

Towards an Eco-Social Contract in Nepal

THE ROLE OF RIGHTS-BASED CIVIL SOCIETY ACTIVISM

The new eco-social contract for the 21st century must prioritize securing human rights for all and spur the transformation of economies and societies to collectively halt climate change and environmental destruction. In Nepal, historically marginalized members of society—including women, Dalits and Indigenous Peoples—and social movements led by rights-based civil society organizations are keeping governments and policy makers accountable. They are paving the way for transformative change founded on economic and social justice and ending centuries of discrimination and exclusion.

Introduction

This thematic brief examines the history of some of Nepal's major policy changes since the country's emergence from a civil conflict in 2006 and looks at the prospect of introducing an eco-social contract as an inclusive strategy to achieving lasting economic, social, political and ecological justice.

Nepal has a long history of social assistance programmes driven by poverty, exclusion and the fight for ecological justice influenced by the climate and environmental vulnerability of the Himalayan region. This was exacerbated by nominal commitments by political elites to establish an inclusive Constitution post-2006 and perseverant contestation by civil society. The signing of the 2015 Constitution was considered a breakthrough because not only did it formally commit to recognizing social justice and inclusion, but it also ended legal discrimination based on caste, ethnicity, region, religion, gender and indigeneity. At this time, the political system was also secularized, side-lining Hindu ideology.

However, discrimination and oppression continue to undermine the rights promised in the new Constitution. Cleavages are worsened and perennially reinforced by economic inequities and power hierarchies. Communities who do not meet the expectations of the "High Hindu" dominant nationality often experience marginalization, oppression, economic and societal exclusion and denial of ecological rights. This is particularly true for the country's Dalit and Indigenous communities.

This brief tracks the trajectory of establishing a notional eco-social contract in Nepal within the new 2015 Constitution while considering its various deliberations and drafting processes. To do this, we analyse current progressive rights-based alliances and organizations leading the environmental justice movement that are challenging exclusionary politics. These alliances and organizations are

reviewed with respect to their genesis and composition, political commitments and advocacy and mobilization strategies. The brief concludes with an outlook on the prospect for an inclusive, progressive and rights-based eco-social contract in Nepal.

In terms of methodology, this thematic brief builds upon the active engagements of one of the authors, discussions with experts and activists, including the UNRISD working group on eco-social contracts, as well as academic and political literature.

A post-conflict reformation of the Nepal government

In April 2006, the People's Movement (*Jana Andolan*), a cross-sectional coalition of civil society groups and individuals, organized 19 days of non-violent protests in the Kathmandu area, demanding democracy and the monarch's abdication. After 10 years of violent civil strife, these protests catalysed the introduction of a new political system. Nepal was proclaimed a secular republic, thus abolishing the monarchy deeply rooted in Hinduism. The Hindu caste system had been legally abolished in 1963, but its exclusionary practices had continued.

The new government publicly acknowledged that social exclusion had been one of the root causes of the conflict (Khatiwada and Koehler 2014). The civil and political movements that overthrew the century-old Hindu Kingdom did not merely target a regime change, but also sought structural changes that moved the country away from a unitary, Kathmandu-centric system to a decentralized system prioritizing political cohesion and social inclusion. The first section of this brief examines the socio-economic, political, gender and ecological reforms introduced by successive post-conflict governments in the lead-up to the passing of the 2015 Constitution.



Socio-economic policy reforms

Building on a considerable history of social policy action in Nepal itself—which can be traced back to the 1990s—and regional influence from neighbouring countries, the post-conflict governments introduced a series of socio-economic policies to promote social inclusion and address income poverty. These came in the form of free access to basic health services for disadvantaged children, single women, pensioners and people living with a disability, employment generating schemes and tax concessions with positive discrimination elements.¹ Although the reforms were adopted with relative ease throughout the country, most of them were underfunded and thus generated only modest economic benefits for individuals or households, and should be expanded and deepened.

