmative action.

language of the nation even though other native languages were to be allowed in schools up to the primary level. Hence, though Articles 11.2 and 11.3 mentioned religion, race, sex, caste, tribe or ideological convictions as the bases for non-discrimination, language was not mentioned. Further, Article 112.3 restricted the mobilization of socio-cultural groups for collective welfare and empowerment and constrained political choices (Lawoti, 2005).

### ***The interim constitution 2007***

The Interim Constitution (IC) of 2007 marked a significant departure from the 1990 document. One of the key objectives of IC, which itself had emerged from the Comprehensive Peace Agreement (CPA) between the state and the Maoists after a decade-long conflict, was the commitment to progressive restructuring of the state. As a result, IC declared Nepal to be a secular,<sup>7</sup> democratic, federal state in an attempt to address the ‘problems’ that the state had been facing on the basis of class, ethnicity, religion and gender while undertaking ‘an inclusive, democratic and progressive restructuring of the state.’<sup>8</sup> Its 4th amendment in May 2008 abolished the monarchy and declared Nepal a federal republic. Similarly, IC also emphasized the need to strengthen national unity by maintaining cultural diversity through the promotion of healthy and harmonious social relations. It also explicitly recognized Dalits, Adivasi Janajatis and Madhesis as historically marginalized groups requiring special treatment from the state.<sup>9</sup>

The Fundamental Rights enshrined in IC were: right to life; right to a (criminal) justice system; right against preventive detention; right against torture; right against exploitation; and right against exile. The provisions relating to inclusion incorporated in IC were: right against untouchability and racial discrimination (Article 14), positive discrimination for Dalits, women, indigenous/ethnic groups, Madhesis, farmers and other socially and economically marginalized communities (Article 13[3]); and proportional

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7. Nepal was declared a secular state in May 2006 following the Second People’s Movement against a monarchy that had usurped power in the previous years.

8. Preamble, Part 1, Article 3, 5; Part 3, Article 13, 14, 1; Part 4, Article 33, 35 (3); Part 7, 63 (3.a) and (4.5); Part 16, Article 142 (4), Part 17, Article 138 of the Interim Constitution of Nepal 2063 (2007).

9. The 1990 Constitution recognized the existence of different ‘communities’ in the country when dealing with the right to culture and education (Article 18), different ‘denominations’ when dealing with the right to religion.

representation of women, Dalits, Madhesis, indigenous/ethnic groups and other oppressed groups in the state structures (Article 21).

### ***Constitution of Nepal 2015***

The latest Constitution of Nepal was promulgated on 20 September 2015 only to be immediately contested by the Janajatis and Madhesis, giving rise to a prolonged agitation in the Tarai. The major issues of contention were a demand for more proportional representation (PR) seats, demarcation of electoral constituencies on the basis of population, re-organization of the proposed federal units and amending discriminatory citizenship laws, along with the demand that past agreements between the government and different groups be honoured. Compared to IC, the 2015 Constitution reduced the proportion of PR seats in Parliament from 56 per cent to 40 per cent while the issue of proportional inclusion was not mentioned in the case of accommodating minorities in different state structures. As a response to the Tarai agitation, the Constitution was amended in January 2016 and the principle of proportionate inclusion in state bodies (Article 42) was introduced while the demarcation of electoral constituencies would consider population as the main basis and geography as the second point (Article 84).

## **Methodology and data collection**

This chapter looks at the state of Nepal's minorities in a historical context and examines the last three constitutions of Nepal that can be considered relatively inclusive: the 1990 Constitution, the Interim Constitution of 2007 and the 2015 Constitution. It analyses how the current Constitution measures up to international standards vis-à-vis minority rights. Using publicly available data, it delves into specific themes:

- i. Right to life and security with a focus on the criminal justice system;
- ii. Right to non-discrimination and equality by looking at indicators of socioeconomic attainments in education, health, poverty and employment;
- iii. Right to participation, providing an overview of the representation of minorities in national government institutions; and
- iv. Right to culture and identity with an overview of the denial and attainment of identity and cultural rights.

The information presented in this chapter is derived from sources such as national censuses and surveys as well as human development reports

from different years to provide a comparative perspective on the status of each group. Data on representation in various state organs was collected from the respective bodies and also from reports from organizations working on minority issues as well as other available literature.

## **Limitations**

A study of minorities is inherently complex, particularly in a country like Nepal that is home to numerous minority groups, which have not yet been recognized as such. A major challenge was the difficulty in obtaining caste/ethnicity and gender-disaggregated data on the various indicators considered. Lack of standardized data on violence did not allow for a systematic study in comparative terms. The biggest limitation, however, is the absence of almost any kind of data on Christians. Nepal's rapidly changing political context was also challenging, particularly since it had a direct bearing on the content of this chapter.

## **Right to life and security**

Articles 3 and 9 of the Universal Declaration of Human Rights (UDHR) provide for right to life and security of every individual and protection against arbitrary arrest, detention or exile. These principles were subsequently translated into Article 9 of the International Covenant on Civil and Political Rights (ICCPR). These reminders are especially relevant for post-colonial regions like South Asia where the debate on human security has remained at the level of rhetoric and has not fed into policymaking even as groups demanding a more people-centred conception of security have challenged its 'military-centred' conceptions (Bajpai, 2000). In particular, struggles to re-define nationalism vis-à-vis increasing ethno-nationalist demands and the radical redefining of structural arrangements in Nepal have resulted in the 'securitization' of the state and the failure to institutionalize people-centred policies and bringing human security to the fore. The state has invested the security forces with unprecedented power, resulting in the abuse of power at the cost of suffering of the most marginalized.

## **Structures and functions of the criminal justice institution**

All three constitutions—1990, 2007 and 2015—guarantee the right to justice to all citizens and require anyone detained to be informed about the grounds for arrest as well as be produced before a court of law with-

in 24 hours of the arrest. Article 14(4) of the 1990 Constitution provided protection against torture, and even though it mentioned compensation to the victim it was silent on punishment for perpetrators. Nepal also acceded to the United Nations Convention against Torture in 1991, and Article 26 the Interim Constitution and Article 22 of the 2015 Constitution provide for the 'right against torture'; they also say that any such act would be punishable by law and the victim would have the right to compensation.

At the same time, there are multiple shortcomings in Nepal's criminal justice system that not just promote impunity and foster human rights' abuses but also stand in contravention of the spirit of all the three constitutions. Some of these include extant legal provisions from an authoritarian past. For instance, Section 22 of the 1989 Public Security Act (PSA) grants immunity to state officials for any acts committed 'in good faith' in the course of their duty. PSA allows people to be held in preventive detention for up to 90 days on the orders of a local authority, which is normally the Chief District Officer (CDO). This period can be extended to six months with permission from the Home Ministry. Likewise, the equally draconian Anti-State Crimes and Penalties Act 1989 (ASCPA) contains provisions that are in clear breach of the Constitution as well as international obligations such as ICCPR (Amnesty International, 2003).

