
CASE STUDY*

Nepal

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To what extent was the conflict in Nepal generated by lack of inclusion of a group or groups in the state's political and legal structures? Was there a lack of human rights protection for the excluded group?

Exclusion of almost all groups, other than the hill-dwelling Hindu upper-castes, from the political and legal structures in Nepal was a key cause of all three of Nepal's conflicts and associated "People's Movements" (1950, 1990, and 2006). A Hindu nation-state since 1779, largely ruled by a series of autocracies and oligarchies until the abolition of the monarchy in 2008, the fight for multi-party democracy was a defining feature of the People's Movements and their associated conflicts in Nepal. Indeed, the Maoist insurgency during the Nepalese civil war (1996–2006) aimed to abolish the monarchy and transform Nepal into a secular inclusive democratic republic (Khatiwada 2014; Mabuhang 2015; Neelakantan, Ramsbotham and Thapa 2016).

Issues relating to: the socio-economic, civil and political exclusion of and discrimination against women; Madhesi (caste-based Hindus and Muslims in the Tarai [plains] of Nepal); Janajati (ethnic nationalities outside the Hindu caste system); Tharu (indigenous peoples of the Tarai); and Dalits (Hindu caste "untouchables") have been key ignition points for conflicts

in Nepal since the 1950s. In particular, there was a clear link between the exclusion of groups and the Nepalese Civil War (1996–2006): the Maoists adopted these groups' individual grievances, transformed them into collective grievances against the regime, and thereby succeeded in recruiting marginalised groups to their cause and their fighting forces (Khatiwada 2014; Mabuhang 2015; Neelakantan, Ramsbotham and Thapa 2016).

How did reform initiatives or various peace processes try to address this?

Since the signing of the Comprehensive Peace Agreement (CPA) in 2006, a number of initiatives have been implemented to address the exclusion of marginalised groups from state institutions with varying degrees of effectiveness. Key reforms include the transformation of the Kingdom of Nepal into a secular democratic republic in 2008, the introduction of proportional representation (PR) for elections to the Constituent Assembly (CA), inclusion reforms for the Nepalese Army and civil service, and a constitution-making process.

Under the Interim Constitution, a complex system was designed for the 2008 CA election: 240 members were elected from single member constituencies using the first-past-the-post (FPTP system); 335 members were

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elected by PR according to a popular party vote and 26 “distinguished citizens” were appointed by the “council of ministers”. To improve the inclusion of marginalised groups, quotas for women, Janajati, others (the dominant social groups), Madhesi, Dalits, and “backward regions” were introduced for the PR lists. As a result of the PR allocation, many excluded social groups gained access to political power for the first time in 2008. Their inclusion was, however, short-lived. Levels of representation for marginalised groups fell following the 2013 election for the second CA, and the proportion of seats allocated by PR (the system under which the marginalised groups perform better electorally) has been further reduced for Nepal’s legislature-parliament under the 16 Point Agreement and the 2015 Constitution. The proportions were approximately 60% PR to 40% FPTP for the CA elections, however this has been inverted to approximately 40% PR to 60% FPTP for future legislature-parliament elections (Khatiwada 2014; Mabuhang 2015; ICG 2016).

Inclusion quotas were also introduced for civil service and armed forces positions in Nepal. Under an amendment to Nepal’s 1993 Civil Service Act in 2007, 45% of civil service positions are supposed to be reserved for disadvantaged groups. Within this 45%, 33% are reserved for women, 27% for Janajati, 22% for Madhesi, 9% for Dalits, 5% for the “physically challenged” and 4% for the “backward regions”. Ultimately, however, studies have shown that this positive discrimination policy has actually benefited the dominant high-caste social groups and has, in fact, led to a reduction of the inclusion of marginalised populations in the Nepali administration (Mabuhang 2015; One World South Asia 2017).

