



# **Inclusivity, Justice and Accountability: SDG 16 Report of Civil Society in Nepal**

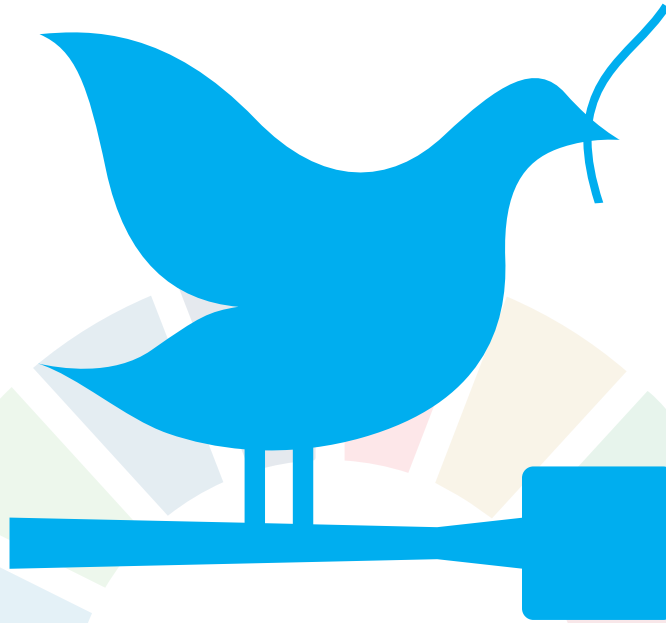


NGO Federation of Nepal

**NGO Federation of Nepal (NFN)** is an umbrella organization of NGOs working in various fields of social welfare and development in Nepal. Established in 1991 for the promotion and protection of social justice, human rights and pro-poor development, NFN has evolved as a national organization working for the entire NGO movement in Nepal. It is actively working to unite, organize and mobilize civil society to create a peaceful, democratic and just Nepal.

NFN is an autonomous, independent and politically non-partisan organization, governed by its own Constitution. NFN has about 6,499 member NGOs affiliated to it through 77 district chapters. To coordinate and mobilize its member NGOs to carry out various programs effectively and efficiently, NFN has seven province committees comprised of 7–9 members in each province. Together, they work as a catalyst to support member organizations in leadership and professional skills development, and to enable them to contribute to sustainable development.

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'Inclusivity, Justice and Accountability: SDG 16 Report of Civil Society in Nepal' is a milestone towards advancing civil society engagement, knowledge building and advocacy for SDGs, mainly through SDG 16 which is considered as an enabler for the acceleration and achievement of the SDGs. SDG 16, indicators under this goal and associated dimensions are of particular interest and importance for civil society.

This report is a reflection of the engagement, dialogue and deliberations of civil society and CSOs in Nepal. I wish to remember the organizations, networks and individuals which are associated with and supporting Nepal SDGs Forum as they have contributed to raising the issues and ideas that reflect all groups, communities and dimensions. Nepal SDGs Forum has been a common platform for collective action and synergy indeed. Our special thanks go to Open Society Foundation, Alliance for Social Dialogue and other supporters in advancing SDG 16. Contribution of Ms Neetu Pokharel in framing the focus of the report is much appreciated.

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**Jit Ram Lama**

**President** of NGO Federation of Nepal

**Coordinator** of Nepal SDGs Forum



## Executive Summary

**The Context:** After the compilation of the progress data, issues, and concerns collected in 2020 by Nepal SDG Forum, which is an open forum for SDGs in, NGO Federation of Nepal (NFN) is now setting its strategies for accelerating the progress by closely researching the goal specific progress, challenges, emerging issues and ways and ideas of further collaboration and coordination among the three levels of the governments. This study on SDG 16 underscores the Goal which is known as an enabler for acceleration and achievement of the 2030 Agenda. This study presents the civil society stakeholders' efforts and perspectives to implement and monitor SDG 16 on the ground and highlights the challenges, needs, and opportunities for national and local actions and accountability at all levels.

**Objectives:** The main objective of this study is to make a critical assessment of policies, institutional provisions, and published data concerning SDG 16. This study specifically aims to document the efforts of the state with regards to SDG 16 implementation and engagement of civil society by critically analysing policies and institutional provisions and progresses towards the attainment of SDG 16 in Nepal from a civil society perspective.

**Methodology:** This study utilizes mixed method of qualitative and quantitative approaches. Review of existing documents, policies, and institutional provisions is the main base to collect and compile the data which is substantiated by conversations with the policymakers, implementers, civil society leaders, and development partners. The data collected from review and consultation were further edited and coded for generating required tables, graphs, and figures. The qualitative information was transcribed to triangulate the information received through other sources.

### Findings of the Study

#### SDG 16 Progress, Mainstreaming, and Challenges

Significant progress has been found on the victims reporting their victimisation to competent authorities which were reported 4.2 percent in 2015 and increased to 7.5 in 2019. Marginal progress has been seen in the local government, that is, from 76 in 2015 to almost 78 in 2019 and the final target is 95 by 2030. The proportion of the population satisfied with their last experience of public services looks 80 which stands as the baseline data to compare in the future. Notable progress is seen in people's perception of corruption, that is, from 29 in 2015 to 10 in 2019. Marginal progress has been seen in the primary government expenditures, that is, from 76 in 2015 to almost 78 in 2019. Improvement has been seen in the proportion of the population that feels safe walking alone around the area they live. People have observed reliability of police services and improvement has been observed on psychological aggression or physical punishment against children, and incidences of sexual violence. Likewise, there is an improvement on the corruption index, and an increase on primary government expenditures as a proportion of original approved budget and proportion of population satisfied with their last experience of public services. Improvement has also been observed in proportion of women holding decision-making positions in public institutions, the effectiveness of independent national human rights institutions, and the proportion of the population reporting having personally felt discriminated against or harassed. However, the score for maintaining transparency, accountability, and minimising corruption in public has been stagnant to 3 in the reporting period although the government aimed to reach 5 out of 6 until 2019.

Legally, the principle of non-discrimination has been fully respected in Nepal as provisioned in the Constitution, laws, and policies. However, its full implementation with the realisation by the respective communities is a major concern. Despite the formation and reformation of the mainstream constitutional commissions like the National Human Rights Commission (NHRC) and other ones on women, Dalit, Muslims, and inclusion, the respective communities have not been able to fully enjoy their rights enshrined in the Constitution.

With regards to key stakeholders and partnership on SDG 16, a shared responsibility of government, inter-governmental agencies, international and national development partners, civil society as well as private sectors is sought. Despite the defined roles and responsibilities of the government agencies and the stakeholders, one cannot hope for sustainable development without peace, stability, human rights, effective governance, and rule of law. While some people or communities enjoy peace, security, and prosperity, others fall into seemingly endless cycles of conflict and violence. Violence and insecurity have a further destructive impact on a country's development, affecting economic growth, and often resulting in grievances that last for generations. Sexual violence, crime, exploitation, and torture are also prevalent where there is conflict or no rule of law. The country must take measures to protect those who are most at risk.

### **Access to Justice and Human Rights Localization Process**

Nepal has made progress in formulating the constitutionally mandated laws and policies related to foreign investment and technology transfer, public-private partnership and investment, special economic zone, labour, social security, and others. These are crucial to create a conducive environment for both foreign and domestic investment and reduce transaction costs. Materialization of these legal provisions in the local government is observed to have been initiated by the authorities. As a point of negotiation between the conflicting parties, the Comprehensive Peace Accord (CPA) was signed which has historic importance for the Nepalese peace process. However, the prolonged process of transitional justice that followed the CPA is yet to come into effect. Nepali civil society, victims and their families, and the international community have since long before raised concerns on ensuring transitional justice to the victims of conflict and their families.

Vital registration has not been effective to date. No reliable databases as conceptualised by this initiative, particularly related to birth, death, migration, marriage, and dissolution, have been established yet. Institutional arrangement with proper technical knowledge on these vital statistics has been found lacking. It looks like the the authorities are shifting responsibilities of collecting these data. This demands a high-level technical knowledge of demography and social statistics in the institutions accountable for conceptualising, compiling, and mainstreaming data for development.

Realizing the fact that the anti-trafficking programs were introduced in the previous periodic development plans of Nepal, the subsequent periodic plans, especially the 14<sup>th</sup> and the 15<sup>th</sup> have explicitly addressed the need for prevention and combating the trafficking in persons, especially women and children (NHRC, 2018). The Government's institutional mechanisms to regulate foreign employment, for instance, are the major attempts to control trafficking. Implementation of these policies has been observed in many of the local levels. Many of the municipalities have prioritized children's rights, their right to nutritious food, right to education, and others in their policies and programmes. However, the incidences of trafficking, violence against women and girls have not gone down. This demands an increased role of the CSOs against violence against women and girls in close coordination with the government agencies following a bottom-up approach.

Nepal is a country of great geographic, cultural, ethnic, and religious diversity which is constitutionally



recognized as identity. This identity is inherently valued and is a rich asset of the country. Despite constitutional provisions, institutional arrangement to some extent, and programmatic priorities, a widening gap between the 'privileged' and the 'marginalized' group has been found ever-increasing. Increased cases of substance abuse disorder, gambling, and violence among the less privileged groups justify these facts which demand first strong commitments then a step-wise concrete plan of action by each of the governments from the federal to local level. It should be done by ensuring collaboration for the capacity building and empowerment of the marginalized and less privileged communities.

## **Implementation of the Constitutionally Mandated Issues on Inclusivity and Equity**

Although the government has made progress in framing the laws and policies as mandated by the Constitution, speeding up the implementation of them is essential by ensuring 'no compromise' on the constitutionally mandated provisions. Programmatic attention should be given to ending all forms of discrimination and oppression that have systemically persisted. Any programme of action should be able to address the unequal power relations experienced by people on the grounds of gender, wealth, ability, location, caste/ethnicity, language, and agency or a combination of these dimensions. Although Nepal has made significant progress in tackling the concerns of exclusion, with the help of good national and international pledges, Nepal should be able to sustain and interlink with resources, strong institutional processes, and effective mechanisms for establishing equality by ensuring locally generated issue-based and demand-based framework for participation and representation. Despite the greater popular mandate for inclusive reform, political interests have tampered with and exploited the provisions of social inclusion. This jeopardizes Nepal's constitutional ethos and societal aspirations, hindering the country's ambition to become an inclusive state with meaningful representation. For this reason, the government should foster and enable public dialogues on social inclusion that are aimed at assessing current practices and resolving exclusion and disparities. Despite progress on gender-responsive budget, the amount and kinds of the allocated budget over the years have fluctuated. Lack of internalization of GRB by line ministries, the deviation between budget allocation and expenditure, lack of gender sensitiveness during plan formulation and implementation, lack of capacity of GRB units in line ministries, weak implementation, and monitoring system, and institutional gaps in sectoral ministries that work in infrastructure development have been observed as obstacles for effective GRB implementation.

## **Democracy, Freedom and Civic Space**

The democratic constitution of Nepal vests sovereignty and state power in the people by guaranteeing three tiers of government: Federal, Provincial and Local and aims to end all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, and unitary system of governance and is committed to socialism based on democratic norms and values. Despite progress in establishing a democratic society, constitutionally mandated smooth functioning is still lacking. To cite an example, freedom of the press is one of the fundamental civil liberties. However, full realization that civil society, civic space are a fundamental prerequisite for fruitful democracy and individual freedom are the matters being questioned to the governments.

## **Recommendations and insights for civil society**

1. The COVID pandemic is causing some havoc in the effective implementation of projects. Due to restrictions and concerns for people's safety, it is not possible to actively work alongside the physical presence of people. Although programs are being conducted virtually, the implementation of goals and coordination between organizations seem difficult.

2. While prioritizing physical infrastructural development, social development is often being overshadowed. Cases of suicides by women have been rising but raising voices to identify cause and solution is essential.
3. Women are not well represented in local levels and the principle of inclusiveness has been blatantly ignored. These are the rooms for improvement and lobby for the social organisations.
4. Females are still being dominated in Karnali. There are increasing cases of gender violence and domestic violence. In a case, budget was provisioned for the so-called 'safe' house for women and children, but was not prioritized for implementation. 'Chhaupadi' is yet to be abolished.
5. Patriarchy has its firm roots in society. Implementation of SDGs is not possible or makes little sense unless people begin to think differently. There has to be a provision of 'pressure groups' to address issues of gender violence and inequality. The SDG implementation should start from households first. Women's empowerment should be the foremost priority. There is huge discrimination even among the representatives. Female representatives are not provided authority and stake in decision-making.