Nepal has not yet defined what constitutes crimes against humanity and extrajudicial killings. The Enforced Disappearances Enquiry, Truth and Reconciliation Act 2014, enacted to look into excesses committed during the decade-long Maoist conflict, defines gross violations of human rights but abstains from including provisions in line with the Rome Statute, such as Article 7 that specifies 'crimes against humanity' consisting of, among others, 'imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law' and 'persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender.'<sup>10</sup> The 2014 Act only mentions murder, abductions, enforced disappearances, physical and mental torture, mutilations, physical disabilities, rape and sexual violence and any kind of acts inconsistent with international human rights or humanitarian laws or other crimes against humanity. The act, however, also contains provisions for amnesty even in the most serious cases of human rights violations and that, too, without the

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10. The Enforced Disappearances Enquiry, Truth and Reconciliation Act 2014; Rome Statute Article 7. Retrieved from: <http://www.preventgenocide.org/law/icc/statute/part-a.htm> .

consent of the victim. These provisions were retained over the objections of the National Human Rights Commission (NHRC) although with the Supreme Court having nullified some of them it is not clear how the act will be implemented.<sup>11</sup>

The 1959 Army Act contained provisions for a court of inquiry board and a court martial for violations of the act. But nothing in the 1959 Act or any other law requires the army to release full and complete details of court martial proceedings or other such judgments, even if a first information report (FIR) has been filed and the civilian police has commenced criminal investigations on the matter. This has obstructed investigations into alleged extrajudicial executions and other abuses. For instance, in the well-known Maina Sunar case, in which a 15-year-old Dalit girl was killed by the Nepal Army in 2004, the army's refusal to share the findings of the court martial with the police and her family, despite a court directive, is a case in point (Amnesty International, 2013). In another example, in 2015 the Bardiya district police office refused to register FIRs in six cases of political killings during the Maoist conflict, despite a 2014 order from the Appellate Court in Nepalgunj.<sup>12</sup> Similarly, the widespread torture and at least 200 disappearances after arrests by security forces in Bardiya district during 2001 to 2003, in which the vast majority of victims were from the disadvantaged Tharu community, indicates the vulnerability of marginalized groups to atrocities at the hands of security forces (International Crisis Group, 2010). More recently, during the agitation in the Tarai following the promulgation of the 2015 Constitution, more than 50 people, most of them of Tarai origin, lost their lives (Human Rights Watch, 2015).

Although difficult to come by, there is some evidence that members of minority groups fare worse at the hands of the security forces. As a report of the Nepali human rights organization, Advocacy Forum, on the situation in the Tarai details detainees belonging to groups such as Muslims and other Tarai groups are more likely to be tortured while those from Bahun-Chhetri groups are least likely to face the same fate (Kathmandu Advocacy Forum, 2010)

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11. The Enforced Disappearances Enquiry, Truth and Reconciliation Act 2071; Rome Statute Article 7. Retrieved from: <http://www.preventgenocide.org/law/icc/statute/part-a.htm> .

12. Advocacy Forum, Asian Human Rights Commission, the Redress Trust, World Organization against Torture, 'Submission to the United Nations: Universal Periodic Review,' 23rd Session of the Working Group on UPR, Human Rights Council, 22 March 2015.

## Grievance redressal mechanisms

As stated earlier, Nepal's justice delivery system faces major shortcomings. Most cases never make it to the courts. Criminal cases reported to the police are most often dealt with by the police itself. Since there is no accountability for failure to investigate cases, there is little incentive for the police to register and investigate cases.<sup>13</sup> Many civil cases are mediated through traditional or informal means, while others do not reach the courts because citizens do not understand the court system, the legal process, or more broadly, their rights as citizens. There has been little systematic education to raise awareness about the role of the courts, how they can protect citizens' rights, or what rights citizens possess. Judicial independence is further hindered by political pressure as well as the general perception that judicial appointments are driven by political partisanship (James et al., 2015).

Confidence in the justice system's institutions is further weakened by the historic exclusion of many groups. The police, courts and government prosecutors' offices consist predominantly of men from 'upper castes' who lack sensitivity towards the social diversity of Nepal. Excluded groups face cultural resistance and structural barriers in entering professions in the judicial sector. While most lawyers begin their careers with unpaid 'apprenticeships', women and men from marginalized groups often lack financial or other means of social support to complete this stage. They find it difficult to break into professional networks dominated by men from the traditionally dominant castes. The judicial sector, hence, does not represent Nepal's social diversity, reducing confidence about fair treatment among the marginalized (James et al., 2009). This situation has, however, started changing with the provision of reservations in government service since 2007, but its impact is yet to be felt fully in terms of having such groups better represented in the higher echelons of the judicial service.

Criminal proceedings and decisions by quasi-judicial authorities take place behind closed doors and generally without defence lawyers or by following standardized procedures, public hearings and witnesses. Such practices also impede the process of fair trials. Quasi-judicial authorities such as CDOs and district forest officers (DFO) often do not have even the basic training in legal or judicial matters and are not independent since they are also part of the executive branch of the government (Adhikari, 2013).

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13. Advocacy Forum, Asian Human Rights Commission, the Redress Trust, World Organization against Torture, 'Submission to the United Nations: Universal Periodic Review', 23rd Session of the Working Group on UPR, Human Rights Council, 22 March 2015.

There are only limited legal aid services available to disadvantaged Nepalis: the first is where the Supreme Court appoints and supervises a member of the bar as a 'stipendiary advocate' in most courts; and the second, launched under the Legal Aid Act of 1997 and administered by the Ministry of Law and Justice, relies on legal aid committees set up in collaboration with local bar cells in each district to assess legal aid applications and appoint private lawyers to act for those granted assistance. However, both schemes are poorly funded and the absence of a system for monitoring their effectiveness translates into only a low level of assistance to those eligible to use such services (James et al., 2009).

## **Right to non-discrimination and equality**

In Nepal, social and gender identity determine individual and group access to assets, capabilities and voice. In this regard, poverty outcomes, including indicators of economic well-being, human development and voice and political influence reflect the results of discrimination and inequality faced by minorities due to historical and cumulative discrimination and exclusion in Nepal (DFID, 2006). Being party to international agreements such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Nepal has an obligation to right these long-standing inequities since these instruments require ratifying states to grant all people 'the right of self-determination...[to] freely determine their political status and freely pursue their economic, social and cultural development' (Article 1, ICESCR) and to do all it can to eliminate such discrimination (Article 2[2], ICERD).<sup>14</sup>

In 2007, Nepal also became the only country in Asia to ratify the Indigenous and Tribal Peoples Convention 1989 (ILO Convention 169) along with the United Nations Declaration of the Right of Indigenous Peoples

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14. Article 2(2) of ICERD states, States parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

15. This was part of the agreement with the agitating Nepal Federation of Indigenous Nationalities (NEFIN) and the Indigenous Nationalities Joint Struggle Committee in September 2007.

(UNDRIP).<sup>15</sup> However, the National Action Plan on ILO Convention 169 has not been implemented yet and is pending cabinet approval since being drafted in 2009. Likewise, the Committee on Natural Resources, Economic Rights and Revenue Allocation of the first Constituent Assembly had called for inclusion of the provision '[t]o ensure prior use rights to the indigenous, ethnic and other communities in natural resources and their use' in the Preamble to the Constitution ([http://www.ncf.org.np/upload/CA/concept\\_paper\\_Natural\\_Resource.ENG.pdf](http://www.ncf.org.np/upload/CA/concept_paper_Natural_Resource.ENG.pdf)). But the dissolution of that CA meant such provisions calling for greater social inclusion in the Constitution died a quiet death.

On the other hand, the 2015 Constitution has continued to uphold the principles of non-discrimination and equality while the practice of untouchability has been made a punishable offence. In practice, however, the government has not been able to fully safeguard all these rights. Additionally, the 2015 Constitution fails to guarantee collective rights over traditional territory, land and resources in line with UNDRIP and ILO 169, which the Adivasi Janajatis have demanded as inalienable individual rights in the Constitution.

## **Cases of identity-based violations**

The Caste-Based Discrimination and Untouchability (Offence and Punishment) Act was adopted by Nepal in 2011. This act states that if any one commits or causes to commit any act of discrimination shall be deemed to have committed caste-based discrimination and untouchability, and is liable for punishment.<sup>16</sup> However, the mechanisms to eliminate such discrimination are not effective and only a few cases relating to untouchability have been lodged in the courts.<sup>17</sup> Most police officers are either unaware that caste-based discrimination is a crime or they are reluctant to file cases in the name of maintaining social harmony and instead tend to pressure victims

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15. This was part of the agreement with the agitating Nepal Federation of Indigenous Nationalities (NEFIN) and the Indigenous Nationalities Joint Struggle Committee in September 2007.

