

## The Reluctant Inclusion and Federal Institution Building in Nepal

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### Executive Summary

Inclusion was central to adopting a federal structure in Nepal. However, the idea and the process of inclusion both have been contested over the years since inclusion, as a concept, was conceived officially and envisaged in the Constitution. Using 'reluctant inclusion' as an analytical frame, this Policy Brief explains how the articles included in the Constitution in Nepal have grappled with the question of facilitating broad inclusion in the design of political power-sharing mechanisms and institutions. The groups who face major institutional constraints on their representation and participation in the power-sharing arrangement are influenced by multiple factors that are accentuated by the entrenched loopholes in the Constitution, the structure, and the process of inclusion at large. This makes Nepal's effort at inclusion a reluctant one as exclusion is rooted within the social structure, that manifests at the political level making inclusion rather a token than a principal in which the democratic, federal institution building is grounded.

non-ethnic identities into the design process. Doing so acknowledges that citizens' identities are complex and multi-layered. Reflecting the varied ways in which citizens organize their lives in governing institutions is likely to enhance institutional legitimacy and stability.

The central tenet of political participation lies in the idea of inclusion; that every citizen, regardless of caste, class, age, gender, sexual orientation, ability, group, culture, and ethnic or religious background should have equal rights and opportunities to engage with, and contribute to, the functioning of democratic institutions and processes. Citizens' participation and representation in all democratic institutions and processes such as, but not limited to: constitutional bodies and constitution-building processes, political parties, bureaucracy, and parliaments are central to ensuring systemic inclusion of marginalized groups in the long-term in democratic structures.

However, the very idea of inclusion has remained contested and the process of inclusion is best defined as being 'reluctant' in Nepal. This Policy Brief examines the underlying loopholes and the myopic collective national self-understanding problem in Nepal, which was resurrected on the notion of a single language, religion, and dress. Such an understanding not only undermined diversity itself but also lay at the centre of the entrenched reluctance of inclusion seen to date. A transformation redefining the boundaries of the national political community<sup>2</sup> from an ethnic exclusivism to a diverse nation remains a long and daunting road,<sup>3</sup> which continues to witness counter-inclusion backlashes.

### Introduction

The primary objective behind adopting a federal structure in Nepal was to ensure inclusion and to bring an end to the structural marginalization and systematic exclusion based on identity and ethnicity. Nepal's Federalism was designed to recognize that, non-dominant groups – the others – also deserve recognition, representation, and access to democratic decision-making channels. It has acknowledged that the federal design should not preclude bringing gender, sexuality, class, and other

<sup>1</sup> Editor's note: the data reported in this Policy Brief is current as of 2021.

<sup>2</sup> Takle, M. 2007.

<sup>3</sup> Rensmann, L. 2012.

A range of factors from organizational deficiencies, leadership issues, and internal feuds in political parties, to strategic failures, and a lack of democratic responsiveness plays an important role in low levels of commitment to inclusion. This Policy Brief seeks to embark on unravelling this dubious practice entrenched in Nepal's vision for inclusive federal institution building.

### Constitutional Provisions

The Constitution of Nepal of 2015 envisages proportional representation with provisions of distinctive inclusive treatment for minorities and women. Further, affirmative actions and constitutionally mandated quotas, affirmative actions, and constitutionally mandated quotas form the required foundation for inclusion ensuring special provisions for Dalits and the most marginalized sections. For instance, in both urban and rural municipalities, at least two of the four ward members are women, one of whom must be from a Dalit caste.

In addition, political parties are required to field at least one woman candidate for the offices of mayor and deputy mayor (chair and vice-chair in rural municipalities). The Constitution also mandates that the nine-member District Coordination Committees include a minimum of three women and at least one Dalit or member of a minority community. As a result of this, the 2017 local government elections resulted in the election of at least 14,352 women—the highest number ever elected to public office in the country's history. The Constitution of Nepal, therefore, has made major strides in recognizing diversity and structural discrimination.