### **Recommendations to the governments at all levels**

1. Avoid unnecessary duplication of the projects; provisions for mandatory supervision must be put into action ensuring monitoring by internal mechanism and project-based evaluation by the third party.
2. Strong implementation on the provisions set forth in the constitution, laws, and policies are suggested, particularly on the following:
  - Participation, empowerment, and capacity development of all stakeholders
  - Proportional representation of all
  - Reservation, special protection, and subsidies for the disadvantaged
  - Positive discrimination (equality through equity)
  - Legal protection for the minorities,
  - Investment for human development and ending poverty
  - Awareness
  - Local, Provincial and Federal Government standard guidelines to mainstream inclusion,
  - Development and implementation of sectoral reporting mechanism
3. In the local levels, in order to address the abovementioned inequalities and discriminations, authority to allocate funds for projects should also be provided to the deputy mayor.
4. There should be no restriction in civic space and freedom and the role of CSOs in policy formulation, monitoring human rights, raising awareness, championing the voices of vulnerable populations, and building partnerships. Limited civic space develops the risk of excluding voices and increasing social distrust. This ultimately increases inequalities and makes development less sustainable.
5. Financial discipline is always a concern. The allocated budget is more of an earning opportunity for the local contractors and political workforce rather than the 'targeted' groups. There has to be enough monitoring from the concerned authorities to maintain financial discipline.

## Abbreviations

CBS	Central Bureau of Statistics
CIAA	Commission for the Investigation of Abuse of Authority
CIED	Commission on Investigation of Enforced Disappearance
CPA	Comprehensive Peace Accord
CPN (UML)	Communist Party of Nepal (United Marxist Leninist)
CRVS	Civil Registry and Vital Statistics
CSO	Civil Society Organization
GBV	Gender Based Violence
GESI	Gender equality and social inclusion
GRB	Gender Responsive Budget
MOF	Ministry of Finance
MOFAGA	Ministry of Federal Affairs and General Administration
MoHA	Ministry of Home Affairs
MOHP	Ministry of Health and Population
MOWCSW	Ministry of Women, Children and Social Welfare
NC	Nepali Congress
NFN	NGO Federation of Nepal
NGO	Non Government Organization
NHRC	National Human Rights Commission
NPC	National Planning Commission
PPP	Population Plan Perspective
SDG	Sustainable Development Goal
TRC	Truth and Reconciliation Commission
UCPN (MC)	Communist Party of Nepal (Maoist Center)
VAW	Violence Against Women

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# Chapter I

## Introduction

### 1.1 General Background

Universally agreed by the heads of states and governments of the world in 2015 for transforming the world, the 2030 Agenda for Sustainable Development, SDGs, and targets are integral and indivisible. These are global and universally applicable, considering different national realities, circumstances, capacities, and levels of development and respecting national policies and priorities<sup>1</sup>. The SDG targets are defined as aspirational and global, with each national government setting its national targets guided by the global level of ambition. Thus, it is up to each of the national governments to decide and incorporate these aspirational global targets into national planning processes, policies, and strategies (UN, 2015)<sup>2</sup>.

SDG 16 aims to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. The term inclusivity refers to the degree of access to governance by various actors concerned with/affected by a given conflict or political settlement by participating in decision-making, or by having their concerns addressed by the state through a legal framework. Levels of inclusivity can be internal, that is, within a single actor or institution, inter-actor, that is, negotiation through different actors or institutions, and external where the stakeholders do not participate in political settlements directly. The principle of inclusivity has some intrinsic qualities (e.g. by increasing the prospects for conflict transformation and reaching ‘positive peace’). Nepal’s aftermath of the decade-long armed conflict went for peace process welcoming structural reform process based on the negotiations among the stakeholders of the political fronts. The centre point of the negotiation was the idea of inclusivity. The 2030 Agenda for Sustainable Development stresses on eradication of poverty (SDG 1) in all forms and dimensions: combatting inequality, “preserving the planet, creating sustained, inclusive, and sustainable economic growth and fostering social inclusion are linked to each other and are interdependent” (SDG 16).

The 2030 Agenda defines justice in line with the inclusive societies that must be able to “provide equal access to justice and that is based on respect for human rights (including the right to development), on effective rule of law and good governance at all levels”. Justice seen both in formal and informal mechanisms can be assured and ensured only when a state implements without compromise on creating transparent, effective, and accountable institutions. SDG 16 further aims to end violence, insecurity, and injustice by reducing the existing anomalies seen in inequality, corruption, and poor governance.

To end these anomalies and fulfill people’s want for justice through the idea of inclusivity, the essential role is of the national parliaments through their enactment of legislation and adoption of budgets ensuring accountability for the effective implementation of the commitments. For this, governments of all three levels by mobilising their public institutions will have to work closely on the implementation in coordination with civil society, academia, philanthropic organisations, volunteer groups, and others. Whatever efforts should promote accountability to citizens seeking effective

<sup>1</sup> [https://www.un.org/ga/search/view\\_doc.asp?symbol=A/RES/70/1&Lang=E](https://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E), accessed on 12 Jun 2020

<sup>2</sup> <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>, Retrieved 12 Jun 2020.



international cooperation for fostering exchanges of best practices and mutual learning. Equally, emphasis is to be given to enhance capacity-building support for the availability of high-quality, timely, and reliable data disaggregated by income, gender, age, race, ethnicity, migratory status, disability, geographic location, and other characteristics relevant in our contexts.

Five years elapsed after the SDG implementation as committed by the UN member states including Nepal. Discourses have been ongoing to review critically the progress made so far on the indicators set forth under SDG 16 and fine-tuning them.

With the adoption of the 2030 Agenda in 2015, every member country started different strategies for the effective implementation of the agendas at their national level. Countries formulated policies and institutions to speed up the implementation of the SDGs. Nepal also initiated localization of the SDGs through its policies and programs. In this course, Nepal has formulated policies, developed programs, and published different reports on SDGs' implementation and progress. Amidst this, as an important stakeholders for the SDGs, it is essential for the Nepalese civil society to monitor, review and come with with its perspectives on the SDG implementation and progress.

The Rome Conference, and the strong attention and interest that is generated across regions, served as yet another compelling reminder that the adoption of the 2030 Agenda, and in particular SDG 16 with its powerful call for peaceful, just and inclusive societies, represent a landmark achievement in multilateralism. Civil society played a key role in making SDG 16 an integral part of the 2030 Agenda. They now have an even more important role to play in supporting implementation and ensuring more broadly the accountability for the achievement of SDG 16, and the 2030 Agenda. Increased fragility and conflict, negative impacts of climate change, slowing economic growth, rising inequalities, growing intolerance, and frequent attacks on international norms and human rights are threatening the momentum towards equitable and sustainable development. While these factors affect all SDGs, they pose particularly serious challenges to SDG 16, given its lofty targets. Progress on SDG 16 has been slow and uneven, even retrogressive in some places. The targets of SDG 16 will not be met by 2030 unless there is a much greater effort by all.

SDG 16 is widely recognized for its cross-cutting value across the 2030 Agenda. Failing on SDG 16 may therefore also impact negatively on the achievement of other Goals. If we are to achieve SDG 16 and the 2030 Agenda, national action and global partnerships are critical – especially through the enhanced engagement of civil society, human rights and justice defenders, and citizens themselves.

This report presents the civil society stakeholders' efforts to implement and monitor SDG 16 on the ground and highlights the challenges, needs, and opportunities for national and local actions and accountability at all levels. This study further encourages states and other actors to draw from the best practices and lessons learned by civil society, and in doing so strengthen their accountability and commitments to the 2030 Agenda, as well as expand the space for civil society action and partnership.

## **1.2 Nepal's Initiative to Implement SDGs**

Nepal is going through the second year of implementation of the Fifteenth Five Year Periodic Plan. Developed in line with the Constitution of Nepal promulgated in 2015 and the SDG framework, this plan





also includes a 25-year vision for transforming Nepal into a high-income country assuring USD 12,100<sup>3</sup> per capita national income. The SDG targets and indicators were officially entered in Nepal's Fiscal Year 2016-17. The Constitution of Nepal progressively incorporates global agenda of sustainable development and social, economic, political, and cultural issues. The acts framed and enacted as per the mandate of the Constitution and the Fifteenth Five Year Periodic Plan now in implementation since 2016 are the major instruments to review how the SDG targets and indicators are being reflected and to what extent we are on track to fulfill the global commitments.

National Planning Commission (NPC) is the official body in Nepal to coordinate with line ministries, government authorities, civil society, and private sectors for the successful implementation of the SDGs. The NPC organized series of public consultations and collaborative work of the multi-stakeholder working groups on SDGs and approved for Nepal the 16 goals (except SDG 14), 158 targets, and 479 indicators (including 245 national indicators). Regarding SDG 16, Nepal has shown commitment to fulfill all the globally accepted 12 targets and 23 indicators.

### 1.3 Objectives of the Study

SDG 16 deals with the core issues of peace, justice, and strong institutions, and thus is known as the cornerstone to remaining other goals. SDG 16 is to “promote peaceful and inclusive societies for sustainable development. It promotes citizens’ access to justice by advocating to build effective, accountable, and inclusive institutions at all levels”<sup>4</sup> This Goal has 12 targets to be achieved by 2030. Progress towards targets will be measured by 23 indicators. In this context, the overall purpose of this assignment is to make a critical assessment of policies, institutional provisions, and published data concerning SDG 16. The specific objectives of the assignment are:

- i. To document the efforts of the state with regards to SDG 16 implementation and engagement of civil society;
- ii. To critically analyse policies and institutional provisions and progress towards attainment of SDG 16 in Nepal from a civil society perspective;
- iii. To examine the monitoring systems of SDG 16 implementation at all levels; and
- iv. To make practical recommendations of the strategic course of action for government and CSOs in Nepal.

### 1.4 Methodology

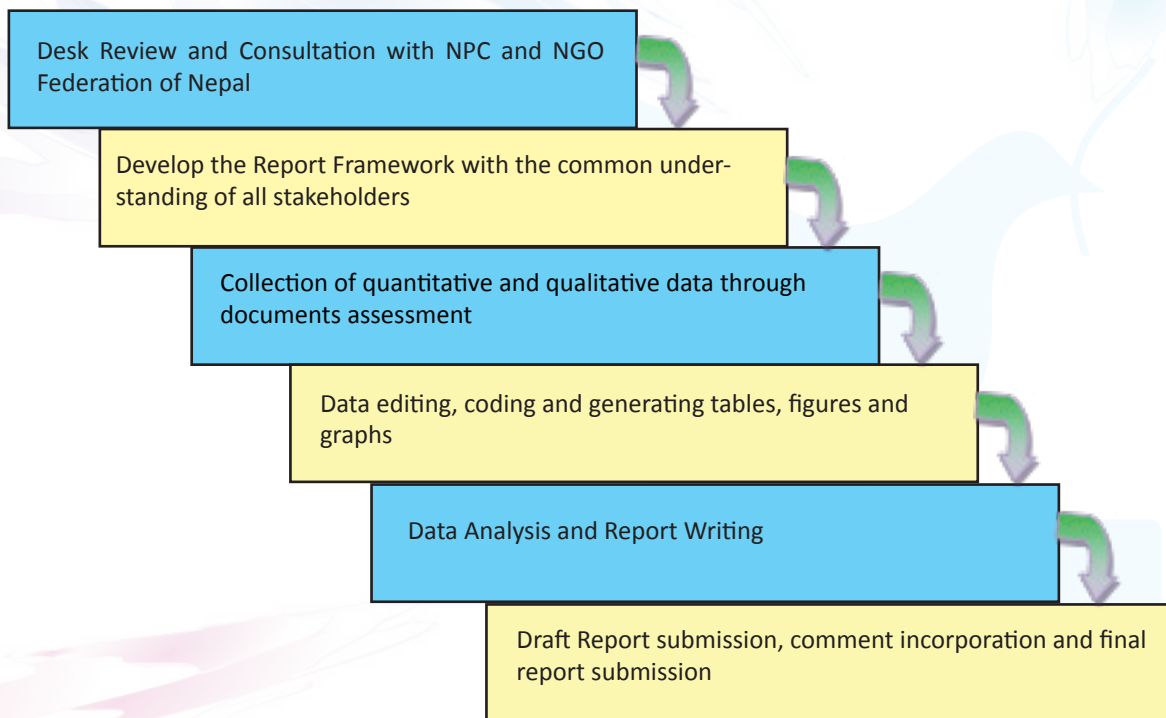
The embedded mixed method of both qualitative and quantitative approaches is adopted for this study. Existing documents, policies, and institutional provisions will be assessed primarily through a desk review. The assessment is based basically on the conversation with the policymakers, civil society leaders, and development partners.

