

**Adivasi Janajati exclusion:
Status and trend update (June 2005–April 2009)**

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1. Introduction

Since the June 2005 conclusion of the Gender and Social Exclusion Assessment (the GSEA, spearheaded by the World Bank and DFID), a number of significant changes have taken place in Nepal. On 28 May 2008, the Constituent Assembly abolished the country's long-reigning monarchy, transforming the country into a republic in one fell swoop. The most significant step in this direction was the people's movement, known as *Janandolan II* (to set it apart from the people's movement of 1990), which culminated in April 2006; during the course of this movement, the Nepali people expressed their aspirations to end all forms of autocracy, and to establish democracy. The Comprehensive Peace Agreement (CPA), signed between the government and the Communist Party of Nepal (Maoist) in November 2006, was another historic milestone, again reflecting the people's desire for as well as ability to bring about peace.

The *Adivasi Janajati* (indigenous nationalities) movement took an active and critical part in the *Janandolan II*. Thereafter, its members continued to push for greater inclusion in the subsequent promulgation of the Interim Constitution in January 2007, as well as the elections to the Constituent Assembly in April 2008. In particular, the Nepal Federation of Indigenous Nationalities (NEFIN) drew attention to the limitations of the Interim Constitution, and especially in advocating that Nepal be declared a 'federal state', among other demands. Eventually, NEFIN was successful in getting the interim government to address major issues raised by Nepal's indigenous peoples and, in August 2007, a 20-point agreement was signed between NEFIN and the Government of Nepal.

The *Adivasi Janajati* movement was also able to draw the attention of the state and various other stakeholders to the need to ensure equitable resource distribution, and to protect the rights of indigenous peoples as enshrined in national and international instruments. For instance, the Three Year Interim Plan 2008-10, announced by the National Planning Commission in July 2007, set specific targets and allocated a budget for the development of *Adivasi Janajatis*. Further, most of the development community, including the UN and donor agencies, adopted 'social inclusion' as priorities in their country plans. Indeed, the horizon of the development discourse itself has since widened, to include both identity and cultural rights within its purview. In September 2007, the Government of Nepal ratified ILO Convention No. 169, on indigenous and tribal peoples, which is the only legally binding international instrument on this issue, and also adopted the UN Declaration on the Rights of the Indigenous Peoples. This move engendered great hope in many communities in Nepal that the state was serious about protecting their rights. Yet despite some progress having been made in addressing the issues of *Adivasi*

Janajati exclusion, there remain several challenges to translating these promises into practice.

This report builds on Part A of Chapter Nine, and presents an update on the status and trends in Adivasi Janajati exclusion in Nepal. It assesses the emerging themes of concern to different elements in the indigenous community, their contributions to the democratisation of the country, and their sometimes varied visions for a New Nepal. The primary purpose of this assessment is to generate policy recommendations for more inclusive policies in the country. In order to contextualise the discussion, I begin by describing the major events that took place during between June 2005 and April 2009, followed by discussion on major changes in the constitutional and legal regimes. The next section deals with key developments in the policies and programmes of the government and donors with regard to Adivasi Janajatis. The relationship between Nepal's political parties and indigenous peoples, and the latter's efforts to maximise their voices in the Constituent Assembly process, is dealt in the subsequent section. Finally, I discuss the dynamics of the Adivasi Janajati movement, and conclude with a summary of key learnings.

1. Key events and political changes (June 2005–April 2009)

As mentioned earlier, during the period from June 2005 until April 2009, multiple significant events took place that contributed considerably towards reshaping the nature of the Nepali state. As the country goes through the process of crafting a new constitution, the Adivasi Janajati movement continues to struggle for space in which to contribute to the new document, as well as to draw attention to inadequacies and/or weak implementation of existing policy measures through which the government has tried to improve the inclusion of indigenous peoples. Yet in fact, the Adivasi Janajati movement has played a major role in the political negotiations that are leading the country through a series of democratic transitions: from autocracy to democracy, from Hindu kingdom to secular republic, and from unitary and centralised structure to federal design. The concept of 'inclusion' has been central to the shift in discourse necessary to combat the structural inequality based on caste and ethnicity that has for centuries shaped the Nepali polity. The following compilation of key events, although not exhaustive, captures the major political developments, responses from the state and international development community, and the trends in the Adivasi Janajati movement itself.

Major events (February 2005–April 2009)

<i>Period</i>	<i>Events</i>
February 2005	King Gyanendra dismisses Prime Minister Sher Bahadur Deuba and his government, declares a state of emergency and assumes direct power, citing the need to defeat Maoist rebels.
April 2005	King lifts the state of emergency amidst international pressure.
September 2005	Maoist rebels announce a unilateral ceasefire, rejected by the royalist government.

November 2005	Maoist rebels and main opposition parties agree on a programme intended to restore democracy.
April 2006	People's movement II calls for the re-instalment of Parliament.
July 2006	Government establishes District Coordination Committees (DCCs) for indigenous nationalities in all District Development Committees in the country.
September 2006	IP Joint Action Committee/NEFIN forward their position on elections to the Constitution Assembly and state-restructuring to the Election Commission.
November 2006	Comprehensive Peace Agreement between government and CPN (Maoist) signed, formally ending the decade-long conflict.
January 2007	Promulgation of the Interim Constitution, which declares the country to be a 'secular' state with the promise of inclusive restructuring and provision for use of all languages in local bodies.
February 2007	European Union funds projects, to work for highly marginalised Janajatis, for ActionAid and Care Nepal, to be implemented jointly with NEFIN.
February 2007	UN sets social inclusion as one of the priorities in its Development Assistance Framework (2008-10).
March 2007	First Amendment to the Interim Constitution declares Nepal to be federal in structure, in response to agitation by Adivasi Janajatis and Madhesis.
August 2007	Government-NEFIN 20-point agreement is signed following nationwide Adivasi Janajati agitation for proportional representation in the Constituent Assembly and other issues.
August 2007	Civil Service Act is amended to include provision for 45% vacant seats to be reserved for reservation for women, Dalits, Adivasi Janajatis, Madhesis and those from 'backward' regions.
September 2007	Ratification of ILO Convention on Indigenous and Tribal Peoples 1989 (No. 169) by the Interim Parliament of Nepal.
September 2007	Nepal adopts the UN Declaration on the Rights of the Indigenous Peoples in the UN General Assembly.