Political reforms

Political governance reforms were far more contentious. The Constitution drafting process (2007-2015) was rife with violent conflicts and debates, mainly over the topic of restructuring the state from a unitary form of governance to a federation of the country's provinces with some degree of autonomy at the provincial and local levels. After a series of violent protests led by Madhesi communities,² Nepal was declared a federal state in the Interim Constitution in 2007. Additionally, Article 21 in the Interim Constitution introduced social justice as a legal concept for the first time, ensuring inclusion on the principle of proportional representation for marginalized groups such as Dalits, women, Indigenous nationalities, Madhesi communities, poor farmers and labourers in state structures.³

The demand for transforming Nepal into a federal state arose from the movements led by Indigenous Peoples and Madhesi communities to build an inclusive New Nepal (*Naya Nepal*). They wanted to create opportunities for those who had long been excluded from state structures and to address the High Hindu caste domination (Hachhethu 2014). Article 138.1 in the Interim Constitution enshrined federalism as a progressive restructuring of the state in public discourse, seeking to end discrimination based on class, caste, gender, religion, language, culture and region by eliminating the centralized and unitary form of the state.

For marginalized groups, identity was a central pillar of their advocacy, and the Interim Constitution was an opportunity to redress historically exclusionary processes. However, traditional political parties, certain media outlets, the bureaucracy, the judiciary and civil society criticized their advocacy of inclusion as being an “external agenda weakening of Nepali sovereignty and as nationally divisive” (Thapa and Ramsbotham 2017:7).

An intelligible shift occurred during the 2013 election when the second Constituent Assembly Election saw the re-emergence of Hindu ideology.

On February 20, 2017, Mohan Mainali reported in South Asia Check that the right-wing National Democratic Party Nepal won 25 percent of proportional representation votes in Kathmandu. Ideas of ultra-nationalism and populist rhetoric of prosperity returned to dominate the Nepali political sphere, claiming that identity was disruptive to national unity (Lama 2020:16). After the election, Nepali society became highly polarized on the inclusion of marginalized groups and the ways caste, class and religion-based discrimination influence political discourses.

Against this background, Nepal's new Constitution was promulgated in September 2015. On September 20, 2015, news website Al Jazeera reported that national celebrations in Kathmandu contrasted starkly with violent protests in the Terai, where 40 people were killed in the week leading up to its adoption. One of the more regressive provisions of the Constitution was the new classification of the *Khas Arya*, a collective reference to some High Hindu castes, as a marginalized group with a right to social inclusion measures (Hachhethu 2017:59). The introduction of *Khas Arya* as a new category for inclusion undermined the state's previous commitment to address historical discrimination based on caste, class and religion. It also diluted the concept of inclusion by failing to recognize the historical and present economic, social and political discrimination faced by Dalits, Muslims, Madhesi communities and Nepal's Indigenous Peoples (Jha 2017:66).

Even though not all political aspirations of the marginalized were recognized and institutionalized in the 2015 Constitution, Nepal nevertheless achieved several key milestones in the social inclusion policy arena, including passing Article 38.4 on the rights of women, Article 40.1 on the rights of Dalits and Article 42.1 on the right to social justice. Additionally, Article 258 established a National Inclusion Commission, Articles 260ff created the Commissions of Women, Dalit, Indigenous nationalities, Tharu, Madhesi and Muslim communities, and Articles 84.2(8), 86.2(a)(b) and 176.6(9) helped introduce a proportional electoral system in federal and provincial parliaments.

Gender reforms

The 2015 Constitution also instigated improved political representation of marginalized groups such as women, Dalits and Indigenous Peoples by introducing quotas in the electoral system and establishing a three-tiered government system: federal, provincial and local government bodies. In the 2017 federal and provincial elections, the Election Commission mandated a 40.4 percent reservation for women, a first in the country. At the local level, at least two of the four ward members needed to be women, one of whom from the Dalit caste. The 2017 local elections saw a significant rise in the number of women, and specifically Dalit women, elected to leadership positions overall.