<sup>3</sup> [https://npc.gov.np/images/category/15th\\_plan\\_English\\_Version.pdf](https://npc.gov.np/images/category/15th_plan_English_Version.pdf).

<sup>4</sup> Referred to as common online review platform which is dedicated to compiling information from countries participating in the voluntary national reviews of the High-level Political Forum on Sustainable Development which can be obtained from United Nations official website on SDGs: <https://sustainabledevelopment.un.org/sdg16>



**Figure 1: Methods and approaches**



### ***Desk review and consultation***

All the relevant literature, documents, reports, and information were reviewed intensively. Primarily, the review of secondary data and information consists of monitoring reports produced by the National Planning Commission (NPC), NGO Federation of Nepal, and other development partners working in Nepal especially focusing on SDG 16. A review of status of SDG 16 implementation was carried out using references from international experiences, and emerging best practices.

The assessment process and work plan were finalized with the close consultation with a team of NGO Federation of Nepal as well as experts and campaigners in this sector. The consultation meeting was focused on key issues and concerns of the assessment for the relevant information. So, a consultation meeting was regarded as the main basis for shaping the strategy to gather the required data for the study.

### ***Joint consultation workshop***

The joint consultation workshop of relevant stakeholders gives the ideas in developing the procedure of assessment classified in terms of mainly quantitative and qualitative arenas as cross verification of data collected through quantitative efforts. This facilitated the assessment team to shape the process and compilation of the information.

### ***Documents assessment***

To access the quantitative and qualitative data for the report, existing documents published by NPC, NGO Federation of Nepal, and other development partners relating to SDG 16 were assessed/



reviewed. The critical assessment was carried out to showcase the concrete learnings, challenges, and recommendations for SDG 16 implementation and engagement of civil society.

### ***Data editing, coding, and generating tables, figures, and graphs***

The data collected from review and consultation were edited and coded. After editing and coding the data, the required tables, graphs, and figures were generated in line with objectives. The qualitative data were transcribed in line with the objectives.

### ***Data analysis and report writing***

The primary data collected from the assessment/review were rigorously analyzed to conclude. The intensive analysis and synthesis of the data and information were done as per objectives. The report of the assessment was finalized within the given timeframe. The comments, feedback, and suggestions from the NGO Federation of Nepal were incorporated in the draft before the finalization of the civil society report on SDG 16.



## Chapter II

### SDG 16 National Targets and Indicators: Progress, Mainstreaming and Challenges

SDG 16 aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels. This goal consists of 12 targets along with 23 indicators. Nepal has added eight more indicators. Some notable features of the goal contain ending violence, promoting the rule of law, strengthening institutions, and increasing access to justice. Nepal affirms its commitment towards socialism based on democratic norms and values. The path to go ahead is the people’s multiparty democratic system of governance. The Constitution guarantees civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press, an independent, impartial, and competent judiciary, and the concept of the rule of law, and the purpose is to build a prosperous nation. Target 16.3 of the SDG aims to promote the rule of law at the national and international levels and ensure equal access to justice for all.

#### 2.1 Progress

There has been found significant progress in the past three years on the victims reporting their victimisation to competent authorities which were reported 4.2 percent in 2015 and increased to 7.5 in 2019. However, the score for maintaining transparency, accountability, and minimising corruption in public has been stagnant to 3 in the reporting period and the government aims to reach 5 out of 6 during the SDG implementation period. Similarly, marginal progress has been seen in the local government, that is, from 76 in 2015 to almost 78 in 2019 and the final target is 95 by 2030. Similarly, the proportion of the population satisfied with their last experience of public services looks 80 which stands as the baseline data to compare in the future.

**Table 1: Status of progress on peace and justice**

Targets and Indicators	Baseline 2015	Target 2019	Progress 2019
Children trafficking to abroad (including India) per annum (reported number)	64	47	23
Transparency, accountability, and corruption in public (score out of 6)	3	4	3
People’s perception of corruption (percent of people with at least one instance in the past 12 months that require to give a bribe/present) (Corruption index score)	29	21	10
Primary government expenditures as a proportion of the original approved budget, by sector (or by budget codes or similar)	76	81.1	77.9
Proportions of decision-making positions held by women in public institutions	15	20.3	13.9

Source: NPC, SDG Progress Assessment Review, 2020



To increase the satisfaction rate, the Mayor of Mahashila Rural Municipality, Parbat suggests that elected people's representatives should focus on providing public services as well as improving weaknesses observed while delivering those services.

Remarkable progress has been noticed on the indicator that people's perception on corruption, that is, percent of people with at least one instance in the past 12 months that require to give a bribe/ present) from 29 in 2015 to 10 in 2019. Similarly, marginal progress has been seen in the primary government expenditures, that is, local government in our context, that is from 76 in 2015 to almost 78 in 2019 and the final target is 95 by 2030. Similarly, the proportion of the population satisfied with their last experience of public services looks 80 which stands as the baseline data to compare in the future.

Improvement has been seen in the proportion of the population that feels safe walking alone around the area they live. People have observed reliability of police services and improvement has been observed on psychological aggression or physical punishment against children, lesser incidences of sexual violence, reduction on the corruption index, increase on primary government expenditures as a proportion of original approved budget and proportion of population satisfied with their last experience of public services. Improvement has also been observed in decision-making positions held by women in public institutions, the effectiveness of independent national human rights institutions, and the proportion of the population reporting having personally felt discriminated against or harassed.

## 2.2 Mainstreaming

Nepal strongly reaffirms the principle of non-discrimination. The preamble of the Constitution aims to end all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance. It has mandated, for example, the National Dalit Commission to file cases against any persons or bodies on matters of being victims of caste-based discrimination and untouchability or social ill-practices or infringement of or deprivation of enjoyment of the rights of the *Dalit*, to make recommendations to the concerned bodies to file such cases in courts in accordance with the law.

Nepal affirms its commitment towards socialism based on democratic norms and values. The path to go ahead is the people's competitive multiparty democratic system of governance. The Constitution guarantees civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press, an independent, impartial, and competent judiciary, and the concept of the rule of law, and the purpose is to build a prosperous nation.

## 2.3 Institutional Mechanism

National Human Rights Commission (NHRC) is the main constitutional body in Nepal for monitoring the state of access to justice, and peace. Community-based commissions like Muslim Commissions, National Women Commission, and Dalit Commission have their human rights and social justice objectives to promote access to justice. The most important part in making the constitutional commissions and bodies functional and competent is the way the commissioners and officials in these agencies are appointed and nominated. Mayor of Mahashila Rural Municipality, Parbat flagged the opinion of the Constitutional Commission as well as local bodies to be dedicated to provisioning



adequate monitoring and management of the works and plans being conducted on local levels. He added, “Every local level should work proactively on the effective completion of the projects alongside social mobilization.”

## 2.4 Key Stakeholders and Partnership

Attainment of the SDGs is the shared responsibility of governments, international and national development partners, civil society as well as private sectors. So, partnership for working together has been ensured to address the resource, governance, and capacity gaps at the federal, provincial, and local levels.

- i. Constitutional commission: National Human Rights Commission (NHRC), Commission for the Investigation of Abuse of Authority (CIAA), Office of Auditor General (OAG), Public Service Commission, National Women Commission, National Dalit Commission, National Muslim Commission, National Tharu Commission, National Madheshi Commission, SDG and Governance Committee of National Assembly
- ii. Line ministry: Office of the Prime Minister and Council of Ministers (OPMC), Ministry of General Administration,
- iii. Other Line agencies: NPC/CBS (data generation), province governments, local governments
- iv. Development partners: UN Agencies, multilateral and bilateral agencies
- v. Civil society organizations: Nepal SDGs Forum coordinated by NGO Federation of Nepal
- vi. Private sector: Private enterprises/economic groups, organisations, cooperatives, private sector

Despite having these partnership approaches, there is a gap in resource, content, theme, and methodological partnership.

## 2.5 Challenges

- We cannot hope for sustainable development without peace, stability, human rights, and effective governance, based on the rule of law. Yet our world is increasingly divided.
- Some regions enjoy peace, security, and prosperity, while others fall into seemingly endless cycles of conflict and violence. This is not inevitable and must be addressed.
- Armed violence and insecurity have a destructive impact on a country’s development, affecting economic growth, and often resulting in grievances that last for generations. Sexual violence, crime, exploitation, and torture are also prevalent where there is conflict or no rule of law, and the country must take measures to protect those who are most at risk.



## Chapter III

### Access to Justice, and Human Rights Localization Process

#### 3.1 Enhancing Right to Justice and Legal Aid

The Constitution of Nepal guarantees inclusive socio-political and economic development and a wide range of fundamental rights and human rights. Fundamental rights of the citizens as mentioned in the Constitution includes the right to basic and secondary education, right to basic health, right to clean water and sanitation, right to food, right to clean energy, right to housing, rights against discrimination, and right to clean energy among others. The fundamental rights and some of the targets of SDGs are positively associated. The given SDG targets help achieve these constitutional commitments. It provides the guiding principles, policies, and roles of the government for Nepal's development efforts. The provisions of the constitution are directly and indirectly related to SDGs. The constitution has a provision to form a Parliamentary Committee to monitor and evaluate the implementation performance of these principles and policies. The constitutional provisions along with the enforcing mechanism have reflected an enabling environment to implement SDGs.

The Constitution of Nepal comprises provisions to promote greater inclusion through fundamental rights, equal access to basic services, and empowerment of women. Newly enacted hundreds of laws and more than 300 amendments in making legal provisions for the implementation of fundamental rights as mentioned in the constitution of Nepal ensure to improve equitable access to basic services and strengthen accountability systems at the federal system. Fiscal federalism has been institutionalized. Functions across the three tiers of government, and the revenue sharing, and fiscal transfer arrangements are defined. Enhancing shared prosperity through equitable basic services has been devised as a new framework for engaging in federalized basic services.

Improvement in doing business index and newly enacted laws, for example, Foreign Investment and Technology Transfer Act, the Public-Private Partnership and Investment Act, the Special Economic Zone Act, Labour Act and Social Security Act create a conducive environment for both foreign and domestic investment and reduce the transaction costs. Social Security Act was enacted in 2017 to ensure the rights of the workers based on the concept of contributory social security and to provide social security to the contributors. Social security can be considered a powerful instrument in reducing the consequences of inequality and promoting inclusive growth. Materialization of these legal provisions in the local government has been initiated by the authorities.

*“Special considerations have been made for women, children, and the physically challenged in easing their reach to services. Similarly, a social security fund has been set up with a minimum budget of 1 Rs. million to help the elderly, women, children, and the physically challenged people.”*

- Deputy Chairperson, Gharapjhong Rural Municipality, Mustang

Saraswati Khadka, Deputy Mayor of Kirtipur Municipality pointed out the need to have special considerations in budget allocation for gender equality, marginalized communities, conflict victims, and children's social welfare. She further added that the municipality has been utilizing the allocated budgets for projects related to SDGs taking into consideration the suggestions of people. She said, *“Meetings are called every four months to report and summarize the activities conducted in different levels of the municipality.”* Similarly, Ananta Gautam, Planning Department Chief, Tulsipur Sub-



Metropolitan City added that free legal counselling and aid are being provided to the needy ones. Information transparency is maintained via the metropolitan city's website while social follows are being conducted via Facebook and dedicated mobile apps. The Municipality has further provisioned scholarships for those severely affected by the civil war. Children of the martyrs and physically disabled are provided scholarships by the municipality. Children of low economic backgrounds are also being included in the scheme.