November 2007	Three Year Interim Plan is announced with specific promises for Adivasi Janajati inclusion.
March 2008	Agreement between an Adivasi Janajati party, the Federal Democratic National Forum (FDNF), and the Government of Nepal for recognition of ethnicity-based federal system in the new constitution.
April 2008	Constituent Assembly election takes place, in which 218 representatives are elected as members from Adivasi Janajati communities (82 from the ‘first past the post’ system; 120 from the proportional-representation system; and 16 nominated).
May 2008	Fifth Amendment of the Interim Constitution declares Nepal to be a ‘republic’, by nullifying the monarchy.
September 2008	Prime Minister Pushpa Kamal Dahal (Prachanda) expresses commitment to implement ILO Convention 169. The National Action Plan for the Implementation of Convention 169 is prepared by a 23-member taskforce comprised of representatives from various ministries.
November 2008	The UN Special Rapporteur for Indigenous Peoples Human Rights and Fundamental Freedoms, James Anaya, visits Nepal.
December 2008	The Nepal Federation for the Development of Indigenous Nationalities (NFDIN) and the Ministry of Local Development initiate a process to address demands to recognise separate identities for Adivasi Janajati groups, by forming a high-level taskforce to revisit the official list of indigenous nationalities.
December 2008	The DFID-funded Janajati Empowerment Project (JEP) successfully concludes with the formation of Adivasi Janajati District Coordination Councils (DCC) in 57 districts and Village Coordination Councils in about 2,000 VDCs.
December 2008	Adivasi Janajati Constituent Assembly members form an informal caucus to work for the incorporation of Adivasi Janajati rights in the Assembly.
February 2009	Adivasi Janajati organisations and lawyers file a case against the Interim Constitution for not allowing indigenous representation through their representative organisations in line with international law.

February 2009	The Cabinet approves the formation of an Inclusion Commission, under the chairpersonship of Nar Singh Chaudhary (Sadbhavana Party)
March 2009	Tharu resistance demands an indigenous identity separate from ‘Madhesi’, as well as proportional representation in all state institutions.
May 2009	Maoists resign from the government.

As this timeline shows, the Adivasi Janajati community has actively mobilised to push for its rights in recent years, while there have also been some important policy advances – and many promises. The declaration of the country as a secular state went relatively smoothly, meeting with little resistance from the old establishment other than a minor outcry from Hindu groups and others. In order to address the question of linguistic equality, the Interim Constitution made provisions to allow for the use of mother tongues in local bodies. These events indicate that the Adivasi Janajati movement in Nepal has developed a high degree of solidarity and maturity in peacefully advancing its voice. This timeline also shows that the state has taken some important steps towards recognising the demands of indigenous peoples. At the same time, however, state responses have been ambiguous and/or inadequate and, despite its success, the Adivasi Janajati movement continues to face several challenges.

2. Changes in constitutional and legal provisions

Between June 2005 and April 2009, the most significant achievement of the Adivasi Janajati movement has been in establishing itself as a major force for democracy in Nepal. The movement has not only championed the both the rights of indigenous peoples and inclusion, but has also rearticulated the meanings of such terms as *representation*, *nation-state*, *democracy* and *citizenship*, as well as what is meant by cultural and linguistic rights. Today, the Adivasi Janajati movement continues to struggle for secularism and decentralised authority or autonomy, which is fundamental to the functioning of democracy. This indicates that the diverse organisations and leaders in the movement have worked on substantive issues of local democracy in the Nepali context – efforts that are directly reflected in changes in the constitutional and legal provisions of the country. Let us take a look at some of these significant changes.

The Interim Constitution (2007), for example, has taken important steps in addressing issues raised by Adivasi Janajatis. The preamble to this document begins by stating, ‘having determined for progressive restructure of the state in order to resolve the existing problems of the country based on class, caste, region and gender’. In Article 33 (d), it goes on that the state shall have the responsibility

to carry out an inclusive, democratic and progressive restructuring of the State by eliminating its existing form of centralised and unitary structure in order to address the problems related to women, Dalits, Indigenous Nationalities, Madhesis, oppressed and

minority communities and other disadvantaged groups, by eliminating class, caste, language, gender, cultural, religious and regional discrimination.

In addition, two major progressive decisions reached thus far involve issues of religion and language. Instead of officially constituting a Hindu set-up, the Interim Constitution has defined Nepal as a 'secular state'. Second, Article 5 (1) acknowledges that all of the 'languages spoken as mother tongues in Nepal are the national languages of Nepal'; and allows the use of one's mother tongue in a local body or office, for which the state takes responsibility for translating these languages into the language of official business, as required (Article 5 [3]).

The Interim Constitution is also progressive in its promise of the right to equality. For instance, Article 13 states, 'The State shall not discriminate among citizens on grounds of religion, race, caste, tribe, gender, origin, language or ideological conviction or any of these.' In order to attain this promised equality, it continues:

Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of women, Dalits, Indigenous Nationalities, Madhesi or farmers, labourers or those who belong to a class which is economically, socially or culturally backward, or children, the aged, disabled or those who are physically or mentally incapacitated.

The Second Amendment to the Interim Constitution adds that Adivasi Janajatis Madhesi, Dalits, women, workers, farmers, the disabled, and those from 'backward' classes and regions will be included at all levels of the state structure, on the basis of proportional representation. Similarly, in the section on the right to social justice (Article 21), the Interim Constitution states,

Women, Dalits, Indigenous Nationalities, Madhesi communities, oppressed groups, the poor farmers and labourers, who are economically, socially or educationally backward, shall have the right to participate in state structures on the basis of principles of proportional inclusion.

The Interim Constitution is also liberal in its provisions for special measures and affirmative action, including reservation, in order to attain equality. The state policies in Article 35 (10), for example, note:

the State shall pursue a policy which will help to uplift the economically and socially backward Indigenous Nationalities, Madhesi, Dalits, as well as marginalised communities, workers and farmers living below the poverty line, by making provisions for reservations in education, health, housing, food security and employment for a certain period of time.

Article 35 (14) goes even further, to say that

the State shall pursue a policy of making special provision on the basis of positive discrimination for the minorities, landless, squatters, bonded labourers, persons with

disability, backward communities and sections, and the victims of conflict, including women, Dalits, Indigenous Nationalities, Madhesis and Muslims.

In order to safeguard and promote the rights and interests of the country's various sectors, including indigenous peoples, the Interim Constitution also promises to form a commission to look further into the issue (154).

Beyond the Interim Constitution, Nepali policymakers have also involved the country in two significant international agreements. On 14 September 2007, the Interim Parliament of Nepal ratified ILO Convention No. 169 on Indigenous and Tribal Peoples, the only legally binding international instrument concerned with the rights of indigenous peoples. The decision to officially commit to this convention – which covers a wide range of topics related to the socio-economic, political, cultural and religious rights of indigenous peoples relevant to the Nepal context – was applauded by Adivasi Janajati organisations and by the ILO in Nepal. For more than a half-decade, the Nepal Federation of Nationalities, together with the National Foundation for the Development of Indigenous Nationalities, had been working on this issue in collaboration with the ILO.