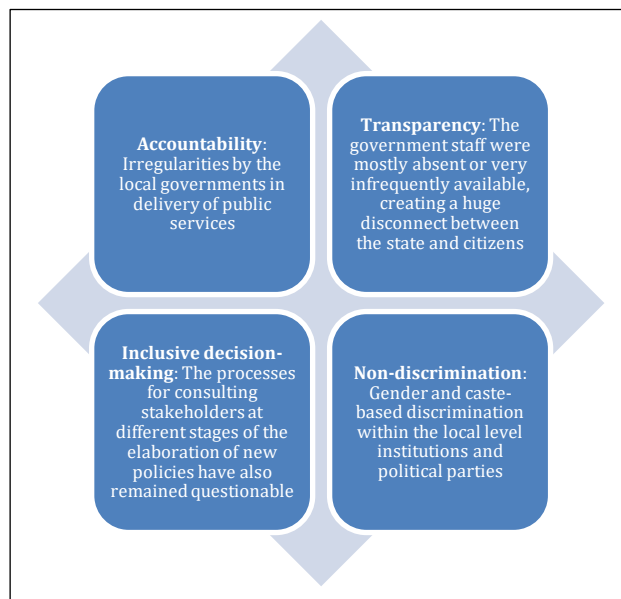
However, careful consideration of inclusion in Nepal reveals glaring loopholes making it at best a reluctant inclusion practice, meaning inclusive principles have been envisaged but not practised.

### Factors Promoting Inclusive Institution Building

There are four factors that this Policy Brief argues promote inclusive institution building: accountability,

transparency, inclusive decision-making, and enforcing non-discriminatory laws and policies, in relation to the institutional principles of Sustainable Development Goal (SDG) 16: transparency, access to information, accountability, anti-corruption, inclusiveness of decision-making processes, and non-discrimination.

### Factors Influencing Inclusion



### What makes Inclusion Reluctant in Nepal?

Habermas in his description of the public sphere provides the core normative standard for the idea of inclusive critical discussion, that propagates a model free of social and economic pressures, in which interlocutors treat each other as equals in a cooperative attempt to reach an understanding on matters of common concern. This concept is grounded in the structural transformation of the public sphere itself and in the dimension of its development<sup>4</sup> stemming from critical/transformational pedagogies.

However, over a period of time inclusion has been rather adjusted to fit the existing public sphere dominated and determined by the elites instead of the transformation of the public sphere itself. The

<sup>4</sup> See Dahlberg. 2005.

degree of inclusion is defined within the parameters of the threefold scheme that includes focusing on access and economic factors, social justice, community participation, human potential, and personal and collective empowerment. Here, the possible areas of inclusion are socio-economic status, culture, linguistic group, religion, geography (rural and remote/isolated), gender, sexual orientation, age, physical and mental health/ability, and status with regard to unemployment, landlessness, and prosecution.<sup>5</sup>

This is a design rather in line with what Horowitz (1993) propagates: it is important to design institutions that support democracy for dominant groups, including ethnic minorities. Yet, non-dominant groups – the others – also deserve recognition, representation, and access to democratic decision-making channels. Even if a Federation’s origins are ethnic-specific, this should not preclude bringing gender, sexuality, class and, other non-ethnic identities into the design process. Doing so acknowledges that citizens’ identities are complex and multi-layered (thus bringing to the fore the important concept of ‘intersectionality’). Reflecting the varied ways in which citizens organize their lives in governing institutions is likely to enhance institutional legitimacy and stability<sup>6</sup>.

While this is projected as a robust approach to inclusion, a significant question is: To what extent, if any, has the concept of inclusion been used as a measure to transform party politics in Nepal? Here, political discourse and programmatic positions on citizenship, identity, and ethnocultural diversity; the policy regime of mainstream parties on the inclusion of ethnic minorities; and the fielding of minority candidates for national public office are important dimensions to take into consideration.

For instance, in Nepal’s national and local elections of 2017-18, women came to occupy 41.8 percent of

political positions across the country with 91 percent of women as deputy mayors. However, there is still a large gap between the number of male and female elected representatives: 98.16 percent to 8.13 percent.<sup>7</sup> This provides an important insight into the party system of Nepal which is also a central tenant of political representation as political representatives are members of political parties which are the main vehicles of representation.<sup>8</sup>

It is also important to note that Dalit political leaders do not hold influential political posts in any of Nepal’s ruling parties. Further, as the Constitution of Nepal does not specifically state that the representation shall be in proportion to the population, there is a huge under-representation of Dalits except among ward members. Therefore, the electoral system in Nepal, despite its significant efforts to be more inclusive, has crucial loopholes which allow for the concept of political inclusion to be a mere technicality.<sup>9</sup> It is, thus, important to highlight factors such as how political participation and representation has been interpreted, how vested interests and demands have been at play, and what the level of understanding and engagement is with the political system.<sup>10</sup>