### 3.2 Transitional Justice and Reparation

SDG 16 aims to “promote peaceful and inclusive societies for sustainable development. It promotes citizens’ access to justice by advocating to build effective, accountable, and inclusive institutions at all levels”<sup>5</sup>. After 10 years of conflict between 1996 and 2006 Nepal went for peace negotiation as a result of 19 days People’s Movement in 2006. As a point of negotiation between the conflicting parties, the Comprehensive Peace Accord (CPA) was signed on 21 November 2006.<sup>6</sup> This agreement is historic for the Nepalese peace process, as it led both of the conflicting parties formally declare the end of the armed conflict. The CPA officially declared the end of armed struggle, confined Maoists’ People’s Liberation Army (PLA) in temporary cantonments, leading to the promulgation of the new federal and democratic constitution by the Constituent Assembly. The CPA fully agreed to form a National Peace and Rehabilitation Commission, a Truth and Reconciliation Commission, and a High-level Commission for State Restructuring. The CPA also committed for investigation on human rights violations during the armed conflict. It thus created avenues for investigation by an independent body of the victims of the armed conflict, i.e. the killed, wounded, disappeared, displaced, and the grave violations of human rights. Both the parties through CPA also agreed to end the feudal land-ownership system by initiating a scientific land distribution system. They felt the need for a strong punitive policy to curb corruption, and to confiscate properties earned illegally e.g. through corruption.<sup>7</sup>

The prolonged process of transitional justice started right after the CPA. The process for transitional justice formally started in June 2007 when the then Ministry of Peace and Reconstruction unveiled the draft Truth and Reconciliation Commission (TRC) bill. The Government tabled the bill for the Truth and Reconciliation Commission on 4 December 2009, after making some amendments and registering the bill on 17 February 2010. The proposals carried the rhetoric of national reconciliation and advocated for blanket amnesty via a controversial clause that was rejected by the victims, civil society, and the international community. As a result, they were repealed after a series of campaigns.<sup>8</sup>

On 28 August 2012 the Council of Ministers finalised the Ordinance on the ‘Investigation of Disappeared People, Truth and Reconciliation Commission, 2069’ (2012) and was promulgated by the President’s office of Nepal on 14 March 2013. On 1 April 2013, the Supreme Court suspended

<sup>5</sup> Referred to as common online review platform which is dedicated to compiling information from countries participating in the voluntary national reviews of the High-level Political Forum on Sustainable Development which can be obtained from United Nations official website on SDGs: <https://sustainabledevelopment.un.org/sdg16>

<sup>6</sup> [https://peacemaker.un.org/sites/peacemaker.un.org/files/NP\\_061122\\_Comprehensive%20Peace%20Agreement%20between%20the%20Government%20and%20the%20CPN%20%28Maoist%29.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/NP_061122_Comprehensive%20Peace%20Agreement%20between%20the%20Government%20and%20the%20CPN%20%28Maoist%29.pdf) .

<sup>7</sup> Khatiwada, P.P. (2015). Nepalese peace process: faster changes, slower progress. <https://berghof-foundation.org/library/the-nepalese-peace-process-faster-changes-slower-progress>.

<sup>8</sup> Advocacy Forum Nepal. *Nepal: Transitional Justice at Crossroads*. 2014. <http://www.advocacyforum.org/downloads/pdf/publications/tj/transitional-justice-at-crossroads-2014.pdf>. Accessed 17 May 2021.





the ordinance from taking effect.<sup>9</sup> The OHCHR put its objections in the ordinance regarding the facilitating clauses to recommend amnesties for perpetrators of gross violations of human rights and called upon to initiate reconciliation processes in the absence of a request by the victim or the offender and limited focus on justice and restricted procedures for initiating prosecution.<sup>10</sup> Nepali civil society, victims and their families, and the international community raised concerns against the ordinance and the proposal of the Government for transitional justice.

The Nepal Government promulgated The Enforced Disappearances Enquiry, and Truth and Reconciliation Commission Act, 2071 (2014) and established a Commission on Investigation into Disappeared Persons and the Truth and Reconciliation Commission. The mechanisms were able to register 62,000 complaints in the Truth and Reconciliation Commission and more than 2,700 at the Commission on Investigation of Enforced Disappearance. The Nepalese Government promulgated a similar act in February 2019 for the continuation of the commissions. In doing so, the Government appointed officials to the commission for the second time.

Delays in transitional justice ultimately leads to denial of justice as the commission was developed after the 1990's people's movement. A Commission of Inquiry to Locate the Persons that Disappeared during the Panchayat Period (1990 to 1991) was formed by Prime Minister Krishna Prasad Bhattarai in 1990. The commission investigated such cases and recommended 35 incidents but no alleged perpetrators were brought to justice. Mayor of Mahashila Rural Municipality, Parbat remarks that the political issues have been overshadowing the cases of TRC and CIED.

### 3.3 Vital Registration

SDG 16 Target 9 Provides legal identity for all, including birth registration. In Nepal, since 1976, access to Civil Registry and Vital Statistics (CRVS) has been provided, though not effectively. As a result, no reliable databases as conceptualised by this initiative, particularly related to birth, death, migration, marriage, and dissolution, have been established. Before 2017, the key responsibility of CRVS was assigned to the then Federal Affairs and Local Development Ministry. Since the Ministry structure was changed after 2017, the responsibility went to the Ministry of Home Affairs (MoHA). At the same time, the Population Division of the Ministry of Health and Population (MOHP) is found conducting some sensitisation and awareness programmes. The Ministry of Women, Children and Social Welfare (MOWCSW) is also found launching sensitisation programmes. Coordination among ministries as well as non-government and inter-governmental organisations is often commented lacking for the effective functioning of the vital registration work. Raju Prasad Poudel, Chairperson of Mahashila Rural Municipality in Parbat, in this context highlights, *“To achieve Sustainable Development Goals, there has to be enough coordination between the local and central government.”* He reinforces shifting priority towards the implementation of SDGs than the awareness and documentation itself. According to him, this is possible by establishing mandatory requirements for all the elected representatives for developing knowledge on SDG indicators where civil society can work as a connector. Juna Basnet, Deputy Mayor of Surya Binayak Municipality observes the huge expectations of people on the implementation of SDGs. According to her, *“the primary concern is seen towards the development of infrastructures.”*

<sup>9</sup> International Justice Resource Center. “Truth and Reconciliation Commission For Nepal Continues to Face Criticism”. 2020. <https://ijrcenter.org/2013/04/09/flawed-truth-and-reconciliation-commission-for-nepal/>. Accessed 17 May 2021.

<sup>10</sup> OHCHR. “An OHCHR Analysis of the Nepal Ordinance on Investigation of Disappeared People, Truth and Reconciliation Commission, 2012”. Accessed 17 May 2020.



*“The metropolitan focuses on women’s safety issues as a priority alongside other SDGs. Collaborations of NGOs are called for the establishment of ‘safe houses’ for women. Victims of human trafficking are being looked after in a temporary settlement while actively working for their retribution in the society.”*

- Ananta Gautam, Planning Department Chief of Tulsipur Sub-Metropolitan City

Five vital events are recorded by the Registrar’s Offices in standard forms and registered, collated, compiled, and reported by local registrars to the local level in Nepal. At present, hospitals also record birth and death and issue certificates; however, hospitals only report this information on vital events to the Health Management Information Systems (HMIS) and not the CRVS system. Thus, the information on vital events from health facilities is not used by MoHA for vital statistics purposes.

While legal procedures and reporting mechanisms for civil registration data have been established, recording cause of death using International Classification of Diseases (ICD) mortality coding, and publication of vital statistics from civil registration data still need substantial improvement.

Much progress has been achieved in different aspects of CRVS in Nepal, with commitment from MOFAGA and support from partners such as UNICEF, Plan, ADB, UNHCR, UNFPA, USAID, WHO, and others. However, to go forward and make significant strides in strengthening the CRVS system as a whole, there is a further need for aligned and sustainable support by key stakeholders of CRVS.

The Population Division of the Ministry of Health and Population (MOHP) has declared a long-term Population Plan Perspective (PPP) (2011-2031), endorsed by the Cabinet in 2011, and has made a strategic plan to consolidate the CRVS system. To address this plan, MOHP has designed a program called the Country Accountability Roadmap Nepal (CARN)<sup>11</sup>.

### **3.4 Violence against Women and Children and Trafficking**

The 2015 Constitution of the Federal Republic of Nepal and the Criminal (Penal Code) 2017 protects women and children, particularly minorities. The Domestic Violence (Crime and Punishment) Act, 2006 is considered moderate to address the causes of domestic violence, violence against women (VAW), and GBV. The government has made several arrangements to provide services for those seeking remedies. Some of them are the National Women’s Commission and Women and Children Service Centers in Nepal Police. Similarly, local governments are entitled to provide remedies to the victims of domestic violence, VAW, and GBV.

Realizing the fact that the anti-trafficking programs were surfaced in the previous development periodic plans of Nepal, the subsequent periodic plans, especially the 14<sup>th</sup> and the 15<sup>th</sup> have explicitly addressed the need for prevention and combating the trafficking in persons, especially women and children (NHRC, 2018). The Government’s institutional mechanisms to regulate the foreign employment through i) Ministry of Labor, Employment and Social Security (MoLESS), ii) Foreign Employment Promotion Board (FEPB), iii) Department of Foreign Employment (DoFE), iv) Foreign Employment Tribunal (FET) and v) Labor Attaché appointed in the destination countries are the major attempts to control trafficking.

<sup>11</sup> Gurung, Y.B & Khatiwada, P.P. (2015). Legal identity in Nepal. Report submitted to Alliance for Social Dialogue (ASD).

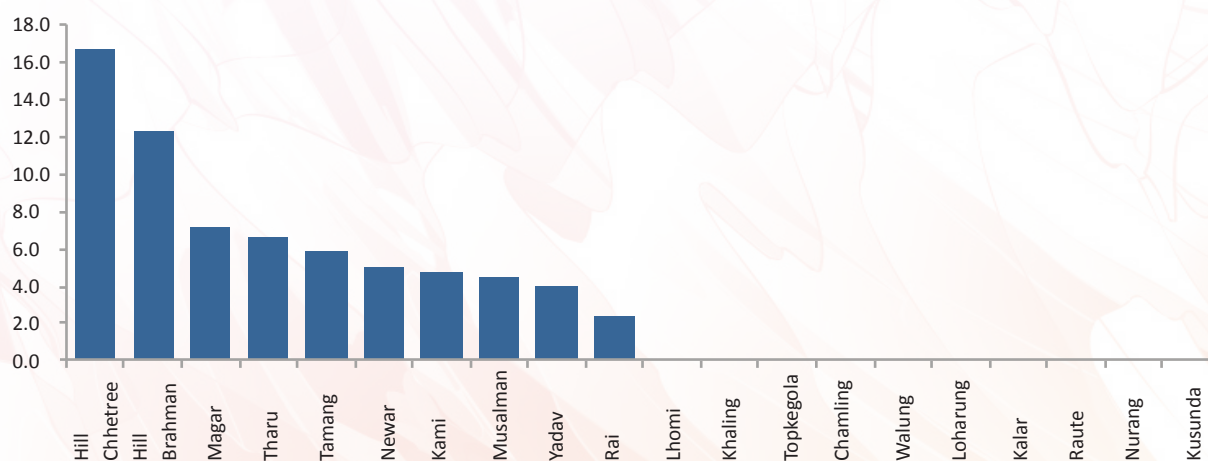


These policies' implementation has been found in many of the local levels. Many of the municipalities have prioritized children's rights, their right to nutritious food, right to education, and others in their policies and programmes. Juna Basnet, Deputy Mayor of Surya Binayak Municipality said that they have initiated the campaign for Child Labor Free Municipality. For this, dedicated groups have been established to solve the issues of children. The municipality is planning to provide laptops to two students achieving excellent results in the SEE exams. As briefed by Saraswati Khadka, Deputy Mayor, Kirtipur municipality has been declared a child-friendly municipality. Budgets for legal advice and counselling have been put forward. Local complaints are addressed by the judicial committee to save people from the hassles in court. Women in crises are facilitated to have their reach to the respective organisations like WOREC Nepal.