¹ Khatiwada and Koehler 2014:136ff; Koehler 2021; Shakya 2021.

² Madhesi communities broadly refers to the people of non-hill origin residing in the Southern belt of Nepal who are distinct ecologically, linguistically and culturally from those residing in the middle hills. According to the 2011 census, they account for 19 percent of the total population of Nepal. Madhesi communities are a heterogeneous group of people with their own social hierarchies of high Hindu Madhesi, Dalits, Muslims and Indigenous Madhesi. They are a regionally excluded group often classified as second-class citizens as they have historically been left out of Nepal's hegemonic and monolithic nation building processes.

³ Interim Constitution of Nepal, 2007.

However, elected candidates for the highest public office roles such as mayors (for urban municipalities) and chairpersons (for rural municipalities) remained majority male: out of 753 chairpersons and mayors elected, only 18—or 2.39 percent—were women. It was deputy and secondary leadership roles that were primarily filled by women. In the 2022 local elections, 25 women were elected as mayors or chairpersons, an increase that propounds the improved leadership capacities of women political leaders building upon their earlier roles as deputies.

According to Krishna Gyawali writing for Online-Khabar on June 2, 2022, aggregated election results show that the total number of women representatives elected decreased from 779 in 2017 to 656 in 2022, with a significant decline occurring in deputy positions from 700 to 562. This decrease in women's representation has been attributed by The Record, an independent digital publication based in Kathmandu, to political party dynamics and the increased vulnerability of women candidacies in an unstable political context. Moreover, in light of the pressures on women's time and resources during the Covid-19 pandemic and nation-wide lockdowns, women may have chosen to retreat from their political engagements and activities. This trend shows that inclusive policies are difficult to implement even when explicitly mandated in law.

Gender discrimination continues, favouring male candidates over women in decision-making spaces, and the diversity of elected Nepali women remains scant where most elected women in the highest decision-making roles are filled by Khas Arya women instead of Indigenous, Madhesi, Muslim and Dalit women. Moreover, the representation of Dalit women in these spaces became possible only because of the government's explicit mandate while the representation of other marginalized women continues to remain nominal. In fact, Indigenous women are now seeking formal recognition of "Indigenous woman" as a distinct category within the 2015 Constitution, not to be conflated with women in general which, they argue, dilutes the multiple intersecting forms of discrimination that Indigenous women face in Nepal (CEDAW 2018).

Ecological reforms

Similar to the socio-economic, political and gender reforms introduced by the successive post-conflict Nepali governments leading up to the signing of the 2015 Constitution, ecological reforms also have a long history in the country.

At the national level, Nepal has been a party to the Convention on Biological Diversity (CBD) since the 1990s. Moreover, at the applied level, the community forestry movement was also launched in Nepal in the 1990s. Community forestry has contributed to building rural-social cohesion by providing physical and social infrastructure in its various

forms including natural, social, human, financial and physical capital. Since inception, the programme has mobilized 1.6 million households who collectively manage 16 percent of the total forest area of Nepal (Pokharel 2020). Community forestry is important for climate-vulnerable countries since it is a key method for implementing and scaling-up climate mitigation projects, including REDD+, in line with the UNFCCC Paris Climate Agreement and Nationally Determined Contributions (NDCs) for reducing greenhouse gas emissions.

The 2015 Constitution, too, reflects growing ecological concerns. Article 30 recognizes citizens' right to a clean and healthy environment and compensation for any injury caused by environmental pollution or degradation. In a section delineating policies relating to the protection, promotion and use of natural resources, Article 51(g)(1) makes explicit reference to renewable energy and guarantees the equitable distribution of the fruits of natural resources, offering preferential rights to local Indigenous communities. Considering the interconnection between Indigenous rights and ecological concerns, it is notable that in 2007, soon after the end of the civil conflict, Nepal adopted the Convention on Indigenous and Tribal Peoples (ILO Convention 169)—the only South Asian country to have ratified this key convention, which however, still needs to be claimed and realized.