A report by Bholu Paswan and voices of women media presents an appalling example from the Nepalese practice of inclusion.<sup>11</sup> Out of 13,484 non-quota ward member positions in the local elections 2017, only 2% went to women. Similarly, out of the total 6,742 ward chair seats, women won only 1% (in the 2017 local elections). In Nepal, Dalits continue to be the most underrepresented in the parliament with only 8% (20 representatives) representation in the House of Representatives out of which, only 2 are Madhesi Dalits. There are only 6 women directly elected to the House of Representatives out of which non are Dalits or Madhesi. In the National Assembly in 2018, meanwhile, 55 percent of the MPs were Khas Arya, 22 percent Adibasi Janajati, 8.4 percent Madhesi, 1.6

<sup>5</sup> Gidley, et al, 2000.

<sup>6</sup> Horowitz, 1993.

<sup>7</sup> Upreti, B., D. Upreti, and Y. Ghale. 2020.

<sup>8</sup> Heller, 2009.

<sup>9</sup> Mehrotra, I. (2019). Political Representation in Indian Democracy: A View from the Margins. *Journal of Social Inclusion Studies*, 5(1), 59–71.

<sup>10</sup> Lijphardt, A. (1969). Consociational Democracy. *World Politics*, 21(2), 207-225.

<sup>11</sup> Paswan, B. (2021).

percent Tharu, and 11.8 percent Dalit. There are no Muslim MPs in the National Assembly. There are 22 women MPs in the National Assembly. The three government-nominated members of the National Assembly are Khas Arya<sup>12</sup> (two men and one woman).

This draws attention to the fact that Madhesi women are not represented as well as Hill women; similarly, Tarai Dalits only constitute 23% of the officials elected to the Dalit Woman Ward Member post.<sup>13</sup> This displays a clear apathy toward intersectional inclusion in the electoral politics of Nepal. Mainstream political parties have been reluctant, but ultimately strategic, agents reacting to these transformations in the electoral market. Yet, the scope and character of inclusion also depend on external and internal supply-side conditions that enable parties to make programmatic changes, depolarize key issues of citizenship policy regime, and recruit ethnic minorities for political representation. Ultimately, despite their reluctance, they have been rational agents responding to electoral demand and interested in maximizing voter mobilization.

### Continuity of "Politics of Exclusion"

While the political elite has begun to endorse an increasingly inclusive societal and political view on cultural diversity in the relevant parts of the electorate, the persistent problems of institutionalized discrimination as well as comparatively restrictive institutional politics grants ethnic minorities and marginalized population limited access to the societal elite or to public office, the legal status, political role, along with an opportunity to change social perception. The Constitution of Nepal, despite projecting progressive policies vis-à-vis inclusion, embodies some pressing loopholes that provide for the continued practice of exclusion. For instance, the Constitution of Nepal does not specifically say the representation shall be in proportion to the population. The Constitution also does not provide a framework for the representation of local minorities in local government, resulting in

many cases of complete unrepresentation in the newly elected bodies.

More so, there is a huge under-representation of Dalits except for ward members. In most cases, directly elected leaders selected people of their own ethnic identity when appointing indirectly elected members to the municipal executive.<sup>14</sup> This represents what has been termed the 'exclusion amid inclusion' dilemma. This explains that to create stability and pacify the dominant groups in the power-sharing arrangement, it must marginalize non-dominant groups. These are groups that were neglected in the original design of power-sharing institutions, and who face major institutional constraints on their representation and participation in the power-sharing arrangement.<sup>15</sup>

The local governments have, on the one hand, prioritized physical or infrastructure development over inclusive growth,<sup>16</sup> and ethnic organizations have also complained that the local governments have not consulted them on plans and policies on matters of their own concern. Further, in practice, there is some appalling evidence that typically demonstrate a complete lack of, or little willingness to implement, inclusion in the real sense.

The implementation of legal reforms and policies enacted to improve gender equality and social inclusion at the national and local levels has been weak. Women and Dalit representatives elected to the local government from reserved seats are of the opinion that they are not encouraged to participate in decision-making and are deprived of specific roles and responsibilities, attending meetings, and voicing opinions in local governance. Deputy mayors or chairpersons are mandated to convene the Judicial Committee of the local government but none of them are trained in law.<sup>17</sup> The judicial committee is not just important for catering to justice but is also an important opportunity for the women leaders to showcase their skills. However, in addition to the absence of legal units in local governments, and the sheer unwillingness to advance the leadership of

<sup>12</sup> This refers to Hill Brahmin and Chhetris.