In order to implement Convention No. 169 (which entered into force a year after ratification), in 2008 the government formed a taskforce, coordinated by the Ministry of Local Development, made up of representatives from various ministries, NFDIN and NEFIN member organisations. Recently, the taskforce completed drafting a National Action Plan for implementation of Convention 169, which was then forwarded to the Cabinet for approval. In September 2008, Prime Minister Pushpa Kamal Dahal (Prachanda) publicly committed to implementing the convention, and to making Nepal an exemplary case for promoting Adivasi Janajati rights in the region.¹ Although exactly how the National Action Plan will be implemented – and, in particular, how the necessary resources for the task will be generated – is yet to be seen, the very act of ratification has given a sense of empowerment to Nepal's Adivasi Janajati communities.

The ratification of Convention 169 is particularly significant as Nepal is the first Asian country to ratify this instrument, signifying its potential leadership in the recognition of indigenous-peoples' rights on the continent. The UN special rapporteur on indigenous peoples, James Anaya, noted that the convention's ratification forms part of Nepal's wider commitment to human rights, as reflected in the ratification of other international human-rights treaties.² Anaya also stated that Nepal's commitment toward international instruments for protecting the rights of the indigenous peoples is likewise reflected in its vote to adopt UN Declaration on the Rights of Indigenous Peoples (UNDRIP), on 13 September 2007.

With Nepal's ratification of Convention 169 and its support for the United Nations

¹ See Prime Minister's speech of 13 September 2008. *Adivasi Janajati Bulletin* 8 (December 2008), NFDIN: Kathmandu.

² Report on the situation of Indigenous Peoples in Nepal by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, July 2009.

Declaration, a process has opened toward legislative and programmatic reforms. Hopefully, these will now be able to establish or enhance legal protections for indigenous peoples, and mainstream those protections in the various relevant government programmes in line with the standards expressed in these instruments. The National Action Plan for the implementation of Convention 169 is one step toward this. However, the implementation of both Convention 169 and UNDRIP will require serious work on the part of both the government and the Adivasi Janajati communities themselves. While both of these international instruments have provided indigenous groups in Nepal (as elsewhere) a tool for claiming their rights, the government response to initiate dialogue with the rights-holders to find practical ways to execute the plan has not followed at the same pace.

As a result of this sluggish pace, a growing tension is palpable. For instance, the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) recently led 20 Adivasi Janajati organisations in filing a writ petition against the 'violation of their right to participate in the ongoing Constitution making process through their own representative freely chosen by themselves in accordance with their own procedure'.³ Following the filing, on 1 March 2009 the Supreme Court issued a 'show cause' order against government, prime minister, chairperson of Constituent Assembly and the committees of the Constituent Assembly. As reflected in this case, indigenous lawyers have clearly taken international human-rights treaties to which Nepal is a party to be key tools in their legal battle to protect the rights of indigenous peoples – particularly ILO Convention 169 and UNDRIP, along with the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC). During the last three years, LAHURNIP has focused on reviews of national laws,⁴ including the Interim Constitution, to indicate areas in which provisions of domestic laws are either counter to indigenous peoples or not in line with international human-rights law. In the process, LAHURNIP has produced case studies on how hydropower dams, national parks, community- and leasehold-forestry programmes in Nepal have deprived indigenous communities of their traditional rights to land and natural resources.⁵

Many of the substantive themes covered by Convention 169 and UNDRIP – such as the right to self-determination; self-governance; free, prior and informed consent; the right to land and natural resources; and autonomy – have been a matter of public debate as to how these can best be applied in Nepal's context. On the one hand, some of the more radical Adivasi Janajati activists have evoked Convention 169 to collect taxes or block private companies from operating in their territories. On the other, a conservative section of the dominant society views the Convention as threatening their rights. Despite this tension, the Convention – as ratified by the country's supreme body and as part of international

³ Writ petition filed by 19 Adivasi Janajati organisations, including LAHURNIP, February 2009.

⁴ Limbu, S. (2005) 'Comparative study of prevailing national laws concerning Indigenous Nationalities in Nepal and ILO Convention No. 169 on Indigenous and Tribal Peoples' in S. Webster and O. Gurung (eds) *ILO Convention No. 169 and Peace Building in Nepal*, Kathmandu: ILO/NEFIN.

⁵ Documentary case studies produced by LAHURNIP, 2008.

law – can be used as a tool for dialogue and partnership between the state and indigenous peoples, in order to find appropriate ways for its implementation.

Apart from the Interim Constitution and other international instruments, the Interim Parliament approved revisions in the Civil Service Act of 2007. The amendment included provision to reserve 45 percent of vacant posts to Adivasi Janajatis (27 percent), women (33 percent), Madhesis (22 percent), Dalits (9 percent), disabled people (5 percent) and those from ‘backward’ regions (4 percent).⁶ This constitutes a widely applauded step towards making state-employment opportunities open to historically excluded groups, as well as to make governance more inclusive. At the same time, however, given that there will be only about 100 to 150 such openings every year, this measure will likely require a significant amount of time in order to make Nepal’s civil service more inclusive. As such, this approach might fall well short of ensuring representation for these various groups in proportion to their population, as demanded.⁷ Nor does adequate capacity exist among Adivasi Janajati groups to take full advantage of the opportunities opened by this new legislation, unless some notable changes in the recruitment process are introduced.

Finally, a few additional developments in labour legislation from this period should also be noted. For instance, Clause 8 (2) of the Foreign Employment Act of 2007 states, ‘the company which sends labourers, must reserve the seats to women, Dalits, indigenous nationalities, oppressed class and people from backward region and class, and remote areas as determined by the government.’⁸ Again, however, despite the fact that the government itself has enacted this law, it has yet to reserve seats for the aforementioned groups, nor has it oriented the agencies who supply labourers for foreign employment. As such, this follows a pattern widely seen elsewhere, of progressive legislation being introduced into Nepali law, but subsequently seeing dismal follow-up in terms of implementation.

3. Policies and programmes of the government and donors

In line with spirit of the Interim Constitution, the National Planning Commission has also taken the development of Adivasi Janajatis into consideration. The Three Year Interim Plan (2008-10), for example, set a target to increase the Human Development Index (HDI) for Adivasi Janajatis by 10 percent, for which it allocated some NPR 15 billion.