The 2020 Voluntary National Review of Nepal details efforts on the United Nation's Sustainable Development Goal (SDG) 15 regarding terrestrial ecosystems, forests, land degradation and biodiversity loss. Reported progress on the pertaining indicators is steady (Government of Nepal 2022:52ff). Indeed, community forestry is hailed as Nepal's success story, despite its limitations. Even though community forestry is rooted in Indigenous practices of forest and resource management, its formalization and institutionalization processes have tended to overlook customary Indigenous practices and knowledge. Some Indigenous activists, therefore, criticize community forestry particularly because it excludes local Indigenous communities from decision-making and equitable resource sharing (NEFIN 2016).

To build a strong eco-social contract, climate action projects—including community forestry programmes—must follow free, prior and informed consent (FPIC) principles as enshrined in ILO Convention 169 and in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), of which Nepal is a signatory nation. In practice, this means recognizing the collective and traditional ownership of the land customarily claimed by Nepal's Indigenous Peoples, protecting and promoting tangible and intangible knowledge and heritages related to nature and providing adequate information and access to decision-making spaces related to resources and benefit sharing (NEFIN 2020).

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“Rights-based organizations and civil society have been instrumental in establishing inclusive policies in Nepal”

The role of rights-based movements for co-creating an eco-social contract

Despite setbacks, dilution and obstacles during implementation, Nepal's recent political developments with regards to its 2015 Constitution is the beginning of a new eco-social contract (Sunam and Shrestha 2019). We argue that this is primarily due to the persistent contestation—some peaceful, some violent—of marginalized communities, identity groups and civil society.

In the post-conflict period, social protests were (and are) multi-pronged. In the initial phase after 2007, Nepal abolished its monarchical system and became a secular republic. It is one of the first countries globally to recognize LGBTQI rights. Despite some regressions compared to the ambitious Interim Constitution of 2007, many elements of a more liberal social turn have remained.

Civil society groups continue to seize political opportunities to advocate for the rights of marginalized communities. Alongside political party contributions, rights-based organizations and civil society have been instrumental in establishing inclusive policies in Nepal. The social justice movements led by Dalits, the political movements led by Madhesi communities and the ecological and political movements led by the country's Indigenous Peoples continue to inform policy making and to challenge the country's elites.

For example, in 2020, a nationwide independent #DalitRightsMovement began in Nepal to protest the killing of a Dalit teenage boy, Navaraj BK, and five of his friends by a mob of villagers over an inter-caste marriage. The social movement that grew out of this gruesome human rights violation continues to advocate against the impunity, prosecution and killings of Dalits across the country. The movement has garnered widespread support and Dalit rights organizations continue to fight for an end to all forms of discrimination and violence based on

Box 1. The Nepal Federation of Indigenous Nationalities (NEFIN)

The Nepal Federation of Indigenous Nationalities (NEFIN), an umbrella organization made up of representatives from 59 of Nepal's Indigenous nationalities, has been collectively advocating for the rights of Indigenous Peoples since the early 1990s. It played a key role during the Peoples Movement of 2006 and during the Constitution's drafting process from 2007-2015. It helped institutionalize the rights of Indigenous nationalities and ensured that the Nepal government ratified international treaties such as UNDRIP and ILO Convention 169.

made 15 recommendations to the government of Nepal asking that the Constitution be amended to better align with UNDRIP. CEDAW's recognition of the Indigenous women's movement in Nepal and their demands is considered a historic success in the international human rights arena.

However, the pace of the Indigenous movement's successes in Nepal has slowed in the last few years (Chhantyal and Rai 2020:6). This may be due to increased weariness and pessimism, heightened polarization between Indigenous and non-Indigenous communities, as well as some degree of co-optation by political parties. For example, marginalized groups' demand for an inclusive society via identity-based federalism during the drafting of the Constitution was often portrayed as a threat to social harmony and national unity (Saba 2018).

Nevertheless, the movement is re-emerging in other forms across the country. Recently, Indigenous

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