<sup>13</sup> See Paswan, B. (2021).

<sup>14</sup> Australian Aid & The Asia Foundation. (2017).

<sup>15</sup> Agarin, T. & McCulloch, A. (2020).

<sup>16</sup> Democracy Resource Centre, Nepal. (2019).

<sup>17</sup> Australian Aid & The Asia Foundation. (2017).

women and other marginalized sections, the services seem to have been neglected. What appears to be the case is a tendency to keep the quota candidates incapacitated so that the power relations and hegemony do not change.

The reluctance is also made apparent by the dismal progress demonstrated by certain communities of Nepal in their social, economic, and political arena. For instance, according to Nepal Social Inclusion Survey (NSIS) (2018), the literacy rate among Madhesi Dalits is only 17.6%.<sup>18</sup> Madhesi Dalits also have the lowest level of proficiency in Nepali (15.6%) and only 17.6% of their population has completed basic education through the 8th grade. As a result, Madhesi Dalits consistently display the lowest level of knowledge of affirmative action, possession of legal identity documents, participation in local governance, representation in local organizations, and having a sense of agency with respect to rights and governance.

Large disparities exist across geographical regions and between excluded and less excluded groups (Hill Dalits rank at 0.446 in the Human Development Index as per the 2011 Nepal Living Standards Survey (NLSS) compared to 0.400 for the Madhesi Dalits). According to NSIS (2018), access to safe housing for Madhesi Dalits is 15.2% as compared to Pahadi Dalits at 23.5% and only 15% of land plots are owned by women.<sup>19</sup> Therefore, inclusion can only be attained by improving the poor's access to resources, and in particular, those resources most vital to escaping poverty. Further, the removal of institutional constraints that currently bar the poor from accessing these resources, and thus render them powerless to help themselves, is essential. A broader framework for social protection and social security coverage can form the required bedrock for achieving a broader and more meaningful inclusion.

### Conclusion

Nepal has strategically sabotaged the very principle of inclusion through practices envisaged above in terms of accountability, transparency, inclusive decision-

making, and non-discrimination. Provisions for inclusion have been manipulated to practice systematic exclusion at different levels. Back in 2002 the Asian Development Bank had concluded "In Nepal, social exclusion is primarily driven by institutions and processes that uphold or exacerbate income- and capacity-poverty on the basis of gender, ethnicity, and caste".<sup>20</sup> This statement still remains relevant in aptly explaining the nature and scope of exclusion in Nepal.

Inclusive political institutions constitute and sustain democracy but political actors, in order to maximise their gain, compromise inclusive structures. Such practices impede not only maintenance of political order but also meaningful representation, choice, fair competition, and accountability along with checks on corruption. This is also a major challenge that Nepal is faced with as political interests are driven by personal gains and electoral ends and fail to produce workable, sustainable, and effective economic and social policies in lack of more effective and stable structures for representing interests. These factors represent a picture that is rather indicative of a reluctance to implement inclusion where policies are envisaged on paper but not in practice.

Several recommendations can be proposed in order to better deal with this situation:

1. Loopholes inherent in the Constitution (such as the lack of clear principles of inclusion-based proportional representation) need to be revisited and addressed.
2. Targeted programs for the most marginalized sections of the population, such as Madhesi Dalits and Muslims, are important for increasing their understanding of their political rights.
3. Measures must be taken to broaden the scope of inclusive representation for non-dominant minorities, and institutional reforms are also required to accommodate the minorities.
4. Training and courses on the benefits and importance of inclusive institutions in the process of democratic institution-building to staff members/ bureaucracy are required.

<sup>18</sup> Central Department of Anthropology: Tribhuvan University. (2018).

<sup>19</sup> Ibid.

<sup>20</sup> Asian Development Bank. (2002).

5. Accountability and transparency monitoring measures and community action mechanisms need to be developed and extended. A clear strategy for accountability and action and a plan for collaboration across institutions need to be developed.
6. Institutional culture and environment need to be sufficiently aligned to ensure that inclusion of diversity, accountability, and participation goals are fully integrated and embedded within the local and national level institutions' core objectives.
7. Finally, behavioural changes within the local and national institutions are primary as the shared values, beliefs, and customs shape how individuals behave within an institution which in turn shapes the processes, policies, and practices that they manifest in the institution. This is at the core of breaking the entrenched exclusionary mindset and making the institutional spaces inclusive and participatory.

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