### 3.5 Rights and Justice to Minorities/Disadvantaged

Nepal is a country of great geographic, cultural, ethnic, and religious diversity which is constitutionally treated as identity. This identity is inherently valued and is a rich asset of the country.<sup>12</sup> The 26.5 million citizens of Nepal come from many ethnic groups. Some, like the Hill Chhetree, have significant populations; they alone account for just under one-fifth of the total population with the highest share (16.8%) (Figure 2). The Hill Brahman population is in the second position with a share of 12.2%, and there are seven others such as Magar, Tharu, Tamang, Newar, Kami, Musalman, and Yadav that have populations of more than one million people. Other groups have small populations; Lhomi, Khaling, Topkegoa, Chidimar, Walung, Loharung, Kalar, Raute, Nurang, and Kusunda all have populations of less than 1,615, with Raute (618), Nurang (278), and Kusunda (273) registering numbers of less than one thousand.

**Figure 2: Top 10 and bottom 15 castes/ethnic groups in terms of percentage of the population, Census 2011**



Source: Gurung, 2014

The directive principles of the Constitution of Nepal state that the political objective of the State shall be to establish a public welfare system of governance, by establishing a just system in all aspects of the national life through the rule of law, values, and norms of fundamental rights and human rights, gender equality, proportional inclusion, participation, and social justice. Inclusion, thus, is the major

<sup>12</sup> Gurung, Y.B. (2014). Social demography of Nepal: Evidences from population and housing census 2011. <https://cbs.gov.np/wp-content/uploads/2018/12/Population-Monograph-of-Nepal-2014-Volume-I-FinalPrintReady1.pdf>.



roadmap for Nepali people to reach the path of equality. The SDG 16, target 16.7 aims to ensure responsive, participatory, and representative decision-making at all levels. Another target 16.9 urges member states to provide legal identity for all, including birth registration. Mayor of Mahashila Rural Municipality, Parbat identifies the gap between the 'privileged' and the 'marginalized' group is ever increasing. According to him, there are increased cases of substance abuse disorder, gambling, and violence among the less privileged groups. To tackle instead of just raising these issues, there has to be enough homework done and commitment should come from the local and central representatives. There is also a requirement of capacity-building training amongst the representatives alongside empowerment sessions for the local people.

The local governments have been found initiating special measures to reduce the gap. Juna Basnet, Deputy Mayor of Surya Binayak Municipality adds, "Special programs have been put forward for the indigenous, socially marginalized, physically challenged, single women and senior citizens. The municipality has also been collecting data of the aforementioned groups to help them solve their day-to-day problems. The group is being assisted by the municipality in sectors of agriculture (farm, poultry) to broaden their financial sustainability."

### 3.6 Rule of Law and Impunity

On 19 September 2018, 16 bills<sup>13</sup> passed by the House of Representatives (HOR) and National Assembly were officially approved by the President as per the mandate of the Constitution which had stipulated that laws related to the fundamental right should be enacted within three years of its proclamation in 2015. Among them, four originated from the National Assembly.

Right after four months of the promulgation of Nepal's Constitution by the historic Constituent Assembly, the 17 Sustainable Development Goals (SDGs) of the 2030 Agenda for Sustainable Development — adopted by world leaders in September 2015 at a historic UN Summit — officially came into force on 1 January 2016<sup>14</sup> after rigorous discussions in various forums created by the UN<sup>15</sup>.

The Constitution provides three tiers of Court, which include the Supreme Court, High Court, and the District Courts. There is no distinction between Criminal and Civil Courts other than some basic procedures. District Court is the Court of the first instance against the judgment of which the Court of Appeal hears the appeal. Besides, the Constitution provides for establishing special types of courts or tribunals under the judicial control of the Supreme Court to deal with special types of cases, which include- four Revenue Tribunals, one Administrative Court, one Labor Court, and one special court.

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<sup>13</sup> These were right to social security, right to land, right to free and compulsory education, right to employment, right to privacy, right to food, right to shelter, right to health, right to consumer protection, right against discrimination and untouchability, right to safe maternity and fertility, right of people with disabilities, right to environment protection, right to protection of crime victims, right of children and right to public security.

<sup>14</sup> See <https://www.un.org/sustainabledevelopment/development-agenda/>.

<sup>15</sup> The SDGs were first formally discussed at the United Nations (UN) Conference on Sustainable Development in Rio de Janeiro in June 2012 (Rio+20), and then in the UN General Assembly (UNGA) in September 2014. See for detail: <https://www.undp.org/content/dam/nepal/docs/reports/SDG%20final%20report-nepal.pdf>.



## Chapter IV

### Inclusivity and Equity

#### 4.1 Constitutional Frame

The Constitution of Nepal embraces the idea of an inclusive state and guarantees the right to equality for all its citizens. As the preamble of the constitution emphasizes and states, “ending all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance, recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics, resolving to build an egalitarian society founded on the proportional inclusive and participatory principles to ensure economic equality, prosperity and social justice, by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability<sup>16</sup>.” The constitutional commitment is to ensure and assimilate those at risk of poverty and social exclusion to gain the recognition, opportunities, and resources they need to participate fully in economic, social, and cultural life and to enjoy a standard of living and well-being that is considered normal in the society in which they live. The constitution at its best has tried to remove institutional barriers and enhanced incentives to increase access for diverse individuals and groups to development opportunities. The constitutional provision ensures the reach of everyone to participate more in decision-making on matters that affect them and gain equal access to the resources, opportunities, and services one needs to enjoy their fundamental rights.

In addition to the constitutional provisions for the commitment towards inclusive democratic society, Nepal has numerous other legal and institutional arrangements, plans, policies and programs, and international agreements. Gender equality and social inclusion (GESI) seeks to address multidimensional poverty, gender inequality, exclusion, and vulnerability. The 2015 constitution contains provisions for institutional mechanism relating to GESI, which states there shall be gender equality, proportional inclusion, participation, and social justice (Part 4, Section 50[1]). Hence, there is no doubt that the constitution and various other legal provisions have strong GESI mandates inbuilt. To address unequal power relations experienced by people on the grounds of gender, wealth, ability, location, caste/ethnicity, language, and agency or a combination of these dimensions, GESI focuses on the need for action to re-balance these power relations, reduce disparities and ensure equal rights, opportunities, and respect for all individuals regardless of their social identity.

Nepal aspires to emerge as an inclusive, equitable, and prosperous middle-income country by 2030 with the spirit of a welfare state by achieving the targets of the SDGs and its agendas by 2030. To achieve the SDGs targets by 2030, appropriate steps such as fairness and justice in the distribution of benefits and responsibilities between all sectors have to be materialized. Mayor of Mahashila Rural Municipality, Parbat stresses that inclusive participation of people is required for the meaningful implementation of SDGs, but this has not been practiced although more than 5 years have elapsed.

In this perspective, the 2030 Agenda will have to be ‘dealt with differences and take into consideration the fact that our society has many groups in it who have not always been given equal treatment and/or have not had a level field on which to play. Considering that these groups have been frequently

<sup>16</sup> The Constitution of Nepal. (2015)



made to feel inferior to those in the mainstream, and some have been oppressed, the 2030 Agenda should focus on providing compensatory kinds of treatment, offering it in the form of special programs and benefits for those who have been left behind and require opportunity.

## 4.2 Institutional Mechanism and International Commitments

Nepal has made tremendous progress in tackling the concerns of exclusion, with the help of good national and international pledges. Nepal being a signatory to various international conventions is also legally committed to gender equality and social inclusion. However, discrimination continues to recede a substantial percentage of the Nepalis. Thus, it is apparent that if Nepal is to materialize its constitutional goals of an inclusive state into reality, a strong mechanism of inclusivity and equality has to be developed.

Thus, over the years to address the issue of inequality and exclusion, the Government of Nepal has created institutional mechanisms and structures at various levels. Table 2 shows the institutional mechanisms and structures created by the Government of Nepal to address GESI issues at various levels:

**Table 2: Institutional mechanisms for GESI**

Institutional/Constitutional Mechanism	Line Ministry and Government Mechanism
Nepal's constitution enshrined to protect and promote rights of the citizen, established functional institutional mechanism, Public Service Commission, Women Commission, National Dalit Commission, National Tharu Commission, Muslim Commission, Inclusion Commission, Madeshi Commission, Indigenous Nationalities Commission, and other mechanisms for Persons with Disabilities, Senior Citizens, Laborers, Peasants, Minority, and Marginalized Communities, People of the Karnali and the Indigent Class, etc.	National Planning Commission; Ministry of Women, Children and Social Welfare (MOWCSW) and Women Development; Ministry of Federal Affairs and General Administration (MOFAGA) and its Dalit and Adibasi/Janajati co-ordination committees; Gender/GESI Focal points in NPC, MoFAGA, MoWCSW, and the ministries of Education, Health, Urban Development, Forestry, and Agriculture.

Nepal Government has designed and implemented various institutional mechanisms for GESI at the federal, provincial, and local levels. These institutional structures have mandate and responsibilities to ensure and advocate the promotion of GESI at all levels. Ministry of Women, Children and Social Welfare (MoWCSC) was set as the key ministry for the promotion of gender equality and women's empowerment. The National Committee for the Development of the Marginalized, Oppressed, and the National Foundation for Development of Indigenous Nationalities (NFDIN) as an autonomous body that works for the betterment of Adivasi Janajatis, etc. have been formed to achieve equality and inclusion.

Similarly, inclusivity and equality commitments are mirrored in different government policies. The Ministry of Federal Affairs and General Administration (MoFAGA) formulated a GESI policy in 2010. Likewise, the Ministry of Urban Development GESI Operational Guidelines, the Ministry of Forest and Soil Conservation GESI Strategy, the Ministry of Education Consolidated Equity Strategy, and



the Ministry of Health's GESI Operational Guidelines recognize the need to address GESI issues programmatically and institutionally to achieve sector objectives. The School Sector Development Program (2016-2023) addresses inclusivity in education for girls and children from vulnerable groups. The Fourteenth Plan (2016/17-2018/19) which was the first plan to mainstream and internalize the SDGs agendas and the Fifteenth Plan (2019/20-2023/24) which is seen as being crucial in the efforts towards achieving SDGs, extensively talks about interventions to reduce gender, social and economic inequality, and on governance, social protection<sup>17</sup>.

Likewise, Nepal has signed several international agreements regarding nondiscrimination, gender equality, and social justice. Nepal ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1991. The 1995 Beijing Platform for Action, Gender equality include the outcome of the 1994 International Conference on Population and Development (ICPD) and ICPD+10, The 2000 Millennium Development Goals (MDGs), The United Nations Security Council Resolution (UNSCR) 1325, the International Convention on the Elimination of All Forms of Racial Discrimination, 1971, Nepal's 2007 ratification of the United Nations Declaration on the Rights of Indigenous People and International Labor Organization (ILO) Convention 169 (Indigenous and Tribal Peoples Convention) shows its commitment to the rights of indigenous nationalities, and to achieve equality and inclusion. Likewise, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) defines discrimination against women as "...any distinction, exclusion or restriction made based on sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field<sup>18</sup>." Nepal ratified CEDAW on 22 April 1991.

These mechanisms and arrangements have evolved into successful systems for channeling the voices of local levels into the local development planning process at the local/municipal level in many circumstances. However, the established institutional procedures at the higher levels have been hampered due to lack of resources and weak institutional processes, and hence have been ineffective in defending and advancing the cause of gender equality and social inclusion (GESI Working Group, 2017, p. 4)<sup>19</sup>. In addition, a report published by USAID and the Asia Foundation (2018), says key agencies are not adequately equipped to operate in three different areas (gender equality, children, and social welfare)<sup>20</sup>. The same report also states the inadequacy of addressing issues of diversity among women and women target program by the Department of Women Development and the Women Development Offices<sup>21</sup>. Similarly, CEDAW discussing the situation of women in Nepal with CSOs stated due to the absence of a definition of discrimination against women from the Constitution, Nepalese women -- especially Dalit, Madhesi, indigenous, and women from religious minorities, as well as lesbian, gay, bisexual, transgender and intersex women - suffered intersectional and multiple forms of discrimination<sup>22</sup>.