⁶ Civil Service Act 2007, Clause 10 (7). *Nijamati Sewa Ain, 2049 lai samsodhan garna baneko bedheyak.*

⁷ If the basis for the number of reserved seats is, essentially, arbitrary, the current practice of interpreting the provisions also appears contrary to its spirit. For example, Clause 10 (10) of the Civil Service Act states that ‘if the appropriate candidates are not available for the reserved seats during the year of vacancy, the seats should be transferred to the following year, and if the appropriate candidates are still not available, the seats should be included in the open competition in the same year.’ The Public Service Commission (PSC) has interpreted this to mean that reserved seats will be filled prior to open seats. My interview with an official in the PSC suggests that this interpretation has the overall effect of limiting the number of marginalised groups competing for open seats, as the qualified candidates tend to have already become absorbed in the reserved seats. Further, in the absence of specific criteria, seats reserved for indigenous peoples will likely be taken by Newars, while the open seats – 65 percent of the total – thus becomes *de facto* reserved for Brahmans and Chhetris.

⁸ Foreign Employment Act 2007, Clause 8 (2). *Baideshik rojgar sambadhi kanunlai samsodhan ra yakikaran garna baneko Ain 2064.*

Meanwhile, NFDIN, a semi-autonomous body, continues to implement programmes on language preservation, awareness-raising and the protection of endangered indigenous communities with an annual budget of about NPR 30 million. One noteworthy job that NFDIN is currently undertaking is the drafting of a bill for an Indigenous Peoples Commission. Still, a general assessment of NFDIN's performance is not particularly encouraging, as the institution remains confined to funding small projects that, with some exceptions, have only minor impact.

In 2006, the Ministry of Local Development issued directives to all districts to form Adivasi Janajati District Coordination Committees (DDCs). This was intended to create a forum that would enable indigenous peoples at the district level to influence decisions over the local distribution of resources. By and large, however, reports suggest that only the cadres of political parties have been recruited to these committees, which would clearly defeat the purpose of encouraging broader Adivasi Janajati input in resource allocation. More recently, the Ministry of Local Development is working on revising directives to DDCs and Village Development Committees (VDCs) to spend at least 20 percent of the grants they receive on Adivasi Janajatis, Dalits, children, women and people with disabilities. However there is considerable confusion on how to implement this, as no clear rules have been put down for dividing these funds between the various groups.

The government too has implemented 39 targeted projects and programmes in fiscal year 2006-07, with expenditure of more than NPR 4.5 billion. The expenditure is calculated to be 3.13 percent of the total budget, or about seven percent of the development-programme budget.⁹ Yet out of all of these targeted programmes, only four – the Upliftment of Indigenous Nationalities and Praja (Chepang) Development Programme, the Gumba Management and Development Programme, the Land Reform Programme and the Rehabilitation of Freed Bonded Labourers – are directly related to Adivasi Janajatis. Further, the allocated budget for these programmes is just NPR 56 million, a tiny fraction (0.039 percent) of the total budget.¹⁰ Despite the rhetoric of inclusion, examples from the government's targeted programmes show that, for the most part, resource-distribution patterns have remained the same. A study report¹¹ that assessed the development programmes for indigenous peoples' remarks:

Most of the targeted programmes are meaningless from the perspective of inclusion of indigenous peoples/nationalities. Describing the programmes of Extensive Janakpur Area Development Council, Cultural Corporation and Nepal Academy as programmes under the strategic pillar of social inclusion and targeted programmes is ridiculous.

⁹ Not counted in this is the Poverty Alleviation Fund or PAF, created in August 2003 with support of the World Bank, which is implementing programmes in 25 districts, and has activities in 196 VDCs. In 2005-06, PAF spent NPR 247 million, which it claims to have benefited indigenous peoples as well, though only a few of these include activities targeted specifically at Adivasi Janajatis.

¹⁰ NPC, (2006). *Arthik Varsha 2063/64 ko Varshik Karyakram* (Annual Programme of Fiscal Year 2006/07): 2-3.

¹¹ Kirat, J., S. Shrestha and C.B. Subba (2007) *Review of Programmes for Development [of] Indigenous Peoples in Nepal*, Kathmandu: Center for Ethnic Studies and Development.

Donor activities during this period have also been significant. The GSEA, for instance, has stressed the need for social inclusion, and in this the NFDIN undertaking to define Adivasi Janajati groups has clearly helped donors to channel some funding towards the development of indigenous communities. Particularly noteworthy in this has been support from the British, Danish and Norwegian governments, as well as the EU. The former, through DFID, has probably offered the largest single allotment, apportioning NPR 195 million over four years for what is known as the Janajati Empowerment Project (JEP).¹² The EU has split NPR 150 million on two projects that target highly marginalised Janajatis; while in 2005 the Norwegian government set aside NPR 170 million to establish a Social Inclusion Fund, aimed at supporting research on social inclusion and helping to build the research capacity of students and scholars from excluded communities. However, the impact of each these projects, particularly in terms of their contributions to indigenous peoples, remains to be seen.

According to the Association of International NGOs (AIN), as of 2006 there were 68 INGOs working in Nepal, whose total budget amounted to NPR 7.78 billion. Their contribution in the development of Adivasi Janajati communities is not clear, however, nor is there a simple way to monitor the return on investment. Although increased recognition of the issues faced by indigenous peoples within the public discourse has made many donors increasingly interested in allocating funds to the development of historically marginalised groups in Nepal, resource mobilisation remains a stumbling block for Janajati development. In the words of one Nepali research team:

In the absence of the indigenous peoples' representation in the places of authority, which coordinate foreign aid, their issues are undermined and become peripheral. Most senior staffs of donor agencies are from dominant caste groups. They are efficient 'gate-keepers' and can easily prevent the involvement of donor agencies in the empowerment/development of indigenous peoples/nationalities to perpetuate status quo. It is up to donor agencies to maintain the diversity of their staff and to intervene by senior/chief executives in matters related to indigenous peoples/nationalities. Indigenous peoples/nationalities, at this stage, are not capable to influence donor agencies and their access to international resources is extremely limited.¹³

This trend suggests that, during this period, there has been a positive development in the environment for increased donor funding, despite resistance by some elites within decision-making bodies. The example of the successful completion of the JEP project, funded by DFID, also suggests that Adivasi Janajati organisations such as NEFIN have the capacity to manage substantial and complex project on their own. These positive developments, in both the environment and capacity of Adivasi Janajati organisations to handle the funds, have contributed to a change on the part of indigenous peoples' outlook towards foreign assistance. Until around 2005, certain section of the indigenous communities had been rather reluctant to receive financial assistance from donors, due to anxieties over the possible erosion of their credibility.

¹² For details see Subba, C., J. Rai and S. Thapa-Gurung (2008) *Janajati Empowerment Project (JEP) Review of Achievements and Impacts (2004-2008)*, Kathmandu: NEFIN.