16. Caste-Based Discrimination and Untouchability (Offence and Punishment) Act 2011 (2068). Retrieved from [http://www.ilo.org/wcmsp5/groups/public/--ed\\_protect/--protrav/--ilo\\_aids/documents/legaldocument/wcms\\_190732.pdf](http://www.ilo.org/wcmsp5/groups/public/--ed_protect/--protrav/--ilo_aids/documents/legaldocument/wcms_190732.pdf).

17. 'The NHRI Nepal Joint Submission for The Second Universal Periodic Review of Nepal' submitted to the United Nations Human Rights Council, Geneva, and submitted by the National Human Rights Commission, the National Women's Commission and the National Dalit Commission on 22 March 2015.

to withdraw their complaints. According to one report of the 18 registered cases related to caste-based discrimination and untouchability that reached the courts, none of the perpetrators was sent to jail and instead they were imposed paltry fines with small compensations provided to the victims. In fact, in two incidents the victims were forced to change their cases of physical assault stemming from caste discrimination into cases of slander under the less serious State Case Act 1990 and Libel and Slander Act 1959 (Kisan et al., 2015).

According to the Office of the Attorney General's annual reports, 10 cases related to untouchability were taken to the courts in the fiscal year 2014-15, which represent a decline from the 14 in the previous year (Pun, 2015) and indicate either lack of awareness or foot-dragging on the part of police officials who often cite the absence of rules and regulations to implement the act.

The Nepal Social Inclusion Survey (NSIS) conducted by Tribhuvan University recorded that incidents of violations of the rights and security of Dalits and Muslims took the form of both verbal abuse and physical violence, while psychological abuse was reported to be the highest against Madhesi Dalits, Hill Dalits and Muslims. The latter groups also faced discrimination by being barred from entering private homes (CDSA, 2014a) (*see Box 1*).

## **Socioeconomic status of minority<sup>18</sup> groups**

### ***Multidimensional Exclusion Index (MEI)***

The Multidimensional Exclusion Index (MEI) developed by the World Bank measures the status of social exclusion/deprivation of 80 different caste/ethnic groups<sup>19</sup> along health, income, education and empowerment-related indices. The MEI is a tool developed to measure exclusion using three dimensions; economic life, social services and civic and social participation (Bennett and Parajuli, 2011).

According to the MEI measure, the Chepang-Raji-Raute-Kusunda cluster is the most excluded/deprived in Nepal with a MEI value of 0.53, whereas the Marwaris are the least excluded with a MEI value of 0.04, followed

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18. Details are given in Annex 2. Data on minorities in Nepal.

19. The 80 different caste /ethnic populations are classified into four categories: highly excluded, excluded, included and highly included.

**Box 1. Setbacks and reasons for hope**

*Discrimination against Madhesi Dalits*

The Teacher's Service Commission had announced the fulfilment of the quota of three Dalit science teachers for the secondary level for the country's western region. There were only three applicants for the post, including Gulab Chandra Chamar (a Madhesi Dalit), as evident in the list of applicants provided on the website of the Western Regional Education Directorate. When the results were published, Gulab's name was missing and in his place was someone from a Hill Dalit community. Gulab's application form as well as his examination paper had both gone missing, and when he sought clarifications the officials refused to respond (<http://taraihumanrights.org/Details.php?news=106>).

*Caste-based Discrimination*

A couple was banished from their village in Gorkha district for inter-caste marriage. A Dalit boy named Ganesh married Jyoti, a Thakuri (hill high-caste) girl. The Thakuris not only evicted the couple from the village but also all members of Ganesh's family. The couple were to sit for their 12th Grade examination from the village school but were not allowed to do so and Ganesh's brother was also barred from attending school (Singh, 2016).

*Justice for Dalits*

There are some instances where some cases have been decided in favour of Dalits. For instance, in the attempted rape case of Maya Sarki in July 2013 in Belbari VDC of Morang, Maya and Manoj Bishwokarma, a local Dalit rights activist were publicly humiliated for accusing a local of a crime. Following investigations by the CDO's office and the Morang district court, in April 2014 the court penalized nine offenders with a fine of NPR 15,000 each (Kisan et al., 2015).

by the Thakalis, Kayasthas, Newars and Hill Bahuns. Musahars are the second-most excluded/deprived group with a MEI value of 0.47.

**Poverty headcount ratio**

According to the Nepal Human Development Report (NHDR) (2014), poverty incidence or the poverty headcount rate for Nepal was 25.2 per cent. However, as can be expected, poverty levels varied according to social identities and locations—the highest incidence of poverty was among Hill Dalits (43.6 per cent) and Tarai Dalits (38.2 per cent), followed by Tarai middle

castes (28.7 per cent), Hill Janajatis (28.3 per cent), Tarai Janajatis (25.9 per cent), Muslims (20.2 per cent) and Tarai Brahmins (18.6 per cent). Hill Bahuns and Newars had the lowest incidence of poverty at approximately 10.3 per cent.

### ***The Human Development Index (HDI)***

In 2014, Nepal's HDI score was 0.458, the lowest in South Asia apart from Afghanistan.<sup>20</sup> Within Nepal, HDI scores varied significantly between minority groups and the rest of the population. Muslims had the lowest HDI value (0.422), followed by Dalits with an HDI value of 0.434 and Janajatis (excluding Newars) at 0.482. In contrast, the Bahuns/Chhetris had the highest HDI value of 0.557. In terms of intra-group differences, HDI for Madhesi Dalits was lower (0.400) than Hill Dalits (0.446); Tarai Janajatis (0.473) fared worse than Hill Janajatis (0.509).

### ***Education***

According to NHDR (2014), Nepal's adult literacy rate was 56.5 per cent. However, there were significant variations across different groups. The literacy rate of Janajatis overall was 66.93 (Hill Janajatis, 68.45 per cent; Tarai Janajatis, 62.48 per cent). Muslims had the lowest literacy rate (43.56 per cent), followed by Dalits (52.48 per cent) and Madhesi castes (55.49 per cent). Disaggregated further, literacy rates for Madhesi Dalits was only 34.50 per cent, significantly lower than Hill Dalits (61.93 per cent). Although all groups have seen significant attainments in higher levels of education, Hill and Tarai Dalits remained the lowest at the tertiary level with 2.1 per cent each followed by Tarai Janajatis at 3.1 per cent (CDSA, 2014b).

The percentage share of teachers from Dalit and Janajati groups by level and gender was also lower compared to their share in the population. Dalits made up only 4.9 per cent of the teachers at the basic level (Grades 1 to 8) while Janajatis did better at 28.1 per cent (DoE, 2015). The DoE Flash Report does not provide comparable data for other minority groups, although this percentage was much lower in proportion to their shares in the national population at 12.58 per cent for Dalits and 35.8 per cent for Janajatis.

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20. The Nepal Human Development Index (NHDI) measures long and healthy life, knowledge and standard of living. Healthy life is measured by life expectancy, knowledge is measured by adult literacy and mean years of schooling and living standard is measured by the gross national income (GNI) per capita in purchasing power parity.

## **Employment**

According to the 2011 Census Tarai Janajatis (72.9 per cent) had a higher rate of involvement in agricultural-related employment, followed by Hill and Tarai Dalits (69.3 and 69.4 per cent respectively) and Hill Janajatis (66.5 per cent). The figures for Hill Bahuns/Chhetris and Tarai Brahmins/Rajputs were 54.6 per cent and 39.6 per cent respectively and within the Hill Bahun/Chhetri group, the situation of Chhetris at 71.5 per cent was comparable to Tarai Janajatis whereas only 59.2 per cent of the Bahuns were engaged in agriculture (CDSA, 2014b).