Similar quotas were introduced for the Nepal armed forces. In 2006, an amendment to the Armed Forces Act reserved 45% of

posts for disadvantaged groups with, again, specific group reservations within this 45% (20% women, 32% Janajati, 28% Madhesi, 15% Dalit, 5% remote areas). Inclusion of excluded groups in the Nepali armed forces has increased marginally since the introduction of this policy but is nowhere near the reserved levels stipulated. A further concern is the extremely low level of Maoist ex-combatant integration into the armed forces following the CPA. Despite numerous detailed agreements on this issue, less than 1,500 of the 19,000 registered Maoist combatants were integrated into the Nepali armed forces by the end of the Disarmament, Demobilisation and Reintegration programme in 2010. One key obstacle to their integration in the Nepali armed forces was the requirement for the Maoist combatants to meet the existing education prerequisites for armed forces recruitment (as the Maoist forces were largely composed of fighters from marginalised social groups, many of the combatants did not



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possess the educational qualifications required for entry into the national armed forces) (Bogati 2014; Bhrikuti 2015; Mabuhang 2015).

How did inclusion and protection of rights feature in the CPA, constitutional or institutional reform approaches?

Human rights protections and state restructuring to redress group marginalisation were prominent features of the 2006 CPA and the 2007 Interim Constitution, although many of these rights provisions and commitments to inclusion were watered down, restricted, or reversed in the 2015 Constitution. In both the CPA and the Interim Constitution an entire section was dedicated to detailing the human rights provisions for the Nepali people.

In addition to civil and political rights, the agreements also provided specific protection for the rights of women and children, and a range of socio-economic rights, such as labour rights and rights to healthcare, were included. Many of the rights provisions in the Interim Constitution also included a caveat ensuring that the provision of the rights shall not prevent the making of special provisions in law for the protection or empowerment of marginalised groups (for example, women, Dalits, Janajati, Madhesi, disabled people, and others). Both agreements also detailed monitoring mechanisms for the implementation of human rights provisions. These provisions are monitored by the United Nations Office of the High Commissioner for Human Rights in the CPA, and the National Human Rights Commission (which was

created as a constitutional body) in the Interim Constitution (Bell 2015; ICG 2016).

While the 2015 Constitution has been widely celebrated as progressive for its codification of equal rights for the LGBTI community, equal property rights for men and women, and the prohibition of the death penalty, it is highly regressive in other areas and has removed or restricted freedoms previously provided to Nepalis under the 2007 Interim Constitution. For example, the 2015 constitutional provisions relating to freedom of expression (for individuals and the media), freedom of movement, freedom of association, freedom to form a political party, and freedom of occupation are all accompanied by a clause which provides a series of conditions under which the government can legislate to “impose reasonable restrictions” on citizens’ use of these rights. In addition, despite affording women this right in the 2007 Interim Constitution, the 2015 Constitution denies women the right to pass on their citizenship rights to their children independent of the father’s national citizenship (Desouza 2015; Bell 2015; ICG 2016; Acharya 2017).

How did the peace or reform process approach inclusivity: did it focus just on the dominant groups at the heart of the conflict? To what extent did it also attempt broader inclusion of other groups and interests?

Although celebrated as an inclusive form of politics, the Nepali peace process has taken an increasingly narrow approach to inclusion.

Following the 2006 CPA and the 2008 CA elections, which enabled the Communist Party of Nepal (Maoist) (CPN (M)) – the political party formed out of the Maoist forces – to lead a coalition government, there was significant hope that Nepal was moving towards a new kind of inclusive politics. While Nepal



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has now been declared a secular democratic republic, when the first CA was disbanded in 2012, having failed to produce a constitution, little else appeared to have changed.

At both the national and local levels, politics continues to be conducted through the use of patronage networks and back-room deals and the traditional political elite continue to subvert attempts at greater political, social and economic inclusion for marginalised groups. The 2015 Constitution was produced and ratified in the aftermath of a major earthquake, following almost no public consultation or debate in the CA, and many rights and protections afforded to excluded groups in the Interim Constitution have been restricted, reduced or removed from the 2015 Constitution. Inclusion in Nepal has only really been extended (beyond the traditional political elite) to a small number of power contenders who are able to represent a progressive political agenda and mobilise politically to either contest elections or organise mass protest movements (Khatriwada 2014; Mabuhang 2015; ICG 2016; Neelakantan, Ramsbotham and Thapa 2016).

What were the critical moments when attempts at inclusion could have succeeded (and did not) or failed (and did not)? What factors – in country leadership, civil society mobilisation and international intervention – determined whether they succeeded or failed?