¹³ Kirat, J., S. Shrestha and C.B. Subba (2007) *Review of Programmes for Development [of] Indigenous Peoples in Nepal*, Kathmandu: Center for Ethnic Studies and Development.

4. Constituent Assembly process, political parties and indigenous peoples

In Nepal, the relationship between indigenous peoples and political parties is a complex one, which has yet to be systematically studied. Across the globe, indigenous peoples generally find themselves in political systems that are not their own, but rather are created and defined by non-indigenous political leaders.¹⁴ In this, Nepal is no exception. Over the last half-century, Adivasi Janajatis have participated in multiple political parties, and the experience gained has been diverse. For this analysis, I have grouped these experiences into two broad categories. The first is made up of Adivasi Janajati leaders who are frustrated with the exclusionary culture of the mainstream political parties, and see the need to build their own strong political force. Currently, however, such leaders are not necessarily in a position to be able to organise such a force. The second and much larger group is composed of indigenous leaders who believe that they should work through the pre-existing political set-ups.

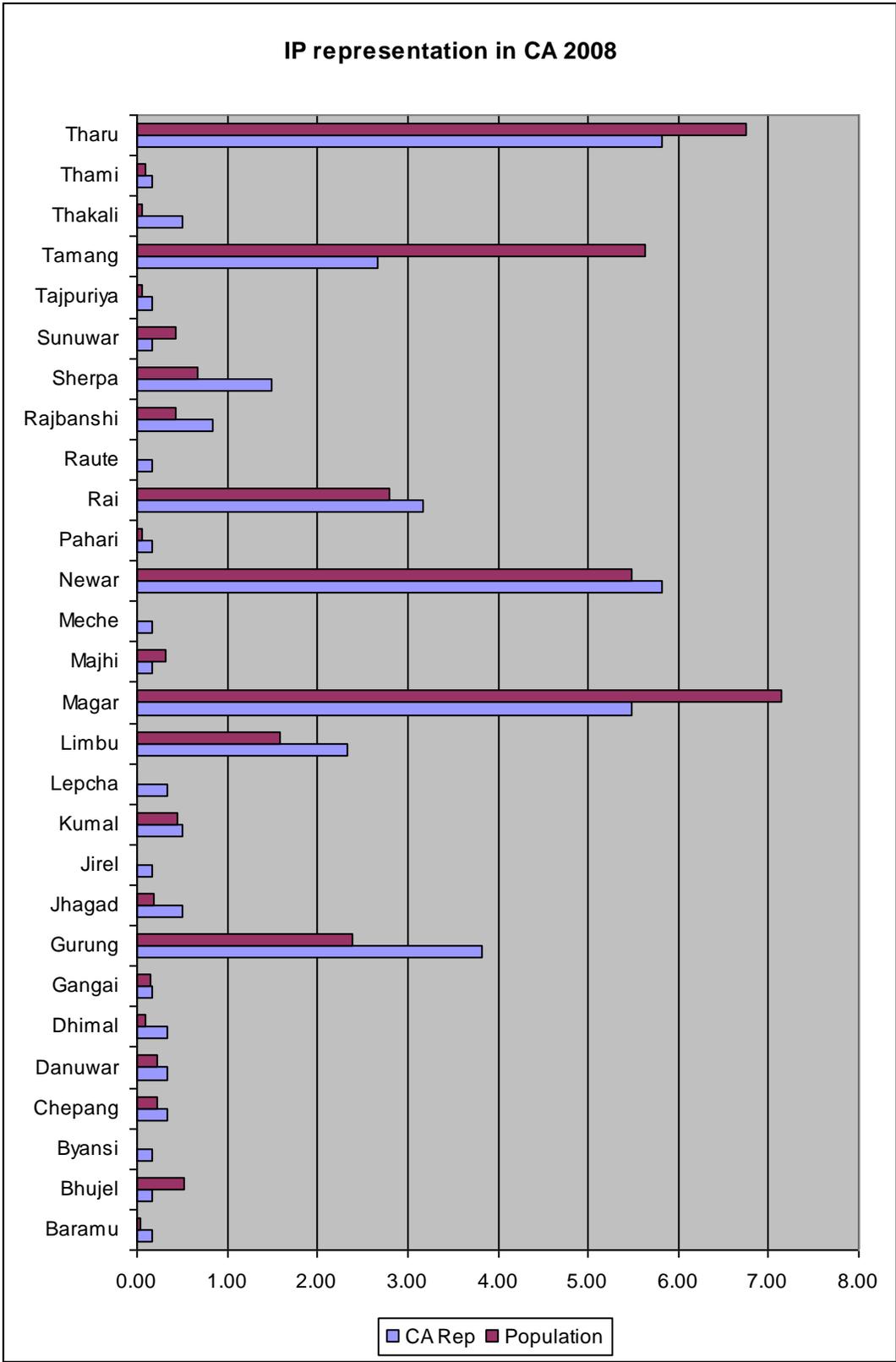
This point was well illustrated by the April 2008 election to the Constituent Assembly. In that context, unlike Madhesi political leaders, Adivasi Janajati political leaders did not leave their mother parties to form their own political groupings. Except for a few small Adivasi Janajati parties, most of the indigenous leadership contested the election from within established political structures. The reasons for this were twofold. First, many still hoped that the mainstream political parties would become inclusive enough to address their concerns. Second, these leaders really had no other option but to join existing parties – they were either too diverse to be organised into a single party, or they did not have the capacity to organise such a front. In the ‘first past the post’ (FTPT) part of the Constituent Assembly election, for example, out of the 55 parties that participated, only six were drawn exclusively from the Adivasi Janajati communities, and focused on ethnic issues.¹⁵ Interestingly, none of them won even a single seat in their constituencies in the direct election.

Overall, of the total 3,946 candidates who contested the election, approximately 26 percent were from indigenous communities, but belonged to 40 different political parties. The CPN (Maoist) had highest number of Adivasi Janajati candidates with 72, out of which 51 (or 70 percent) who contested won a seat in the direct election. This number is much higher when compared to the other two major parties, the Nepali Congress and CPN (Unified Marxist-Leninist), for which only 11 and 12 Adivasi Janajati candidates won, respectively. In any case, this figure indicates that, like most other communities in the Nepali hills, indigenous peoples are spread across the various political parties, with higher inclination towards established parties.

¹⁴ Wessendorf, K. (ed.) (2001) *Challenging Politics: Indigenous Peoples' Experience with Political Parties and Elections*, Copenhagen: IWGIA.