## **Health**

The Nepal Demographic Health Survey (2011) showed that people from the Tarai faced greater problems in accessing healthcare despite travel being relatively easier in the region compared to the hills and mountains. Muslim women (86.3 per cent) and Tarai Dalit women (85.3 per cent) faced severe problems of accessibility, followed by Hill Dalits (79.2 per cent) and Hill Janajatis (72.9 per cent). Muslims (318), Madhesis (307) and Dalits (273) had the highest maternal mortality rates (MMR) per 100,000 live births, and while Janajatis (207) also fared better, Bahuns/Chhetris (182) and Newars (105) had the lowest MMR (Government of Nepal, 2013).

## **State programmes**

The 9th Plan (1998-2002) laid the foundation for introducing 'social inclusion' in government programmes and policies. It had a separate chapter on Janajatis with regard to their integration in society and in a first-ever instance it mentioned providing 20 per cent of the employment opportunities in the public sector to women ([http://npc.gov.np/images/download/ninth\\_eng\\_2.pdf](http://npc.gov.np/images/download/ninth_eng_2.pdf)). Moving ahead, the government adopted 'social inclusion' as one of its major policy objectives in the 10th Five-Year Plan (2002-07) (also known as the Poverty Reduction Strategy Paper). The 10th Plan envisaged social inclusion as the third pillar of poverty reduction and sought to include marginalized sections of the population and backward regions into the mainstream of development and also to make visible progress in reducing existing inequalities (Government of Nepal, 2007). The Three-Year Interim Plan (2007-10) also came up with special programmes for disadvantaged groups, including women, Dalits, Janajatis and Muslims (Government of Nepal, 2007). The Interim Plan, drawn up concurrently with the Interim Constitution 2007, introduced for the first time reservations for Dalits, women, Muslims, Madhesis and Janajatis to increase their participation in the education, health and employment sectors. The Interim Plan also

allocated budgets for each group—NPR 13 billion for Dalits, NPR 15 billion for Janajatis, NPR 10 billion for Madhesis and NPR 1.5 billion for Muslims. The current Three-Year Plan (2013-16) also has programmes to identify and amend legal and policy provisions aimed at marginalized groups.

Building on the goals and achievements of the previous periodic plans, the government's budget for 2014-15 (Ministry of Finance, 2014) has provisioned monthly stipends of NPR 1,500 to 3,000 for students belonging to low-income groups from Dalit, Chepang and Raute communities who have passed the School Leaving Certificate Examination with a first division from public schools. Similarly, announcements have been made that the government will bear all the costs for students from Dom, Badi, Chamar, Musahar and Dalit communities pursuing graduate-level studies in engineering and medicine. In addition, the budget speech also ensures that scholarships will be provided to intelligent, disabled, conflict-affected, liberated *kamlari* (former female bonded child labourers), marginalized and Dalit students.

Some vague provisions vis-à-vis Madhesis have also been inserted: 'Suitable mechanism of addressing Madhesi issues and mainstreaming them at various levels of the state will be developed. A policy of getting participation of Madhesi community in the process of programme preparation, implementation and monitoring related to the Madhes will be followed' (Government of Nepal, 2007). The said mechanism has been left undefined, hence it is difficult to measure any achievements in this regard.

The political context played an important role in shaping the focus of Nepal's different development plans. The 9th Plan was adopted when the Maoist insurgency was rising while the 10th Plan tried to head off the Maoist insurgency that was beginning to reach its peak. The 11th Plan was the most inclusive since it was formulated in the backdrop of the CPA and the 2006 People's Movement, both of which had inclusion at their core. However, these advances fizzled out in the 12th and the 13th Plans, and the emphasis reverted as earlier more towards poverty in general.

### **Government structures**

Gender Equality and Social Inclusion (GESI) units have been established in a number of key ministries to address the issue of marginalization of different social groups.<sup>21</sup> Gender itself had been given priority with the establishment of a Gender Responsive Budget (GRB) committee in the Ministry of Finance (Ministry of Finance, 2012) while a Gender Equity and Environ-

ment Division (GEED) has been functional in the Ministry of Agriculture and Cooperatives since 1992. These units, however, have still not integrated other dimensions of exclusion in their mandate. Even where GESI units/sections have been established, these are afflicted by the same problems that made the Gender Focal Persons ineffective – institutional failures to link their responsibilities to the core functions of ministries, inadequate technical qualifications of staff and lack of specific funds for activities.

A positive development with the 2015 Constitution is the statutory provision for various minority commissions—the Women’s Commission, Dalit Commission, Janajati Adivasi Commission, Muslim Commission, Madhesi Commission, Tharu Commission and an Inclusion Commission—although these have been given a mandate of only 10 years after which their fate will be re-evaluated. So far, the duties and responsibilities of these commissions have not been spelt out apart from the case of the pre-existing Dalit Commission and Women’s Commission.

## **Education**

In terms of education, Nepal has taken progressive measures such as adopting Education for All (EFA) as a national campaign. With the prime objective of ensuring access and equity in primary education, enhancing the quality and relevance of primary education and improving efficiency and institutional capacities, EFA has adopted both a pro-poor approach and targeted gender mainstreaming, while Dalit students have been singled out as the prime beneficiary group. The School Sector Reform Programme (SSRP 2009-15) (Ministry of Education, 2009), which complemented EFA, however, provided for special assistance only to Dalits (and residents of Karnali zone). An important aspect of SSRP is its institutionalization of traditional education systems such as madrassas, gumbas/vihars and gurukuls/ashrams to enable these bodies to meet the national standards of formal education. However, the Multilingual Education Implementation Guidelines 2009 are being implemented in only 24 schools even though the aim was to operationalize multilingual education in 7,500 schools by 2015 (Ministry of Education, 2009).

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21. These include the Ministry of Finance, Ministry of Health and Population, Ministry of Urban Development, Ministry of Women, Children and Social Welfare, Ministry of Cooperatives and Poverty Alleviation, Ministry of Agriculture and Cooperatives and the Ministry of Federal Affairs and Local Development. The Ministry of Education has an Inclusive Education section and a Gender Equity section.

## Right to participation

The aim of minority rights' regimes set forth in international instruments such as ICCPR is both right to diversity and removal of structural barriers to equal opportunities and participation by members of minority groups. Recognizing that different groups have in the past faced multiple discriminations, Nepal sought to address such historical inequities through constitutional and legal frameworks. Additionally, realizing that formal equality or 'equal treatment' is not always sufficient to ensure equal rights and opportunities for historically disadvantaged groups, special measures including affirmative action policies, have also been introduced to 'level the playing field' for members of such groups.

### Legal and policy framework

#### *Constitutional provisions*

The Preamble of the 2015 Constitution commits the state to creating 'an egalitarian society on the basis of the principles of proportional inclusion and participation to ensure equitable economy, prosperity and social justice'. Accordingly, specific provisions in the Constitution to promote participation of minority groups include:

- Article 40(1), giving Dalits the right to proportionate participation in all agencies of the state.
- Article 70, which requires that the President and the Vice-President belong to different gender or macro-ethnic categories.
- Articles 83, 84, 88(2) and 176, which provide for a parliament at the federal level and assemblies at the provincial, while ensuring a degree of inclusiveness within the legislative bodies.

#### *Legal provisions*

The 2007 amendment to the Civil Service Act 1991 set aside 45 per cent of the civil service positions for different marginalized groups. Accordingly, 15 per cent of all the seats are reserved for women, 12 per cent for Janajatis, 10 per cent for Madhesis and 4 per cent for Dalits (and 2 per cent for the disabled and 2 for 10 districts identified as backward). The only comparable earlier legislation is limited to the Local Self-Governance Act 1999 that stipulated that village, municipal and district councils have at least one Dalit member.