The government's institutional structures are, for the most part, inclusive. Deputy Chairperson, Gharapjhong Rural Municipality, Mustang said in this respect that the municipality has not allocated

<sup>17</sup> GoN. (2020). *Nepal national review of sustainable development goals*. Kathmandu, National Planning Commission.

<sup>18</sup> OHCHR | Committee on the Elimination of Discrimination against Women

<sup>19</sup> GESI Working Group (2017). *A common framework for gender equality and social inclusion*. Kathmandu, Gender Equality and Social Inclusion Working Group, International Development Partners Group, Nepal.

<sup>20</sup> USAID, Asia Foundation. (2018). *Promoting gender equality and social inclusion: Nepal's commitments and obligations*. Lalitpur, INHURED International.

<sup>21</sup> Ibid.

<sup>22</sup> OHCHR | CEDAW discusses situation of Women in Nepal, Republic of the Congo, Bahamas, and Samoa with civil society organizations



a budget on a so-to-say percentage basis but all projects are based on the principle of inclusiveness. She added that special considerations have been made for women, children, and the physically challenged in easing their reach to services. Similarly, a social security fund has been set up with a minimum budget of Rs. 1 million to help the elderly, women, children, and physically challenged people. She further added, “Complaints and suggestion boxes have been placed and people are encouraged to provide their feedback to further improve the services and programs being conducted by the municipality.” However, a sufficient number of representatives from CSOs, the private sector, and other stakeholders who are not yet ingrained in the system must be included. The NPC encouraged civil society organizations to participate in the planning process, but they were barred from raising their voices or influencing the decision-making process<sup>23</sup>. It is also critical to clarify the roles of various stakeholders to implement plans and policies at all levels.

### 4.3 Participation and Representation

There is no doubt that Nepal’s inclusiveness and equity agendas are transformative in regards to the participation of all marginalized and disadvantaged groups in political, social, and economic activities from the local to the national level<sup>24</sup>. The Local Self-Governance Act (LSGA) 1999 was the first landmark government document, which had made a provision of mandatory representation of disadvantaged groups in local bodies. Likewise, the Constituent Assembly Member Election Act of 2007, Good Governance Act of 2008, and Civil Service Act 1993 (through amendment in 2007) incorporated the legal provisions for mandatory inclusive representation in public positions through reservation.

The constitution also prohibits discrimination and expands the space for involvement and inclusion of all segments of society, including those who have previously been excluded due to their gender, caste, race, age, disability, or other factors. The government’s long-term vision to achieve national goals of social inclusion and gender mainstreaming is through increased participation of populations of all classes, caste, and gender. Representation of females, as deputy chiefs in local government, is a mandatory institutional provision.

Primarily, the constitution provides a solid and functional platform for the SDGs’ fundamental aim, which is to “leave no one behind.” It defends and promotes social justice, inclusion, and rights-based approach, with women representing 33% of parliamentarians at all three tiers of government (minimum of 37% in federal parliament, 40% at the provincial level, and 40% in local level). The constitution has provisions for institutional mechanisms to ensure inclusion and gender equality, as the appointment to the constitutional bodies and agencies are based on the principle of inclusion. The constitution mandates all political parties to adhere to the values of inclusiveness and promote proportional representation in government sector appointments as well. The constitutional right to social justice establishes the people’s right to participate in state bodies based on the principles of inclusion and proportional representation. Thus, the constitution reinforces positive discrimination in education, health, employment, and social security to create special opportunities for women, and guarantees proportional representation of women in all state organs.

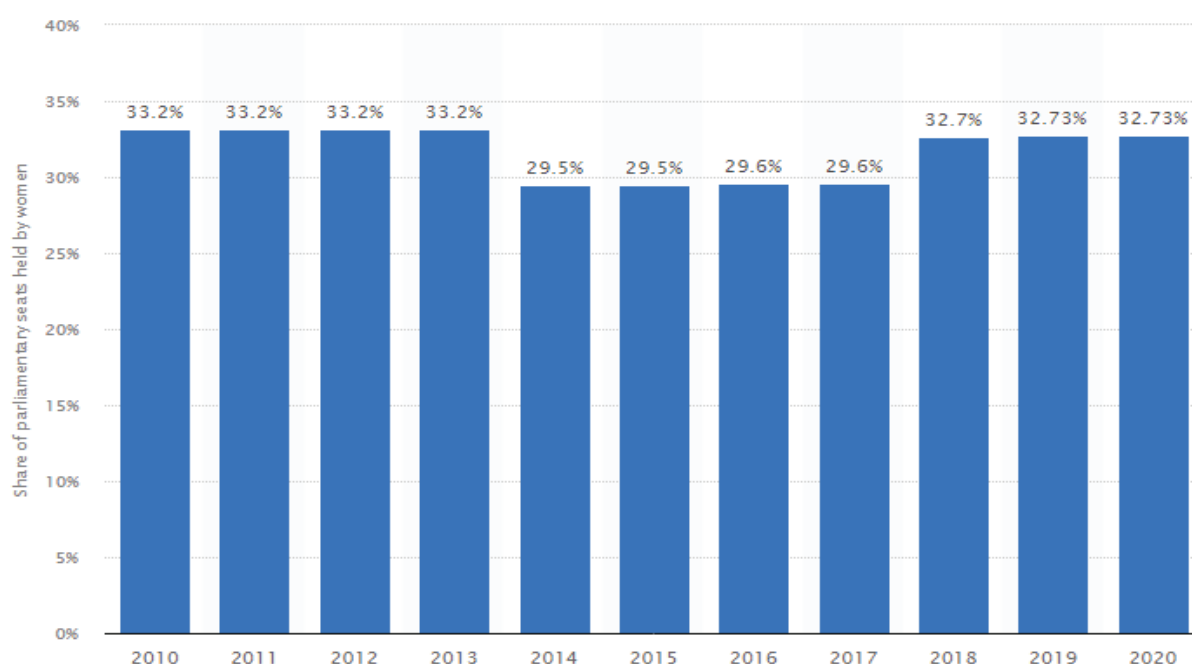
<sup>23</sup> NGO Federation Nepal. (2019). *Accelerating Localization of SDGs in Nepal*, Kathmandu, Author.

<sup>24</sup> GoN. (2020). *Nepal national review of sustainable development goals*. Kathmandu, National Planning Commission.





Figure 3: Proportion of seats held by women in national parliaments in Nepal from 2010 to 2020



Source: <https://www.statista.com/statistics/730577/nepal-proportion-of-seats-held-by-women-in-national-parliament/>

The above figure shows the female representation in the national parliament in Nepal consisted of 32.73 percent of the available seats. This is a slight increase from 2017, in which females held 29.5 percent of the available seats in the national parliament in Nepal.

Despite this, representation is not satisfactory. Only because of mandatory constitutional provisions of the minimum 33% representation of women in the federal parliament, majority of women were appointed through proportional representation<sup>25</sup>. Dalits have 20 elected representatives, which is only 7% of the seats. With 9.5% of members in the House of Representatives (HoR) being Dalits, the NC has the largest representation of this group. The CPN-UML has a 7.4% Dalit representation, while the UCPN-MC has the lowest representation, with 5.7%. Both Madhes-based parties have 6% each. This highlights that the provision of mandatory representation for marginalized communities has contributed unsatisfactorily in the case of the deprived and vulnerable<sup>26</sup>.

Women also are less in the managerial posts like in decision-making level (29.6%), employees (23%), and professional and technical sectors (25%). Similarly, the social position of women has not been much progressed which is shown by the social empowerment index of 2019 (0.5) against the target of 0.48. Almost similar is the case of the economic empowerment index which is found to have increased from 0.34 in 2015 to 0.45 in 2019, slightly higher than the target (0.43).

Despite the greater popular mandate for inclusive reform, political interests have tampered with and exploited the provisions of social inclusion. This jeopardizes Nepal's constitutional ethos and societal aspirations, jeopardizing the country's ambition to become an inclusive state with meaningful

<sup>25</sup> International Alert. (2018). *Democracy and peace in federal Nepal*. Kathmandu, Author.

<sup>26</sup> Ibid.



representation<sup>27</sup>. As a result, the government should foster and enable public dialogues on social inclusion that are aimed at assessing current practices and resolving exclusion and disparities.

#### 4. 4 Gender Responsive Budgeting and Programs

Nepal has been implementing Gender Responsive Budgeting (GRB) for more than a decade. National Planning Commission and the Ministry of Finance (MoF) initiated the Gender Responsive Budget (GRB) during the Eighth Periodic Plan (1992-97)<sup>28</sup>. The Fiscal Year (FY) 2007/08 saw the introduction of GRB by the MoF. The MoF at present has GRB Committee led by the Joint-Secretary. The MoF also has a GRB Formulation Guidelines 2012, GRB Localization Strategy 2015. Likewise, the Local Bodies Resource Mobilization Guidelines 2012 state the allocation of a minimum of 35% of the budget of local bodies in the Target Group Development Program (10% for women, 10% for children, and 15% for socioeconomically disadvantaged groups).

The major objective behind the introduction of GRB is to ensure that the government’s attention and accountability are diverted in the area of GESI for improving the condition of gender equality and social inclusion of people in the country. GBR is initiated and classified in three categories (i) directly gender-responsive with 50% allocation, (ii) indirectly gender-responsive with 20-25% allocation, and (iii) neutral with less than 20% directly benefitting women<sup>29</sup>. Five criteria are set to measure the gender responsiveness of the projects: (i) women’s participation in decision making roles and program planning (20%), (ii) their capacity building (20%), (iii) benefit sharing by them (30%), (iv) women’s increased access to employment and income-generating opportunities (20%) and (v) reduction in women’s workload (10%)<sup>30</sup>.

**Table 3: GBR allocation in the annual budget of Nepal, 2007/08 – 2017/18**

S.N.	Fiscal Year	Direct Responsive (%)	Indirect Responsive (%)	Neutral (%)
1	2007/08	11.30	33.16	55.54
2	2008/09	13.94	35.41	50.64
3	2009/10	17.30	36.43	46.27
4	2010/11	17.94	36.30	45.76
5	2011/12	19.05	45.78	35.17
6	2012/13	21.51	44.13	34.36
7	2013/14	21.75	43.94	34.31
8	2014/15	21.93	45.04	33.03
9	2015/16	22.27	47.98	29.75
10	2016/17	23.10	48.45	28.45
11	2017/18	37.42	32.66	29.92

Source: Ministry of Finance (MoF). (2017). Gender-responsive budget.

Table 3 illustrates the total budget allocated for gender-responsive projects (directly, indirectly as well as natural responsive) from the fiscal year 2007/08 to 2017/18. The budget allocation shows an

<sup>27</sup> Ibid.

<sup>28</sup> GoN. (2020).

<sup>29</sup> USAID, Asia Foundation. (2018). *Promoting gender equality and social inclusion: Nepal’s commitments and obligations*. Lalitpur, INHURED International.

<sup>30</sup> [https://www.mof.gov.np/grbc/grb\\_new\\_englis\\_bros.pdf](https://www.mof.gov.np/grbc/grb_new_englis_bros.pdf)



increasing trend as the budget allocated for projects directly responsive to gender has more than tripled to 37.42 percent in 2017/18 from 11.30 percent in 2007.

Despite the increase in budget, the indirectly responsive budget allocation shows fluctuation over the years, the lowest being 32.66% in the FY 2017/18, and the highest being 48.45% in the FY 2016/17. Likewise, lack of internalization of GRB by line ministries, the deviation between budget allocation and expenditure, lack of gender sensitiveness during plan formulation and implementation, lack of capacity of GRB units in line ministries, weak implementation and monitoring system, institutional gaps in sectoral ministries that work in infrastructure development<sup>31</sup>, etc., have been observed as obstacles for effective GRB implementation. Apart from that, the USAID and Asia Foundation (2018) report shows GRB to have remained fragmented and fairly limited in its scope at local levels<sup>32</sup>. There is a GRB Guideline for all the local levels; it seems there is very limited awareness about its existence resulting in the non-utilization of guidelines in GRB application.

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<sup>31</sup> ADB. (2010). Overview of gender equality and social inclusion in Nepal. Kathmandu, Author.

<sup>32</sup> USAID, Asia Foundation. (2018). Promoting gender equality and social inclusion: Nepal's commitments and obligations. Lalitpur, INHURED International.