¹⁵ The six Janajati political parties that secured the popular vote in the Constituent Assembly election were as follows: the Federal Democratic National Forum (32,932 votes); Janamukti Party, Nepal (281); Mongol National Organisation (6,349); Nepa Rastriya Party (11,352); Rastriya Janamukti Party (23,958); and Tamsaling Nepal Rastriya Dal (5,468). Source: Election Commission, 2008.

In the April 2008 election, 218 out of the total 601 members (36.3 percent) were elected from among the indigenous communities – 82 from FPTP election and the rest through the proportional representation (PR) and nomination processes. Overall, this representation is close to the total 37.2 percent population of indigenous peoples in Nepal – a big jump from previous parliaments. Of the total 59 indigenous groups recognised by the government, currently there are 30 with representatives in the Constituent Assembly. (Most of the remaining 29 that have no representation have small populations.) As in the past, the Newar, Gurung, Limbu, Rai and Sherpa communities have a greater number of elected members as compared to their population, while others (notable the Tamang and Tharu) lag behind in this regard. Among those Adivasi Janajati groups with elected members in the Constituent Assembly, their representation in proportion to their population is provided in the following table:



Source: Election Commission, 2008

At first, the increased number of representatives from the Adivasi Janajati communities was celebrated by indigenous peoples themselves. As time passed, however, Adivasi Janajati activists have gradually become sceptical of many of these individuals, in terms of their effectiveness and ability to contribute to Adivasi Janajati causes in the Constituent Assembly process. This scepticism primarily stems from the roles of these representatives within the parties themselves. The majority of the indigenous Assembly members have scant educational backgrounds, thus operating at the lower echelons of the party hierarchy and having little impact on the party's decisions. Very few of these members have been given important roles in the Assembly's subcommittees, for instance, while the composition of the central committee of each major party remains as exclusive as ever. A recent report, for example, shows that Adivasi Janajati representation in the central committees of both the Nepali Congress and CPN (UML) **[how has that changed since 8th convention?]** stood at only 11 percent. The CPN (Maoist) were not much better, with 17 percent.¹⁶

Seen in this light, the increased number of Adivasi Janajati representatives in the Constituent Assembly appears to be more of an instant response to popular pressure, rather than a systematic effort to bring real inclusion into the political process, as promised in the Interim Constitution. In a radical critique of current party-based modes of representation, for instance, the Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) argues that the current Adivasi Janajati members in the Constituent Assembly do not actually represent Nepal's indigenous communities, as they are accountable to their political parties and respective political ideologies. Instead, they argue that indigenous peoples should be granted the right to represent themselves 'through representatives chosen by themselves in accordance with their own procedures' as enshrined in Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples.¹⁷

As the debate over the future federal structure deepens, Adivasi Janajati communities expected the country's political parties to remain true to the promises made in their election manifestos. In these, each party, for instance, stated that 'history, ethnicity and language and region' would be taken as the basis for designing the eventual federal system; the CPN (Maoist) even provided a map of these proposed federal units, in its Election Commitment Paper (*Chunab Pratibaddata Patra*). Yet contrary to the election-time promises, there is a growing feeling among Adivasi Janajati activists that the issues of ethnic equality and linguistic rights have gradually been left out of the discussion. Such apprehension is apparent in the warnings made by indigenous leaders within the Maoist and other parties that there would be rebellions within the parties if issues related to Adivasi Janajati rights were ignored in the eventual constitution.

¹⁶ Bhurtel, B.P. (2008) *Rājnitik Dalharumā Samābesikaranko Abasthā* [Status of inclusion in political parties] in A. Ajit (ed.) *Samābeshikaran: Rājnitik Dal, Rājya ra Mediā*. [Inclusion: Political parties, state and media], Kathmandu: Martin Chautari.

¹⁷ Article 18 states: 'Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.'

One manifestation of this growing discontent – while also being exemplifying a proactive initiative on the part of indigenous leaders – can be seen in the 1 February 2009 formation of an informal caucus called the Adivasi Janajati Sabhasad Sabha. The process was facilitated by Pasang Sherpa, the NEFIN chairperson and a Constituent Assembly, and the signing was attended by 27 Constituent Assembly members, including senior leaders Barshaman Pun (CPN-Maoist), Indra Bahadur Gurung (Nepali Congress), Prithvi Subba Gurung (CPN-UML) and others. However, it is yet to be seen how the Adivasi Janajati caucus will garner support from their fellow members in a context in which the Constituent Assembly rules of procedure do not include any provision to form caucuses, and party disciplinary rules do not allow Assembly members to vote according to their conscience.

5. Constitution-writing: Suggestions, proposals, insistences

As these processes continue, NEFIN is currently preparing for suggestions to the Constituent Assembly to incorporate Adivasi Janajati rights in the new constitution. For this, the NEFIN leadership has called upon Adivasi Janajati intellectuals, lawyers, academics, planners and educators to work in thematic committees parallel to the sub-committees of the Constituent Assembly. Those committees are now in the process of developing suggestions on each theme, which will then be discussed and adopted by the NEFIN Federal Council. Once this council endorses the proposed suggestions, its members will then bring them for debate in the respective indigenous people's organisations (IPOs) at different levels. This process was thought crucial for producing a collective voice, as well as educating Adivasi Janajatis at the grassroots on issues of interest to their communities currently being decided in the Constituent Assembly.

The suggestions have not yet been finalised by all the committees, and tentative upcoming points include some interesting alternatives that have not yet been widely circulated in the Nepali public discourse. The thematic committee on state restructuring, for example, has started by establishing principles for the design of a federal set-up, the suggested core principles of which include historical/ancestral land/territory, as well as language. In terms of the number of states, the committee has proposed 13 broad states, to be following by the delineation of autonomous regions and areas for each individual indigenous groups. The balance between self-rule and shared rule – the central principle of federalism – is also being discussed, with a three-tiered state structure being tentatively proposed under which current districts would become redundant. No specific map of the future Nepal has yet been drawn up, but NEFIN is seeking to ensure that when such a map is presented, all Adivasi Janajati groups, including those with relatively small population, are given the opportunity to enjoy equal rights with the larger groups.

The issue of ancestral land of indigenous groups and historical links to particular territory have been contentious issues in the public discourse. Adivasi Janajati activists, evoking the history of Gorkha expansion into indigenous territories as a colonial project, claim a link between ethnic or linguistic groups with a particular 'homeland'; others, however, argue that such an association is untenable and impractical for Nepal. In the NEFIN suggestions, to be crystallised through a wide consultation process, the issue of the

recognition of history and ownership rights of indigenous peoples over land and natural resources will appear prominently.