## ***Progress in Increasing Participation***

### ***Political Representation***

In the three parliaments in the post-1990 period, only one Dalit had been elected. Their representation under the existing first-past-the-post (FPTP) system was 0.5 per cent in 1991 and nil in both 1994 and 1999. Even in the 2008 Constituent Assembly, which is considered a landmark for its inclusivity, Dalits managed to secure just 2.9 per cent of the seats under that system, a figure that went down to 0.8 per cent in 2013 (Vollan, 2015). Representation of all the other minority groups was considerably better and with the introduction of quotas in the proportional representation (PR) part of the CA elections of 2008 and 2013, their presence became more pronounced although with the exception of Tarai Janajatis overall it went down in the second CA.

Although better than that of Dalits, political representation of Muslims too has been far from satisfactory. No Muslim candidate was elected in the 1959 elections and the king nominated one Muslim to the national legislature in 1960 and 1963. Two Muslim candidates were elected to the national legislature, the Rastriya Panchayat, in 1981, while there was only one nominated member in the 1986 Rastriya Panchayat (Gaborieau, cited in Sijapati, 2012). Muslim representation was steady in the years after 1990: 2.4 per cent in 1991, 2.4 per cent in 1994 and 2.0 per cent in 1999. The 2008 CA saw 16 Muslims elected including, for the first time, four Muslim women (*see Table 2*).

The record in the executive branch, however, has not been altogether encouraging despite all the focus on creating a more inclusive polity. The first cabinet formed after the promulgation of the 2015 Constitution reflected this regressive tendency, with nearly two-third of the members of the cabinet belonging to the dominant Khas-Arya group (*see Table 3*).

In fact, the record of previous cabinets in the transitional period (2007 to 2015) is also quite mixed. None of the cabinets demonstrated the kind of inclusiveness that has been possible in the two constituent assemblies (*see Figure 1*).

### ***Representation in government structures***

Historically, there has been poor representation of minorities in the administrative structures of the state such as the civil services, the judiciary

**Table 2. Representation in the Constituent Assembly 2008 and 2013 (Caste/Ethnicity)**

Caste/Ethnicity	2008				2013			
	First-Past-The-Post		Proportional Representation		First-Past-The-Post		Proportional Representation	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Hill Castes	99	41.3	94	28.1	132	55	102	30.4
Hill Mountain Janajatis	61	25.4	90	26.9	46	19.2	89	26.6
Tarai Janajatis	17	7.1	28	8.4	21	8.8	32	9.6
Hill Dalits	6	2.5	29	8.7	1	0.4	26	7.8
Madhesi Dalits	1	0.4	15	4.5	1	0.4	11	3.3
Madhesi Caste	50	20.8	69	20.6	34	14.2	61	18.2
Muslims and Sikhs	6	2.5	10	3.0	5	2.1	14	4.2
<b>Total</b>	<b>240</b>	<b>100.0</b>	<b>335</b>	<b>100.0</b>	<b>240</b>	<b>100</b>	<b>355</b>	<b>100</b>

Source: NHDR (2009); Vulliam (2015).

Note: This data does not include the 26 nominated seats.

and security forces. The presence of Janajatis is substantial in the security services although that is generally limited to some Hill Janajati groups only.

However, after the 2007 amendment of the Civil Service Act and the provision of quotas, there has been some progress although not to the extent possible as evidenced in the 2009-12 period, when unavailability of appropriate candidates and the poor performance of those who attempted to get in resulted in less than 40 per cent of the seats set aside for minority groups being filled up (Awasthi and Adhikary, 2012).

Since Muslims are not considered a separate category for reserved quotas, there is no information on how the new provision has affected their participation in government service.

Security forces, mainly the Nepal Army, have remained inherently exclusive vis-à-vis Madhesis. The presence of Madhesis in the security forces has remained practically negligible. To rectify this situation, in 2007 the Nepal Army established a new battalion to include Madhesis (Nepalnews.com, 2015), but the participation of the Madhesi community in the Nepal Army continues to remain low.

### ***Citizenship***

The 2015 Constitution retained citizenship provisions that directly discriminate against women by declaring that, ‘in case of a person born to Nepali woman citizen married to a foreign citizen, he/she may acquire naturalized citizenship of Nepal as provided for by a Federal law if he/she is having the permanent domicile in Nepal and he/she has not acquired citizenship of the foreign country.’ This impinges on equal citizenship rights for women to confer full citizenship to their children since naturalized citizens are not allowed to hold any constitutional positions. This provision is particularly discriminatory towards Madhesis because cross-border marriages are highly prevalent in the Tarai and so children born to Madhesi women and domiciled in Nepal will forever be denied the opportunity to rise to the high levels of governance.

## **Right to culture and identity**

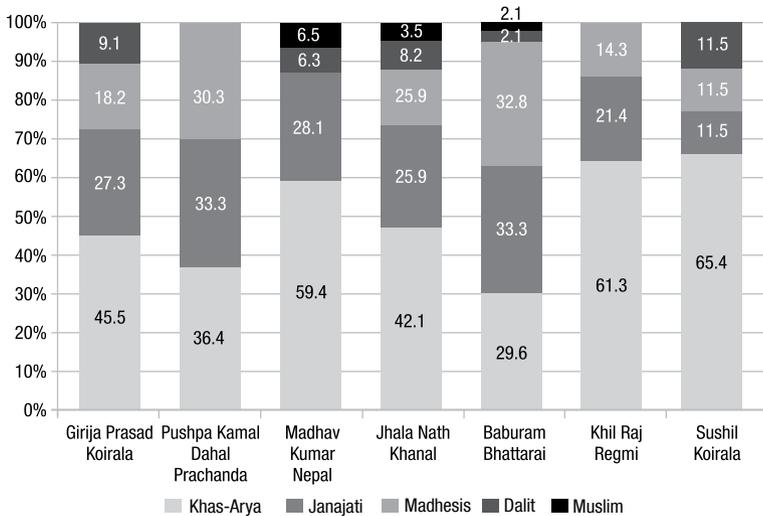
Despite acceding to ICCPR, which states that where ‘ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of this group, to enjoy

**Table 3. Social Composition of First Council of Ministers formed after the 2015 Constitution**

Caste/Ethnicity	Number of Ministers	Percentage
Khas-Arya	25	62.5
Hill Janajati	5	12.5
Tarai Janajati	2	5.0
Tarai Caste	5	12.5
Hill Dalit	1	2.5
Tarai Dalit	1	2.5
Muslim	1	2.5
<b>Total</b>	<b>40</b>	<b>100</b>

Source: <http://www.opmcm.gov.np/en/council>.

**Figure 1. Social Composition of Council of Ministers under Prime Ministers, 2007-2015**



Source: Dhruba et al., (forthcoming).

Note: The figures represent the number of individuals who were nominated as ministers and does not reflect the duration of their office terms.

their own culture, to profess and practice their own religion or to use their own language' (Article 27), in law and practice, the Nepali state continues to place curbs on these rights. Historically, this began with the process of sometimes-forced adoption of the Nepali language and Hindu religion. Ever since the emergence of Nepal as a modern nation-state in 1769 and through the end of the Panchayat system (1960-90), the rulers have promoted a doctrine of 'one nation, one culture, one language, one religion' to the exclusion of minority languages (Turin, 2007). Till 1991, discussions about ethnic difference or inequalities were jailable offences (Miklian, 2008). Under Panchayat rule, the supreme status ascribed to Nepali language left little incentive for mother tongue Nepali speakers to learn minority languages, while political, educational, developmental and administrative activities required speakers of other languages to learn Nepali (Turin, 2007). Many members from Janajati groups from the middle hills adopted both the language (Nepali) and the culture of the dominant group in this period.