## Chapter V

### Democracy, Freedom and Civic Space

#### 5.1 Meaning

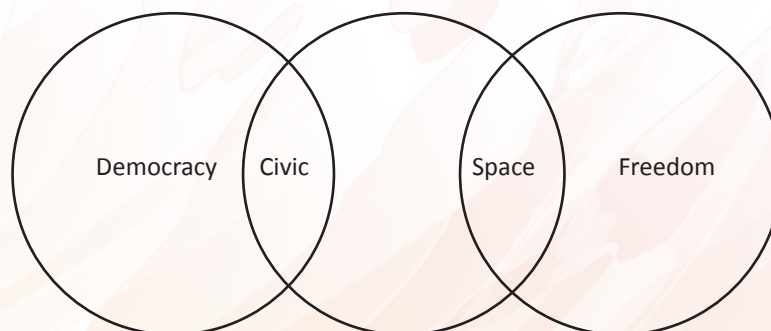
In its most basic form, democracy is understood as “majority rule” or “administration by elected representatives.” It not only refers to a set of decision-making procedures, but also connotes an abstract desire for a more egalitarian, inclusive and participatory political system<sup>33</sup>. The democratic system, thus, is not just a way of managing the apparatus of government, but also of regenerating and legitimizing it.

Democracy plays an important role in people’s perception of their freedom and happiness. Freedom of opinion and freedom of speech as the core human rights were also considered essential in ancient Greece, where democracy was tested for the first time<sup>34</sup>. Freedom here signifies individual entitlements to make decisions over one’s own life, to put it in another way, freedom is rational autonomy.

Civic space, on the other hand, is primarily concerned with the exercise of people’s freedoms and rights in the public realm. A dynamic civic space is essential to the functioning of democracy in society and the maintenance of a democratic and accountable government<sup>35</sup>. As a result, the quality of civic space in a given community is determined by the level of freedoms of expression, peaceful assembly, association, and religion or belief.

Civic space is what ensures a democratic and responsible state by making democracy work in a society. Civic space serves as an important contact between people, society and the state, as well as a source of legitimacy for the latter. Vibrant and open civic space is thus a crucial component of a stable democracy protecting diversity, cultivating tolerance, and guaranteeing respect for human and citizenship rights and liberties<sup>36</sup>.

**Figure 4: Interlinkage between democracy, freedom, and civic space**



The democratic constitution of Nepal, which was promulgated by the collective efforts of the people and the constituent assembly in 2015 vests sovereignty and state power in the people. The constitution

<sup>33</sup> CrimethInc. (2017). From democracy to freedom- The difference between government and self-determination. Salem, OR: Author.

<sup>34</sup> Meyer, M. (2020). Liberal democracy- Prosperity through freedom. Cham, Springer.

<sup>35</sup> FORUM-ASIA. (2018). Civic Space- Challenges and ways forward. Bangkok, Author.

<sup>36</sup> EU. (n.d). Shrinking democratic civic space for youth.



guarantees three tiers of government (Federal, Provincial and Local) system. The constitution states ending all forms of discrimination and oppression created by the feudalistic, autocratic, centralized, unitary system of governance. The constitution's spirit is committed to socialism based on democratic norms and values, such as the people's competitive multiparty democratic system of governance, civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full press freedom, and an independent, impartial, and competent judiciary, as well as the rule of law to build a prosperous nation. The subsequent section highlights the constitutional provisions for the protection and promotion of fundamental entitlements.

## 5.2 Constitutional Arrangements for the Protection and Promotion of Fundamental Entitlements

The Constitution declares Nepal as an independent, indivisible sovereign, secular, inclusive, democratic, socialism-oriented, federal democratic republican state in which the sovereignty and state authority of Nepal is vested in the Nepalese people. To promote unity in diversity, the Constitution recognizes multiethnic, multi-lingual, multi-religious, multi-cultural, and diverse geographical characteristics. Similarly, in the directive principles of the state, the Constitution has embraced the policy of promoting national unity by upholding freedom, sovereignty, territorial integrity, national unity, independence, and dignity of Nepal by protecting and promoting social and cultural solidarity, tolerance, and harmony among various castes, ethnicities, religions, languages, and cultures and developing ties of cooperation among the federal units<sup>37</sup>.

### Article 17, Rights to Freedom, of the Constitution states:

- (i) No person shall be deprived of his or her liberty except following the law.
- (ii) Every citizen shall have the following freedoms:
  - (a) Freedom of opinion and expression,
  - (b) Freedom to assemble peaceably and without arms,
  - (c) Freedom to form political parties,
  - (d) Freedom to form unions and associations,
  - (e) Freedom to move and reside in any part of Nepal,
  - (f) Freedom to practice any profession, carry on any occupation and establish and operate any industry, trade, and business in any part of Nepal.

Likewise, **Article 22, Right against Torture** states,

- (i) No person who is arrested or detained shall be subjected to physical or mental torture or cruel, inhuman, or degrading treatment.
- (ii) Any act mentioned in clause (i) shall be punishable by law, and any person who is the victim of such treatment shall have the right to obtain compensation following the law.

Similarly, **Article 23, Right against Preventive Detention** says,

- (i) No person shall be held under preventive detention unless there is sufficient ground for the existence of an immediate threat to the sovereignty, territorial integrity, or public

<sup>37</sup> GoN. (2020). *The Fifteenth Plan (Fiscal Year 2019/20 – 2023/24)*. Kathmandu, Author.



peace and order of Nepal.

- (ii) Information about the situation of a person who is held under preventive detention under clause (i) must be given immediately to his or her family members or relatives. (ii) If the authority making preventive detention holds any person under preventive detention contrary to law or in bad faith, the person held under preventive detention shall have the right to obtain compensation following the law.

For the **Protection of Children from all Forms of Violence, Abuse or Exploitation** (including trafficking) The Constitution of Nepal, Article 39 (5) states,

- (i) No child shall be subjected to child marriage, transported illegally, abducted/kidnapped, or taken hostage.
- (ii) No child shall be recruited or used in army, police, or any armed group, or be subjected, in the name of cultural or religious traditions, to abuse, exclusion or physical, mental, sexual or other forms of exploitation or improper use by any means or in any manner.
- (iii) No child shall be subjected to physical, mental, or any other form of torture in home, school, or other place and situation whatsoever.

The Constitutional Rights Article 20 related to justice says,

- (i) No person shall be detained in custody without informing him or her of the ground for his or her arrest.
- (ii) Any person who is arrested shall have the right to consult a legal practitioner of his or her choice from the time of such arrest and to be defended by such a legal practitioner. Any consultation made by such person with, and advice given by, his or her legal practitioner shall be confidential. Provided this clause shall not apply to a citizen of an enemy state. Explanation: For this clause, “legal practitioner” means any person who is authorized by law to represent any person in any court.
- (iii) Any person who is arrested shall be produced before the adjudicating authority within twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to such authority; and any such person shall not be detained in custody except on the order of such authority.
- (iv) No person shall be liable for punishment for an act which was not punishable by the law in force when the act was committed nor shall any person be subjected to a punishment greater than that prescribed by the law in force at the time of the commission of the offense.
- (v) Every person charged with an offense shall be presumed innocent until proved guilty of the offense.
- (vi) No person shall be tried and punished for the same offense in court more than once.
- (vii) No person charged with an offense shall be compelled to testify against himself or herself.
- (viii) Every person shall have the right to be informed of any proceedings taken against him or her.
- (ix) Every person shall have the right to a fair trial by an independent, impartial and competent court or judicial body.
- (x) Any indigent party shall have the right to free legal aid following the law.



The Constitutional Rights related to equality '**Article 18 Right to Equality**' mentions,

- (i) All citizens shall be equal before the law. No person shall be denied equal protection of the law.
- (ii) No discrimination shall be made in the application of general laws on grounds of origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology, or on similar other grounds.
- (iii) The State shall not discriminate against citizens on grounds of origin, religion, race, caste, tribe, sex, economic condition, language, region, ideology, or on similar other grounds.

In addition, according to **Article 42 (3)** the citizens with disabilities shall have the right to live with dignity and honor, with the identity of their diversity, and have equal access to public services and facilities.

The Constitution **Article 38(4)** also provides the right to participate for all in public affairs with special attention on women and the marginalized community. As the article reads, "Women shall have the right to participate in all bodies of the State based on the principle of proportional inclusion." The rights related to social justice is spelled out in **Article 42**, which says,

- (i) The socially backward women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, minorities, persons with disabilities, marginalized communities, Muslims, backward classes, gender, and sexual minorities, youths, farmers, laborers, oppressed or citizens of backward regions and indigent Khas Aryashall have the right to participate in the State bodies based on inclusive principle.
- (ii) The indigent citizens and citizens of the communities on the verge of extinction shall have the right to get special opportunities and benefits in education, health, housing, employment, food, and social security for their protection, upliftment, empowerment, and development.
- (iii) The citizens with disabilities shall have the right to live with dignity and honor, with the identity of their diversity, and have equal access to public services and facilities.

**Article 40 Rights of Dalit**, says,

- (i) The Dalit shall have the right to participate in all bodies of the State based on the principle of proportional inclusion. Special provisions shall be made by law for the empowerment, representation, and participation of the Dalit community in public services as well as other sectors of employment.

Rights related to access to information are written in Article 17. The Constitution of Nepal Article 17(2) states, 'every citizen shall have the freedom of opinion and expression.

Article 19 has provisioned **Right to Communication**, and states that:

No publication and broadcasting or dissemination or printing of any news item, editorial, feature article, or other reading, audio, and audio-visual material through any means whatsoever including electronic publication, broadcasting and printing shall be censored. Provided that nothing shall be deemed to prevent the making of Acts to impose reasonable restrictions on any act which may undermine the sovereignty, territorial integrity, nationality



of Nepal or the harmonious relations between the Federal Units or the harmonious relations between various castes, tribes, religions or communities, or on any act of sedition, defamation or contempt of court or incitement to an offense, or on any act which may be contrary to public decency or morality, on any act of hatred to labor and any act of incitement to caste-based untouchability as well as gender discrimination.

**Article 27 Right to Information:**

Every citizen shall have the right to demand and receive information on any matter of his or her interest or of public interest. Provided that no one shall be compelled to provide information on any matter of which confidentiality must be maintained per the law.

**Article 28, Right to Privacy:**

The privacy of any person, his or her residence, property, document, data, correspondence, and matters relating to his or her character shall, except following the law, be inviolable.

In order to promote peaceful and inclusive societies, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels, Nepal is also a signatory to various international commitments and sovereign rights, including Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), Convention on the Rights of the Child (CRC), The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on the Rights of Persons with Disabilities (CRPD) to name few.

Despite the constitutional arrangements with commitments to socialism based on civil liberties, fundamental rights, human rights, adult franchise, periodic elections, full freedom of the press, and independent, impartial, and competent judiciary and concept of the rule of law, Nazeen and Thapa (2019) study report alarming incidents related to clamping down on the media and specific rights-based groups which is against the freedom of fundamental right as bestowed by the constitution. Likewise, FORUM-ASIA (2018) reports censorship and attacks against journalists. As the report says, a new set of Criminal Code Acts 2018 along with the Civil Code Acts 2018 became law of the land on August 17, 2018, replacing 15 laws including 55-year-old civil and criminal laws. Some provisions of the Act, especially Sections 293 to 308 relating to privacy and defamation, are restrictive to the press freedom and criminalize expression<sup>38</sup>. The case of Canadian citizen deportation because of criticizing government policies over Twitter and the arrest of journalist Manoj Kumar Rai, the chief editor of *Gaunle*, for publishing material criticizing a self-proclaimed religious guru, on Facebook is also stated in the same report.

The smooth functioning of any democracy relies on the expression of freedom and any democratic society is based on a culture that insists on human rights and human dignity. Freedom of opinion and expression enabled people to break away from rigid dogmas and pursue new ideas without fear of repercussion<sup>39</sup>. Freedom of the press is one of the fundamental civil liberties. Wherever it is suppressed or even censored, there is no freedom of opinion and true democracy is not possible. Hence, civil society and civic space are fundamental prerequisites for fruitful democracy and individual freedom

<sup>38</sup> FORUM-ASIA. (2018). *Civic Space- Challenges and ways forward*. Bangkok, Author.