Similarly, the idea of the right to self-determination remains central to Adivasi Janajati demands for autonomy, while also generating fear of ‘secession’ among some sections of Nepali society. Nevertheless, the definition of *self-determination* has been refined over time. Following the spirit of Article 46 of the UN Declaration on Rights of the Indigenous Peoples¹⁸, the indigenous movement, for example, asserts that the principle of self-determination in the Nepali case need not include the right to secession.¹⁹ Adivasi Janajati activists argue that self-determination is more about internal democracy, about the autonomy required to practice their culture and tradition. They also argue that those who see indigenous peoples’ demands for self-determination as potentially leading to the disintegration of the state reflect a particular arrogance – that they are the only ones who seek a united Nepal, and that they are the only ones who can shoulder the responsibility of keeping the nation intact.

The Adivasi Janajati movement’s take on ‘federalism’ is as a means – rather than an end in itself – through which the country can become more democratic. Federalism, the movement’s members argue, has become inevitable in Nepal, as the Nepali people have reached an historical moment at which point they are no longer willing to trust any form of centralised, unitary state structure. As such, NEFIN and its affiliated IPOs, DCCs and sister organisations continue to mobilise towards this goal. Such a situation needs to be understood as a result of the failure of the Constitution of 1990 on its promise of decentralisation, which was never followed through upon due to the centralised authority vested in the ministries and the parties that filled them. Thus, the thinking goes, the power dynamic that central elites did not want to change under the previous system can only be transformed through a federal system, with constitutional guarantees of power devolution.

With deep-seated suspicion of the validity of Supreme Court interpretations of key constitutional clauses in the past, Adivasi Janajatis also want to set up an inclusive Constitutional Court, so that the country will not need to depend on conservative readings of the constitution. Similarly, the form of government they propose is that of ‘consociational’ rule²⁰ rather than either a presidential rule or prime-ministerial set-up, by which they mean forming and running a consensus government based on the proportion of vote each party receives through a proportional electoral system. Adivasi Janajati groups have expressed their difficulty in trusting either a powerful president or prime

¹⁸ Article 46 states, ‘Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorising or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.’

¹⁹ Bhattachan, K. (2008) *Sanghiyeta, Atma nirnayako Adhikar ra Adivasi Janajatiya Swayetta* [Federalism, right to self-determination and Indigenous peoples autonomy], Kathmandu: NFDIN.

²⁰ The idea of ‘consociationalism’ is based on the works of political scientist Arend Lijphart, particularly in *The Politics of Accommodation*. Consociationalism is a form of government involving guaranteed group representation and power-sharing.

minister in the context of an entrenched culture of corruption and Nepal's strong tradition of centralisation.

On the linguistic and cultural fronts, a tentative NEFIN proposal would set 11 official languages at the union level. Although 92 languages are spoken in Nepal, only a dozen of these are used by more than one percent of the population. In the proposed scheme, speakers of all languages would have the right to use their mother tongue in local bodies and primary schools in their respective autonomous regions. The proposal also stresses that the constitution should not designate any language as a *lingua franca*, but rather should let people choose whichever is most convenient to them. Effective implementation of secularism is also emphasised by the proposal to remove all Hindu symbols and practices currently embedded in the state system – i.e., the cow as the national animal; the presence of temples in army barracks, police posts and courts; prayers for the goddess Saraswati in school, etc.²¹

Thus far, the failure on the part of Nepal's political parties (including the Maoists) to genuinely address ethnic issues has often resulted in the rise of more-radical forms of the ethnic movement. A case in point is the Federal Democratic National Forum (FDNF), a party with two seats in Constituent Assembly, and with affiliated state councils in Limbuwan, Khumbuwan, Tamsaling and Tharuhat. In an attempt to make the indigenous issue be taken more seriously, the FDNF has mobilised both indigenous and non-indigenous groups in various parts of the country (i.e., Chhetris and Brahmans in Limbuwan). Following on the fashion in the mainstream parties of forming paramilitary youth wings, the FDNF similarly formed groups called the Limbuwan Volunteers and the Tharu Volunteers – and such set-ups are purportedly ready for possible armed struggle, if required.

In Limbuwan, meanwhile, activists have declared that they would begin to implement the entity as an 'autonomous state' in federal Nepal, including collecting taxes in their territory where possible. The various political forces in the Limbu community seem to have formed an alliance to work together for the common goal of achieving autonomy for Limbuwan. After the elections to the Constituent Assembly, for instance, seven organisations advocating for an autonomous Limbuwan formed a United Limbuwan Front,²² announcing a series of protest activities and asserting that 'If there is no Limbuwan, there will be no Nepal either.' This pattern of political activism is spreading across the country, with activists aligned with Tamsaling²³ and Tharuhat having both

²¹ *Nepal Adivasi Janajati Mahasangh ko Sambidhansabha Sambaidhanik Samitima prastut Raya Sujhab* (NEFIN's suggestions presented to Constitutional Committee of the CA), draft paper.

²² The United Limbuwan Front has seven political parties and organisations in its following: Limbuwan Mukti Morcha (Bir Nembang), Limbuwan Rastriya Mukti Morcha (Dhruba Angdembe, CPN-Maoist), Sanghiye Limbuwan Rajya Parishad (Kumar Lingden, FDNF), Nepal Loktantrik Kirat Limbu Sangh (Dambar Singh Sambahangfe, CPN-UML), Nepal Limbuwan Swasait Sangh (K.B. Phudong, CPN-Ekikrit), Limbuwan Prantiya Parishad (K.P. Palungwa Limbu, Rastriya Janamukti Party), and Purna Kumar Sherma Limbu (Nepali Congress). The meeting was facilitated by Uttam Singh Thangden from Kirat Yakthum Chumlung on 8 July 2008.

²³ Political parties and organisations involved in the Join Struggle Committee for Tamsaling includes the following: Tamsaling Rastriya Dal (Parshuram Tamang), Nepal Tamang Ghedung (Dhan Prasad Tamang),

initiated similar activities with united fronts and youth wings – which often include as part of their alliances the relevant ‘ethnic liberation fronts’ aligned with the CPN (Maoist). Newar, Magar and Gurung groups, however, have yet to adopt this approach.

As can be discerned from these cases, the possibility of violence in Nepali politics cannot be ruled out, particularly as state and other authorities continue to fail to respond to the demands of ethnic groups in a coherent and logical way through dialogue. Potential violence, however, is only one side in the indigenous movement. NEFIN, affiliated IPOs, DCCs and VCCs make a conscious effort to keep themselves separate from groups that propose to use violence. Yet this is another challenge faced by civil-society organisations such as NEFIN – those that are attempting to pursue peaceful means in advocating for an agenda, while simultaneously being required to attempt to influence and work with political groups such as the FDNF, CPN (Maoist) and others that see physical threat as necessary to achieve their goals. How to link the civil-society movements with political struggle groups that do not preclude violence remains a significant test.