The 1990 Constitution provided a slight departure from this policy by preserving Nepali as the 'language of the nation' but also designating all languages spoken as mother tongues in the country as 'national languages' and guaranteed the right to primary education in these languages (Gellner, 2015). The latter right, however, was never brought into practice by the state, and neither were the 'national languages' accorded any kind of official sanction. A well-documented case is that of the independently arrived decisions in 1997 by the Kathmandu municipality to use Newari and by the Dhanusha District Development Committee and Rajbiraj municipality to use Maithili as languages of communication in addition to Nepali. The Supreme Court ruled that the use of regional languages by local bodies was unconstitutional and illegal (Turin, 2007), and there has been no judgment so far to reverse this decision. But in an indication of how far the ground has shifted over time, following the uproar by Vice-President Parmananda Jha taking his oath of office in Hindi, ruling on a case filed before it, the Supreme Court decided that taking the oath in one's mother tongue was not unconstitutional, and Jha took his oath once again—in Maithili. Given that the 2015 Constitution provides federal units to determine one or more languages in addition to Nepali as the official language, a start has been made in some district courts to appoint, at government expense, interpreters.<sup>22</sup>

In terms of religious freedom in an apparent step back from the Interim Constitution, which had categorically defined Nepal as a secular state, the

## Profile of a vulnerable minority:

### Musahars

Musahars are a historically marginalized and highly excluded Dalit caste group from Nepal's Tarai region. This case study describes the current status of Musahars in Nepal and provides an overview of their historical background and how they continue to be discriminated against and marginalized by landowners and the state.

The origin of Musahars in Nepal is linked to the history of Musahars in India. Musahars believe that they are the descendants of the Kol tribe of the Chhota Nagpur Plateau in eastern India. Being landless, their ancestors migrated to Bihar in the 12th century to serve as agricultural labourers and remained the largest labour force there (Kumar, 2006). The term 'musahar' is derived from *masa*= 'flesh' and *hera*= 'seeker' (Dahal et al., 2014). However, it has since been distorted by the mainly Hindu Brahmin *jamindars* (Kumar, 2006), to mean 'rat-eaters'.

Musahars are found mainly in the eastern and central Tarai districts of Siraha, Saptari, Dhanusha, Sunsari, Morang, Udayapur, Mahottari, Bara, Parsa, Sarlahi, Rautahat and Nawalparasi. According to the 2011 Census, Musahars formed 0.89 per cent of the population of Nepal and constituted the second-largest Tarai Dalit group. Although there is a lack of records about the history of Musahars in Nepal, it is believed that they entered and settled in the plains of Nepal during the Rana regime working as labourers—clearing forests for agricultural land and working for the extension of the railways between Nepal and India. As labourers, Musahars were bonded to the *jamindars* in the Tarai during the Rana regime and were treated as untouchables (Dahal et al., 2014; Salter and Gurung, 1999). Musahars claim that they have no specific ritual occupations among the Hindu caste groups and that they are an ethnic group with their own distinct cultural identity and proximity to the Bhil and Munda tribes in India (Giri, 2012).

### Discrimination and Marginalization of Musahars

According to the Census 2011, the literacy rate among Musahars was only 21.8 per cent, which was far below the national average of 65.9

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2015 Constitution qualified ‘secularism’ to mean ‘religious, cultural freedom including protection of religion and culture handed down from time immemorial’, the latter being an explicit reference to Hinduism with its use of the term ‘sanatan’ in the Nepali original of ‘time immemorial’. Further, the cow has been retained as the national animal, which impinges on the food culture of some indigenous and religious groups (Constitution of Nepal, 2015). The Nepali state has long punished members of Janajati communities who kill cows for consumption with jail terms extending up to 12 years. In 2013 and 2014 alone, at least 38 individuals belonging to Janajati groups were either serving prison time or facing prosecution on charges of cow slaughter (Ghale, 2015).

## Religious minorities of Nepal

### Muslims

According to the 2011 Census, Muslims in Nepal constituted the third largest religious group with a 4.39 per cent share of the population. Muslims have registered consistent growth over the years from their share of only 2.54 per cent in 1952.<sup>23</sup> Muslims in Nepal are primarily rural, with 85 per cent residing in rural areas (CBS, 2014).<sup>24</sup> They form the largest population group in five Tarai districts—Banke (21.10 per cent), Rautahat (19.47 per cent), Kapilvastu (19.42 per cent), Parsa (15.41 per cent) and Bara (13.43 per cent). In five other Tarai districts, Dhanusha, Mahottari, Sarlahi, Sunsari and Siraha, Muslims constitute the second largest group (CBS, 2001).

Muslims fare poorly on major socioeconomic indicators. The literacy rate of Grade 5 and above is only 43.6 per cent among Muslims (as compared to the national average of 65 per cent). Muslims have only 3.24 mean years of schooling—the least for any social group in Nepal. Their per capita income of US\$695 is also among the lowest; although minimally better than Yadavs and Madhesi Dalits (US\$671 and US\$616 respectively), it is substantially lower than the national average of US\$1,160 (NHDR, 2014) (*See also Annex 1.*)

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22. For instance, the Chitwan District Court has provided for interpreters in 11 different languages while it was reported that the Panchthar District Court has appointed interpreters for 14 languages. <http://kantipur.ekantipur.com/news/2016-04-04/20160404073956.html> and <http://gorkhapatraonline.com/news/28569>.

...Profile of a vulnerable minority continued ...

per cent. Further, the National Social Inclusion Survey (2012) revealed that only 0.69 per cent Musahars had attained education up to the intermediate level. According to the Multi-Dimensional Exclusion Index, Musahars were located at the very bottom among all the caste and ethnic groups in Nepal (Bennet and Parjauli, 2011). Political participation of Musahars at all levels was negligible as was their presence in the civil services (NHDR, 2009).

Musahars have been economically, politically and culturally marginalized. The practice of untouchability continues to be a major problem for the community since it leads to their exclusion even from public places such as drinking water sources. Landlessness is a major cause of the economic and political marginalization of Musahars (Dahal et al., 2014), who dependent on the landowners for their survival. After the 2001 abolition of the *haruwa-charuwa* practice, which bound them to their landlords, Musahars have started working as free labourers, making their living as agricultural labourers, by fishing, selling firewood and pulling rickshaws.

Specific socioeconomic developments programmes targeted at Musahars are lacking. On the contrary, development interventions such as those relating to community forestry and national parks have ended up displacing and further marginalizing Musahars from their livelihoods (Paudel et al., 2007).

## Poor over Generations

Fifty-year-old Bombholi Sada is a resident of Babhangamakatti village in Saptari district. His father, Bechan Sada, spent his entire youth and old age as a servant for an affluent family in the village. Bombholi also spent his entire youth as a cowherd for others. His late brother, Sakunta, worked as a labourer until he was killed in a machine accident in Punjab. Not only Bombholi and Sakunta, but all the five sons of Bechan spent their lives as labourers. Bombholi's grandfather also worked as a servant until he died. Bombholi's son works as a tractor labourer. No one in his family has received any education. Bombholi said, 'For many generations, we have been working for others and we have remained poor and we have survived somehow.'

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### ***The National Muslim commission***

Despite the history of Muslim settlements in Nepal going back to the early 16th century, until recently there was no recognition of Muslims as a separate religious and cultural group. Equal citizenship was not granted to Muslims by the Nepali state until 1962. Muslims were categorized as ‘impure but touchable’ in the caste hierarchy codified in the Muluki Ain (National Code) of 1854 (Hoefer, 2004). Acknowledging the extent of marginalization of the Muslim community, on 5 April 2012, the cabinet approved the formation of a Muslim Commission, which was given constitutional status by the 2015 Constitution (<http://www.nmc.gov.np/>).

### **Christians**

Christians make up another small religious minority in Nepal and currently account for 1.4 per cent of the total population.<sup>25</sup> It is believed that the first Christians came to the Kathmandu Valley in 1628 (Whelpton, 2005) and Christian missionaries have been arriving intermittently from the beginning of the 18th century (Lindell, 2002). After his conquest of Kathmandu Valley in the mid-18th century, Prithvi Narayan Shah expelled all the Christians along with the new converts. These exiled Christians settled in Bettiah in the Indian state of Bihar and returned to Nepal only after the demise of the Rana regime in 1951 (Rongong, 2012).