<sup>39</sup> Meyer, M. (2020). *Liberal democracy- Prosperity through freedom*. Cham, Springer.





## 5.3 Civic Space: Democracy, Freedom and Sustainable Development Goals

Civic space is a set of conditions that allow civil society and individuals to organize, participate and communicate freely and without discrimination, and in doing so, influence the political and social structures around them<sup>40</sup>. An “empowered and resilient civil society ... is a crucial component of any democracy” (Annual Report on Human Rights And Democracy in the World 2017) and the civic space, in general, is “a crucial means of creating the trust and reciprocity on which both democratic and market interactions depend” (Clifford 2011, p. 210)<sup>41</sup>. However, governments around the world have been adopting different tactics to constrain civic space, to which the policymakers and practitioners now refer to this phenomenon as ‘closing’ or ‘shrinking’ civic space.

Civic space is the bedrock of any open and democratic society because at the heart of civic space are the freedom of association, freedom of peaceful assembly, freedom of expression, human rights protection, and civic engagement in policy making. Hence, in many ways, civic space is a crucial interface between people, society, and the state is a source of its legitimacy. Without the liberal values of freedom, human rights, justice, and peace, there would be no civil society organizations and civic space arenas that make democracy and development work for all.

In the context of Nepal, the civic society has been playing a critical role in defending and defining political and civil rights since the democratic transition in the 1990s. Since the democratic transition in the 1990s and during the Maoist conflict (1996-2006), civil society actors have played a critical role in defending political and civil rights. During the transition period (2006 -2015), these actors helped shape the nature of the contract citizens have with the state through the new Constitution. Civil society actors brought issues of gender equity and inclusion of marginalized groups into decision-making spaces and the formulation of inclusive service delivery policies, producing evidence on how states deliver such services.

The civic space also has a serious implication for Sustainable Development Goals (SDGs). As part of Goal 16, governments and other development actors commit to building responsive, inclusive, participatory and representative decision-making at all levels and promise to ‘ensure public access to information and protect fundamental freedoms, following national legislation and international agreements’. Civil society organizations (CSOs) can play a critical role in advocating for the achievement of the remaining SGDs, holding the government to account for delivering on its commitments, while in many cases helping provide services directly to the most vulnerable of citizens.

## 5.4 Transparent and Accountable Institutions

Nepal has made several efforts to enhance transparency, promote accountability, and create corruption-free public institutions and the ultimate goal for them all is to inculcate public sector integrity in Nepal. A political commitment seen for the two decades has paved the way for accountable and transparent governance and the adoption of constitutional-legal measures. The institutional measures for oversight from constitutional bodies, parliamentary committees, and executive surveillance and monitoring systems are the outcomes of such political commitments. The Government has included several systems for review and evaluation of public sector performance, and direct citizen oversight through social accountability mechanisms. Nepal has also acceded to

<sup>40</sup> Keutgen, J., & Dodsworth, S. (2020). *Addressing the global emergency of shrinking civic space and how to reclaim it: A program guide*. London, WFD.

<sup>41</sup> EU. (n.d). *Shrinking democratic civic space for youth*.



some of the international instruments regarding control of corruption, money laundering, or terrorist financing. There is a broad consensus on the need for transparent and accountable governance in Nepal. The Constitution of Nepal recognizes the rights to communication (Article 19) and the right to information (Article 27) as fundamental rights and empowers citizens to demand information. The constitution also upholds principles of the separation of powers and checks and balances, allowing Constitutional Bodies and Parliamentary Committees to provide oversight on the government. Secondly, there is a fairly extensive corpus of laws for promoting government transparency and accountability in Nepal. The constitution itself commits in its Preamble and several of its clauses to good governance, accountability, and transparency. But several laws have been promulgated especially over the past two decades regarding public oversight agencies, control of corruption, vigilance on public procurement, and provisions on right to information and for good governance in general. These Acts and corresponding regulations establish the procedures to create institutions for greater transparency, creating fairness in public procurement, adopting accountability tools, and reporting and disclosure requirements. Prominent Acts in this regard include the following:

- i. Audit Act 1991
- ii. Commission for the Investigation of Abuse of Authority Act 1991
- iii. Financial Procedures Act 1999
- iv. Good Governance Act 2007
- v. Public Procurement Act 2007
- vi. Right to Information Act 2007

In the meantime, Nepal has established over one and a half dozen of anti-corruption and oversight agencies. The CIAA through the constitution of 1990 is a prime example of this. In addition, there are other constitutional bodies, judicial entities, parliamentary committees, executive agencies, and specialised wings of the Finance Ministry and Nepal Rastra Bank. These institutions operate at different levels of constitutional/legal autonomy and independence<sup>42</sup>.

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<sup>42</sup> NASC, 2018



## Chapter VI

### Conclusion and Recommendations

#### 6.1 Conclusion

Sustainable Development Goal 16 (SDG 16) aims to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. These are the core areas of advocacy and campaign of the civil society organisations (CSOs).

Although significant progress has been found on the overall victims reporting their victimisation to competent authorities, marginal progress has been seen at the local government level on this indicator. The proportion of the population satisfied with their last experience of public services looks satisfactory. People’s perception of corruption does not look good and marginal progress is seen in the primary government expenditures. However, the score for maintaining transparency, accountability, and minimising corruption in public has been stagnant for the past five years.

There is no doubt that inclusion and equality are complex and burning issues. Nevertheless, if the concepts are duly understood and operationalized within a specific cultural, historical, and socio-economic context, gender equality, and social inclusion can be a vehicle for transformational change for that particular country. Moreover, unless the disparities between women and men and different social groups are recognized and rectified, there is no way that Nepal can achieve its goal of SDG 16. Sustainable Development Goal 16 deals with the core issues of peace, justice, and strong institutions, and thus is treated as the cornerstone to the remaining 16 goals. The goal is to “promote peaceful and inclusive societies for sustainable development [and thus] provide access to justice for all and build effective, accountable and inclusive institutions at all levels”. By and large, the inclusion of different sects of people will make them feel valued, make them feel their differences respected and that will help them realize their full potential. Likewise, eventually, inclusion and equality could be effective in national unity and integrity, it could help Nepal institutionalize democracy, also manage social conflict, social justice and include all in the participation of the governance system.

Social Inclusion and equality are about the participation and representation of most disadvantaged people, who are left out from the mainstream of development and governance process. Thus, it is necessary to improve the abilities, opportunities, and dignity of people, disadvantaged based on their identity, to improve their participation and position in the society, and to remove institutional barriers to increase the access of excluded individuals and groups to development and welfare opportunities to outreach to include all sectors of society in planning and decision-making that affects their lives.

The government needs to play further collaborative effort to significantly reduce all forms of violence, and work with governments and communities to end conflict and insecurity. Promoting the rule of law and human rights are key to this process, as is reducing the flow of illicit arms and strengthening the participation of developing countries in the institutions of global governance.

The Constitution of Nepal has comprehensively provisioned the fundamental rights of the citizens. The democratic constitution ensures participation, actively reaching out to all citizens, including



the underrepresented or marginalized voices. Equality and freedom of expression as a basic right is spelled out throughout the constitution.

The civic space, which is another important and integral aspect of a vibrant democratic system and society, should not be undermined by any democratic nations. Since civic space allows citizens and civil society organizations to organize, participate and communicate without hindrance, shrinking civic space is likely to halt or reverse progress towards reducing inequality, insuring inclusion, and improving sustainability because it is often precisely those marginalized who are at great risk of being left behind by development. Hence, without a fully engaged civil society, the SDGs are bound to fail. Adequate civic space coupled with transparent and verifiable information are essential. Shrinking civic space decreases trust in official data and political performance.

## 6.2 Recommendations

### Insights for civil society

1. The COVID-19 pandemic is causing some havoc in the effective implementation of projects. Due to restrictions and concerns for people's safety, it is not possible to actively work alongside the physical presence of people. Although programs are being conducted virtually, the implementation of goals and coordination between organizations seem difficult.
2. While prioritizing physical infrastructural development, social development is often overshadowed. Cases of suicides in women have been rising and no one is raising voices on the probable solution.
3. Women are not well represented in local levels and the principle of inclusiveness has been blatantly ignored. These are the areas for improvement and lobby for the social organisations.
4. Females are still being dominated in Karnali. There are increasing cases of women and domestic violence. 'Chhaupadi' is yet to be abolished.
5. Patriarchy has its firm roots in society. There will be no improvement in SDGs implementation unless people begin to think differently. There has to be a provision of a 'pressure support group' to address issues of gender violence and inequality. The SDG implementation should start from households first. Women's empowerment should be the foremost priority.

### To the governments at all three levels

1. To avoid unnecessary duplication of the projects, provisions for mandatory supervision must be put into action ensuring monitoring by internal mechanism and project-based evaluation by the third party.
2. Strong implementation on the provisions set forth in the constitution, laws, and policies are suggested, particularly on the following:
  - Participation, empowerment, and capacity development of all stakeholders
  - Proportional representation of all
  - Reservation, special protection, subsidies for the disadvantaged
  - Positive discrimination (equality through equity)
  - Legal protection for the minorities,



- Investment in human development and ending poverty
  - Awareness
  - Local, Provincial and Federal Government standard guidelines to mainstream inclusion,
  - Development and implementation of sectoral reporting mechanism
3. In the local levels, to materialise the above facts, apart from the mayor, the authority to allocate funds for projects should also be provided to the deputy mayor.
  4. Enabling environment should be created for civil society and civic space so that they can optimally contribute to and engage in policy formulation, monitoring rights, raising awareness, championing the voices of vulnerable populations, and building partnerships. Limited civic space develops the risk of excluding voices and increasing social distrust. This ultimately increases inequalities and makes development less sustainable.
  5. Financial discipline is always a concern. The allocated budget is more of an earning opportunity for the local contractors and political workforce rather than the 'targeted' groups. There has to be enough monitoring from the concerned authorities to maintain financial discipline.



**Nepal SDGs Forum** was established in 2016 as a common platform of thematic federations and networks, CSOs, I/NGOs, private sector, cooperatives, media, UN agencies, bilateral and multilateral development partners and major groups and stakeholders which aspire to contribute to achieving Sustainable Development Goals (SDGs). Nepal SDGs Forum is the only civil society platform recognized by High-Level SDG Steering Committee, Thematic Committees as well as Nepal Government's institutional mechanisms set up for implementation of SDGs. Now, more than 50 federations and alliances and over 500 organizations from across the country are the members of this Forum. This Forum comprises of organizations which have taken their specific responsibilities as Conveners, Co-Conveners, and Major Groups. In addition to the designated Conveners and Co-conveners for each goals, Nepal SDGs Forum has formed the civil society Major Groups as well as cross-cutting or thematic areas that include Youth, Women, People with Disabilities, Senior Citizens, Children, Dalit, Indigenous Communities, LGBTIQ, Farmers, Development Partners, Cooperatives, Media, Trade Unions, Private Sectors, Science and Technology. As an open forum, Nepal SDGs Forum welcomes everyone interested in SDGs to join this forum. INGOs working in Nepal are part of this forum as advisors.

Nepal SDGs Forum aims to accelerate, localize and contribute to achieving SDGs while guided by the principles of 'leaving no one behind', shared and sustained prosperity, and increased role and participation of civil society. It works in close coordination with National Planning Commission (NPC) and other state and non-state actors. By working under this Forum, various stakeholders aim to coordinate, collaborate and build synergy in influencing and impacting sustainable development. Although different organizations have their own priorities and actions, they come together under this Forum so as to impact and influence policy, coherence, harmonization as well as to create a common understanding and voice at the national and international level. They share their activities, lessons learned, priorities and way forward by meeting regularly.

NGO Federation of Nepal (NFN) facilitates in the functioning of Nepal SDGs Forum at central and province levels. Its secretariat is located at NFN at Buddhanagar, Kathmandu. As a host organization of Nepal SDGs Forum as well as the leading CSO network of Nepal, NFN functionalizes this forum, coordinates and builds synergy among CSOs, NGOs, INGOs, and establishes linkage with Government of Nepal. This has made it possible to localize the SDGs at grassroots level, while engaging with national, provincial and local level state and non-state actors and stakeholders for The 2030 Agenda for Sustainable Development.

For more information, visit: [www.nepalsdgforum.org](http://www.nepalsdgforum.org).



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