Key inclusion successes tended to be incited by mass civic mobilisations. For example, the street protests known as the 2006 “People’s Movement” led to the King’s reinstatement of the Nepali Parliament, and the Madhesi Movement in 2007 led to the amendment of the Interim Constitution to include a commitment to federalism (something which the traditional political elite were reluctant to include) (Khatiwada 2014; Neelakantan, Ramsbotham and Thapa 2016).

The most divisive issue regarding inclusion in Nepal is “federalism” and struggles over this issue have been at the root of some of Nepal’s greatest inclusion failures since 2006. Federalism and the decentralisation of political power is seen as a key path to inclusion and political participation by excluded groups in Nepal. As no party won a majority in the 2008 CA elections, national politics was conducted through the formation of alliances which

were either pro- or anti-federalism. While the CPN (M) and a series of new identity-based political parties were pro-federalism, the Nepali Congress (NC) and the Communist Party of Nepal (Unified Marxist-Leninists) (CPN (UML)) – the parties of the established political order – and some other smaller parties, were anti-federalism. Disagreement over the character of federalism, inclusion, and representation in Nepal paralysed the CA and prevented the promulgation of the constitution before the end of the CA’s term in 2012. The electorate’s disillusionment with the new political parties due to their perceived inability to deliver on their promises and promulgate a constitution within the CA’s term resulted in a reduced number of votes for these parties in the 2013 CA elections. This enabled a return of the old order (as the NC and CPN (UML) gained enough seats in the CA to form a coalition government) and left the CPN (M) and the new identity-based parties on the sidelines of the constitution-making process (Khatiwada 2014; Mabusang 2015; ICG 2016; Neelakantan, Ramsbotham and Thapa 2016).

The key inclusion failure for Nepal’s peace process was caused by the 2015 earthquake in Nepal. Arguing that the promulgation of a constitution would enable a more effective disaster response, the major political parties signed a 16-point agreement, resolving some of the core contested issues and “fast-tracking” the constitution-drafting process. Fast-tracking the process meant the major party-leaders making back-room deals on contested issues and ignoring dissent even from members of their own parties. As the NC and CPN (UML) could garner sufficient support to reach the required two-thirds majority in the CA without CPN (M) votes, the CPN (M) leaders, fearing that the NC and CPN (UML) would pass the constitution without them, began making concessions on previously contentious issues. Furthermore, although the CPN (M)



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had previously been the principal advocates for “inclusion”, the CPN (M) leaders stopped pressing for greater inclusion provisions in the constitution as they feared that the NC and CPN (UML) would respond by retracting their support for those already agreed and included in the draft (ICG 2016).

In addition, under the fast-track process, the public consultation on the constitution was reduced to 10 days. Some of the consultation sessions were restricted to political party members only and not open to the general public, others had a high Nepali security forces presence, which discouraged members of certain dissenting identity groups from attending. The CA deliberations were also reduced from a point-by-point plenary discussion to three minutes each for ordinary members and five minutes each for senior members on the entire draft. As a result, many rights and protections afforded to excluded groups in the Interim Constitution were restricted, reduced or removed from the 2015 Constitution and the federal boundaries delineated in the constitution tended to favour the economic interests of senior political figures rather than the representation needs of Nepal’s marginalised populations (ICG 2016).

How transformative has the process been on the inclusion front? If not transformative now, were there transformative moments, or is there further transformative potential?

The transformation of Nepal from an autocratic monarchy to a secular democratic republic (notwithstanding the issues regarding the definition of secularism in the 2015 Constitution), indicates that some progress towards inclusion has been made in Nepal.

In general, however, it is widely felt that the story of inclusion in Nepal is one of the

Hindu upper-caste political elite working to maintain the exclusive status quo. Despite the development of inclusion policies and legislation, since the CA elections in 2013, inclusion of marginalised groups has reduced both in the CA (now the Legislature Parliament) and in the Nepali civil service. The 2015 earthquake provided the requisite conditions for the old political order to manipulate the constitution-making process in their favour and remove many of the inclusion measures which were codified in the Interim Constitution and previous peace agreements. Proposals have been and are being tabled in Nepal’s Legislature Parliament to amend the 2015 Constitution to address the concerns of marginalised groups, however, the dominant political elite have already pledged to block amendments. Whether greater inclusion will be achieved through constitutional amendments is yet to be seen (Baral 2016; Jha 2016).

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