In 1947, Father Marshall Moran, an American Jesuit, arrived in Kathmandu to supervise the BA examinations at Tri-Chandra College, which was then affiliated to Patna University. Responding to entreaties by Kathmandu’s elite, the priest set up the St. Xavier’s School for boys in Kathmandu in

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23. Many Muslims and even Hindus in Nepal claim that the total population of Muslims reported in the Census is incorrect and that the precise figure for Muslims is anywhere between 6 to 10 per cent of the population. In the report ‘Indian Ethnic Groups in the Nepal Tarai. Ansari (1980), showed that the population of Muslims living in Sunsari district was more than 50,000, which is three times the number reported in the 1971 Census (19,373). The often-cited reasons for the under-representation of Muslims include: fear of being discriminated for being Muslim; use of Census data for possible conscription in the army; and imposition of more taxes (see also Siddique 2001, Dahal 1978). These reasons imply that Muslims strategically under-represent themselves, but as a 2014 Census of a VDC in Parsa district found, the 6.7 per cent Muslim population had been reported as zero (Ayub et al 2014).

24. Although Muslims can be divided into Hill Muslims and Tarai Muslims, the latter are so small that they were not even enumerated in 2011. In 2001, they numbered just 4,893 compared to the national Muslim population of 975,873.

*...Profile of a vulnerable minority continued ...*

Eighty-year-old Dular Sada of the same locality is in his twilight years. His father, Pachu and grandfather, Faagu, worked in the village. Until he got old, Dular worked at digging soil in the fields. His nephew, Bhutai, is also working as a labourer. 'In our family, there has been no difference from the time of grandfather till now. We earn during the day, eat at night, and start again in the morning. Fate has been like that. What can we do?'

'Leaders promise a lot during elections, but they have never come back and helped in improving our livelihoods,' said Dewan Sada, the leader of the locality.

Another local, Bulan Sada, said, 'Our main problem is land. Since we do not have land, we cannot even take the facilities provided by the government.'

The only Musahar who has achieved a high political position is Asarfi Sada from Saptari. He was a nominated member of the legislature-parliament in 2007-08. He is currently a leader of the UCPN (Maoist).

*Source: Jha (2016).*

1951 (Messerschmidt, 1977), marking the formal entry of Christians back into Nepal. A school for girls run by Catholic nuns, St. Mary's School, was established in 1954.

### ***Caste discrimination and Christianity***

It is claimed that growing poverty and religious and caste discrimination have contributed to the growth of Christianity. Although the focus has been on people from the 'lower castes' converting to escape an exploitative caste hierarchy, statistics indicate that people from all castes and ethnicities convert to Christianity. However, even among Christians, converts from

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25. Now Nepal has one of the fastest-growing Christian populations in the world, according to the World Christian Database, which tracks global trends in Christianity (<http://www.npr.org/sections/goatsandsoda/2016/02/03/463965924/why-nepal-has-one-of-the-worlds-fastest-growing-christian-populations>).

'lower caste' groups continue to be discriminated against (Bhattachan et al., 2009), while top positions in the Christian community are disproportionately occupied by converts from Hindu 'high-caste' backgrounds (Shah, 1993).

There is a dearth of writing on the Christians of Nepal. What is clear though is that Christians began their work in the name of modernization and contributed to different sectors such as education, health services, communication and transportation. But the Nepali state has always viewed Christians with suspicion with regard to proselytism, particularly during the Panchayat years. At the end of the Panchayat system in 1990, there were 30 persons serving jail sentences for conversion-related charges and another 200 had cases pending against them in different courts. All of them were granted amnesty when the interim government was formed. But, the 2015 Constitution continues to retain the discriminatory clause against Christians by considering proselytising a crime (Article 26[3]).<sup>26</sup> The ambiguity in the Constitution regarding what constitutes 'forceful conversion' and the right of an individual to change one's religious faith has provided the state with leverage against Christian communities and organizations. In another blow to the Christian community, coinciding with the promulgation of the 2015 Constitution, the practice of declaring Christmas a national holiday that had started after 2007 has since been stopped.

There have also been some attacks on Christians by right-wing Hindu groups who blame them for the introduction of secularism in 2006. In 2008, a Roman Catholic priest was killed in eastern Nepal and in 2009 an explosion in a church in Kathmandu killed three people. While physical attacks have ceased after members of the self-styled National Defence Army were arrested, Christians in Nepal still feel discriminated against and treated like untouchables (Timsina, 2013).

## Conclusion and recommendations

Nepal was under monarchical rule for a long time with most powers reposed in the king. In its efforts to institutionalize a monolithic state, the monarchy suppressed minorities and the diverse cultures of Nepal by denying

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26. Article 26 (3) states: 'While exercising the right as provided for by this Article, no person shall act or make others act in a manner which is contrary to public health, decency and morality, or behave or act or make others act to disturb public law and order situation, or convert a person of one religion to another religion, or disturb the religion of other people. Such an act shall be punishable by law.'

Good practice case study:

## Nepal Federation of Indigenous Nationalities

Since the re-introduction of multi-party democracy in Nepal in 1990, the issue of identity politics has strengthened people's claims on every structure of the government (Lowati, 2005). The shift in discourse to 'inclusion' within the 'mainstream' political and social institutions has become central in challenging structural inequalities based on caste, ethnicity, gender, religion and region (Gellner, 2003). One of the leading organizations in this struggle has been the Nepal Federation of Indigenous Nationalities (NEFIN).

### Brief history of NEFIN

NEFIN began life as the Nepal Federation of Nationalities (NEFEN), which was formed in 1990 as an umbrella organization of indigenous people (Onta, 2006). The founding members of NEFEN included eight organizations representing Gurung, Limbu, Magar, Newar, Rai, Sherpa, Sunuwar and Tamang communities. During the pre-1990 period, organizations representing different Janajati groups had been formed such as Chwasa-Pasa (1924), the Tharu Kalyankarini Sabha (1949) (Krauskopff, 2003), the Nepal Tamang Ghedung (1957), the Nepal Bhasa Manka Khala (1979) and the Nepal Langhali Sangh (1982) (Tamang, 2004). But NEFEN paved the way for a national-level network.

NEFEN changed its name to NEFIN in 2001. It currently consists of 48 organizations representing communities distributed throughout the Tarai, Hills and Himalaya of Nepal. The recognition of NEFIN's work has led to its involvement in different international fora such as the United Nations Permanent Forum on Indigenous Issues (UNPFII) and the Asian Indigenous People's Pact (AIPP). Over time, with the help of international development partners, NEFIN has also led and coordinated projects with a particular focus on empowerment among which are the Janajati Empowerment Project (JEP and JEP-II) supported by the Department for International Development and Enabling State Programme (DfID/ESP), the Janajati Social and Economic Empowerment Project (JANSEEP) with Care Nepal and the European Union (EU) (JANSEEP) and the Sustainable Development of Disadvantaged Ethnic Communities in Nepal (SAMARTHYA) with Action Aid and EU.

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them fundamental rights to culture, language, citizenship and identity. This made Nepal's transition to democracy challenging since democratic consolidation, which is largely determined by participation in power-sharing and by addressing and reducing social inequalities, has yet to see significant progress. Although Nepal has made progress in its overall development indicators, it still fares badly in economic growth as compared to its South Asian neighbours, with the marginalized sections faring even worse. Dalits in particular fare badly on all socioeconomic indicators as well as on indicators of political participation. Nepal has acceded to most of the international conventions relating to minority rights even though it is yet to meet all its obligations under them.

Nepal made significant progress in its constitutional provisions with the Interim Constitution of 2007. Some of these gains were reversed with the 2015 Constitution. That this has not been fully accepted by marginalized groups such as the Madhesi is an indication of the state's failure to recognize and address the interests of minority and marginalized groups. The weakness of the state in ensuring fair distribution of resources, development flows and power-sharing among all sections of the population is clear. The deep-rooted marginalization of minority groups is also due to incoherent development plans and their ineffective implementation.

## **Recommendations**

- i. There is a need for a robust and categorical definition of 'marginalized' and 'minorities' with clear listings of caste, ethnic and religious groups. Further, these categories should be used in all sectors and for affirmative action to ensure effective representation.
- ii. Although government agencies have started disaggregating data by ethnicity and gender since the 1991 Census, there is a need for greater disaggregation of all relevant national data based on similar criteria. Given their increasing numbers, the data should also deal with Christians as a separate category.
- iii. The provision of different commissions in the new Constitution to address issues of minorities is a positive step and included in the duties and responsibilities of these commissions should be to defining the types of inclusion that will address the demands of these groups and monitor progress of the same.
- iv. The periodic development plans need to focus on gauging progress along different socioeconomic indicators by minority and marginalized

... Good practice case study continued ...

## **Campaigns and interventions**

Focusing on the need for the inclusion of this huge mass of population within the mainstream developmental agenda, NEFIN's demands in the main were (Bhattachan and Bhattachan, 2003):

- right to self-determination,
- ethnic autonomy,
- equal language rights, including a tri-lingual language policy and education in the mother tongue,
- secularism, and
- affirmative action.

It is a measure of NEFIN's advocacy work, along with other political processes that by the end of the 1990s, the Government of Nepal had considered introducing the following (Subba et al., 2008):

- right to education in the mother tongue,
- reservations for Janajatis in higher technical education,
- use of local languages in local offices,
- secularism,
- special or proportional representation and ethnic autonomy,
- establishment of a foundation/academy to preserve and promote Janajati languages and cultures,
- positive discrimination in government jobs,
- removal of discriminatory provisions in the Constitution, laws, by-laws and policies,
- recognition of rights to natural resources,
- disaggregated data by ethnicity and caste, and
- ratification of ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

## **Interventions and impact**

The objectives of NEFIN have been to develop unity and fraternity among Janajatis while also developing their leadership and capacities (NEFIN.org). The establishment of District Coordination Councils (DCCs) has been instrumental in this context. So far, NEFIN has established DCCs in 69 districts (NEFIN.org), paving the way for strengthening Janajati political activism. This allowed NEFIN to play a prominent role in the 2006 people's movement that led to

... contd. ...

groups. Further, the plans need to build on previous iterations as there exist discontinuities between successive plans.

v. Constitution:

- The 2015 Constitution articulates sentiments for ending discrimination, but since it does not spell out clear pathways to promote equality, the government will have to take heed of the spirit behind the sentiments when designing specific interventions.
- Citizenship rights to women have been particularly discriminatory in Nepal. Multiple clauses in the Constitution ensure transfer of citizenship to children only through the father and curb women's right to transfer full citizenship rights to their children. The state, therefore, has the duty to repeal discriminatory clauses based on citizenship, avoid statelessness and prevent arbitrariness in conferring citizenship (Malla, 2016).

vi. Public Service:

- Since Dalits are particularly vulnerable to their human rights being violated, there should be a provision to include at least one Dalit representative in the National Human Rights Commission.
- The quota or reservation system should be strengthened by making special provisions to encourage members of marginalized communities to seek employment in civil service and public institutions.
- Political participation of Dalits, especially of Tarai Dalits, is bleak. Dalit inclusion should be mandatory at each level of government planning and implementation. The state should develop effective mechanisms for checks and balances to ensure that affirmative action in this regard is implemented.

vii. Implementation of International Standards:

- Nepal has rejected all the 29 recommendations on human rights made during the 23rd Universal Periodic Review held in Geneva in 2015, including those related to conventions on transitional justice and has refused to ratify the Optional Protocol to the Convention against Torture, International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court (Rai, 2016). Nepal should ratify these protocols and also adhere to pledges made for accountability and justice to the people.

... Good practice case study continued ...

the end of direct rule by the king and the end of the Maoist conflict (Shah, 2008).

After the political change of 2006, inclusion became a major agenda in Nepal's political discourse. The issues and demands of the Janajatis focused on state restructuring along the lines of federalism, autonomy with the right to self-determination, representation of Janajatis in government structures in proportion to their population and special representation for minority Janajati groups. Following a protracted struggle, NEFIN signed a 20-point agreement with the government in August 2007, which included a provision accepting ILO Convention 169 and UNDRIP. Around the same time, the Interim Parliament also approved revisions to the Civil Service Act 1993, which led to fixed quotas for Janajatis (and also others) in government jobs.

### **Lessons for advocacy**

Despite many challenges, NEFIN provides a number of lessons for advocacy. Changes in the provisions of the constitutions since the 1990s reflect effective advocacy on the part of NEFIN. NEFIN has successfully advocated for the definition and classification of indigenous/Adivasi Janajatis and also legitimized the definition via various protests, rallies, demonstrations, press conferences and publications (Tamang, 2004). However, the real strength of the organization – engaging in advocacy – became possible only through regular interactions at the grassroots level since its branches are spread across different districts and villages.

However, NEFIN has also had its share of problems. The most prominent of these was its falling out with the UK's Department for International Development (DfID), which had supported the Janajati Empowerment Project. Following a national strike in 2011 called in support of its position of federalism that would recognize identity as one of the bases for the division of provincial units, NEFIN was served a warning by DfID to refrain from the sometimes-violent street confrontations. NEFIN refused and DfID withdrew its support for a very effective awareness-raising programme.

Since then, NEFIN has been reduced to a shell of its former self. Growing interference by political parties has led to factionalism within NEFIN members and led to a weakening of the whole Janajati movement. Co-option of the organization's leaders and activists by established parties has challenged its legitimacy and also undermined all its previous efforts.

- International standards set by instruments such as ILO Convention 169 should be implemented to protect the rights of indigenous people. Existing initiatives of land reforms and management should incorporate a specific focus on the rights of indigenous people over land, territories and natural resources that they have traditionally owned or used, either individually or collectively. Accordingly, the state should obtain free and informed consent of indigenous people prior to giving approval to any project affecting their land, territories and other resources.

viii. Education:

- Nepal has not ratified crucial international documents like the UNESCO Convention against Discrimination in Education (1960). Existing plans for bilingual education should be enforced as a matter of priority in order to promote and develop lingual diversity and also to make teaching and learning processes more effective, including by allocating the required human and financial resources to allow for effective implementation of such programmes. This includes supporting madrassa education and accepting it as a formal educational institution up to the higher level.
- Nepal has implemented plans like EFA and SSRP, but access to education appears discouraging since groups such as Janajatis, Madhesis and Dalits still struggle to educate their children. In a welcome move, the government has been providing scholarships to Dalit children. What is required next is effective monitoring of the distribution of scholarships and creating a Dalit children-friendly environment in schools.
- Scholarships, food and uniforms in schools should be provided to Dalits, backward communities and the poor in order to reduce drop-out rates.

ix. Access to Justice:

- Studies show that the torture inflicted among Madhesis, Dalits and Janajatis is higher as compared to Bahuns, Chhetris and Newars (Advocacy Forum Nepal, 2012). Civil society as well as the state should invest in making core law-enforcing bodies such as the Nepal Police and the Armed Police Force more tolerant and sensitive towards the socio-cultural diversity of Nepal.
- Existing laws must be strengthened through amendments to guarantee that complaints are registered, investigations proceed in a timely

manner, investigators are shielded from political or other pressures and victims are afforded requisite protection.

x. Caste-based Discrimination:

- Mechanisms to eliminate caste-based discrimination should be made effective.<sup>27</sup>
- The government needs to repeal all discriminatory laws, regulations, rules, directives, policies and programmes that contravene the human rights of groups such as Dalits.

xi. Economic, Social and Cultural Rights:

- Special arrangements need to be made for the inclusion, protection and promotion of human rights of the Muslim community while recognizing their existence as a religious community with distinct customs, culture, language and way of life.

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