6. Adivasi Janajati movement and future aspirations

The period of June 2005 to April 2009 saw a dramatic growth in Adivasi Janajati organisations and their engagement on various fronts. Around the end of 2005, Nepal’s indigenous communities were at the stage of consolidating their organised voice against persistent social exclusion. Yet although there were intense feeling of collective deprivation and political suppression, these communities generally lacked adequate intellectual, financial and organisational capacity. Since then, at both the local and international level, these organisations have increased in both number and quality, and have been able to raise specific issues with greater effectiveness, substantially helping to get recognition for the agenda of inclusion and Adivasi Janajati rights. However, while this organisational growth has led to a greater intensity and effectiveness for related advocacy efforts, it has also increased cleavages and challenges within the movement.

NEFIN has expanded its organisational wings at multiple levels. In 2005, the group had a relatively limited number of linkages at the grassroots level, with fairly low-capacity organisations in only 24 DDCs. By the end of 2008, however, it had formed Adivasi Janajati Village Coordination Committees in 2,000 VDCs, outreach to which was primarily done through the formation and activation of Indigenous People’s District Coordination Committees (IP-DCCs). Currently, NEFIN has IP-DCCs in 57 of the 75 districts, which coordinate the activities of IPOs and work collectively to influence decisions on state-resource allocation at the district level. Similarly, while in 2005 only 48 of the 59 officially recognised Adivasi Janajati groups had a registered organisation, three years later 57 had formed IPOs and were affiliated with NEFIN as Federal Council members.²⁴

Tamang Rastriya Mukti Morcha (Surya Man Tamang, CPN-Maoist), Nepal Loktantrik Tamang Sangh (Bir Bahadur Tamang, CPN-UML), Tamang Mukti Sangthan (Tek Bahadur Tamang), Nepal Tamang Swasahit Sangh (Phurba Namgel Tamang), Tamang Yul Parishad (Ganesh Bal, Rastriya Janamukti Party), Tamsaling Mukti Morcha (Jogman Tamang) and Nepal Adivasi Janajati Sangh (Sankha Buddha Lama).

²⁴ NEFIN: <http://www.nefin.org.np>.

Groups have also been creating linkages elsewhere, including outside of Nepal (NEFIN currently has chapters in the US, South Korea, Japan, Canada and Australia) and with various indigenous groups devoted to lawyers, NGOs, students, youths, journalists and environmentalists. These coalitions have proved helpful in influencing the political parties and concerned authorities, as well as in developing a broad-based process of collective action. In addition, fronts have formed to raise the issue of Adivasi Janajati women's rights. The National Indigenous Women Federation (NIWF), for instance, was established in 2001 and currently has 19 affiliated Adivasi Janajati women's organisations, with DCCs in 20 districts.²⁵ Likewise, the National Network of Indigenous Women (NNIW) came into being in 2005, and is composed of indigenous women activists, professionals and educators.

Other, more broad-based organisations have been formed by professionals focusing on various sectors, but which have also overlapped with Adivasi Janajati rights. The Center for Ethnic and Alternative Development Studies (CEADS), for instance, has been set up by experts in demography, sociology/anthropology, economics, politics and natural-resource management. Although CEADS is currently generating analysis specific to the Constituent Assembly process on state-restructuring, it has also done research on various topics²⁶ related to indigenous peoples, demography and Adivasi Janajati rights in general. One important CEADS plan is to provide technical support to the Central Bureau of Statistics (CBS) for the 2011 Census, specifically focusing on inclusion perspectives. Notable work is also being done by the National Environmental Coalition of Indigenous Nationalities (NECIN), which aims to protect the rights of Adivasi Janajatis with regards to natural resources in line with various international treaties.

The formation of alliances between different types of organisations is clearly an important part of mobilisation for collective action. NEFIN has promoted alliances between different Adivasi Janajati sub-groups based on socio-economic status and geography. One recently started programme, for instance, aims to empower those groups that have been classified as highly marginalised Janajatis (HMJs) by forming alliances between HMJ groups in order to lobby for their rights. Not surprisingly, many of these groups have very small populations, and would otherwise have very little clout on their own. Indeed, as the future federal units are being carved up by the political parties, many smaller indigenous groups have spontaneously started to come together, in order to make

²⁵ NIWF affiliated organisations include: Nepal Magar Women's Association, Sunuwar Women's Association, Nepal Kirant (Rai) Women's Association, Nepal Tamang Women's Association, Thakali Women's Association, Kumal Women Society Reform Committee, Dolpo Women's Association, Danuwar Women's Community Reform Union, Nepal Sherpa Women's Federation, Nepal Pahari Women's Development Federation, Meche Women Upliftment Federation, Rajbanshi Women's Society, Kirat Yaakthung Chumlung, Nepal Majhi Mahila Utthaan Sangh, Nepal Bhasa Misha Khala, Nepal Tamu Mahila Sangh, Tharu Mahila Jaagaran Kendra, Lhomi Mahila Kalyan Manch, and Walung Mahila Sangh. Source: <http://www.niwf.org.np/>.

²⁶ Kirat, J., S. Shrestha, C.B. Subba (2007) *Review of Programmes for Development [of] Indigenous Peoples in Nepal*, Kathmandu: Center for Ethnic Studies and Development.

sure that their rights are respected.²⁷ In speaking of alliances, the National Coalition Against Racial Discrimination (NCARD) should also be mentioned, as this was one of the pioneering alliance-builders to have worked to bring all historically marginalised groups together to work against racial discrimination.

The organisational growth of Adivasi Janajatis in terms of coverage and alliances can be attributed to the open space that was created following 1990, during which time Nepal experienced a phenomenal growth of NGOs. In total, approximately 22,000 NGOs are today reported to be registered in Nepal, engaged in grassroots development work as well as advocacy campaigns. As part of this growth, the NGO Federation of Nepal was formed in 1996, organising the groups from all parts of the country. Today, the Federation's executive committee is made up of 141 people, including five regional committees and district chairpersons. Yet some three-quarters of these positions are occupied by Brahmans and Chhetris; even among indigenous groups, Newars are represented in greater proportion than their population, while other Adivasi Janajatis comprise just 12 percent of the total. The following table shows the social composition of NGO Federation central executive committee, regional committees and district chairpersons.

Composition of officials of NGO Federation committees and district chairpersons

Social group	Number	Percent
B/C Hill	107	75.9
B/C Tarai	1	0.7
Dalit	4	2.8
IP Hill	14	9.9
IP Tarai	3	2.1
Newar	9	6.4
Tarai Middle Caste	3	2.1
Total	141	100.0

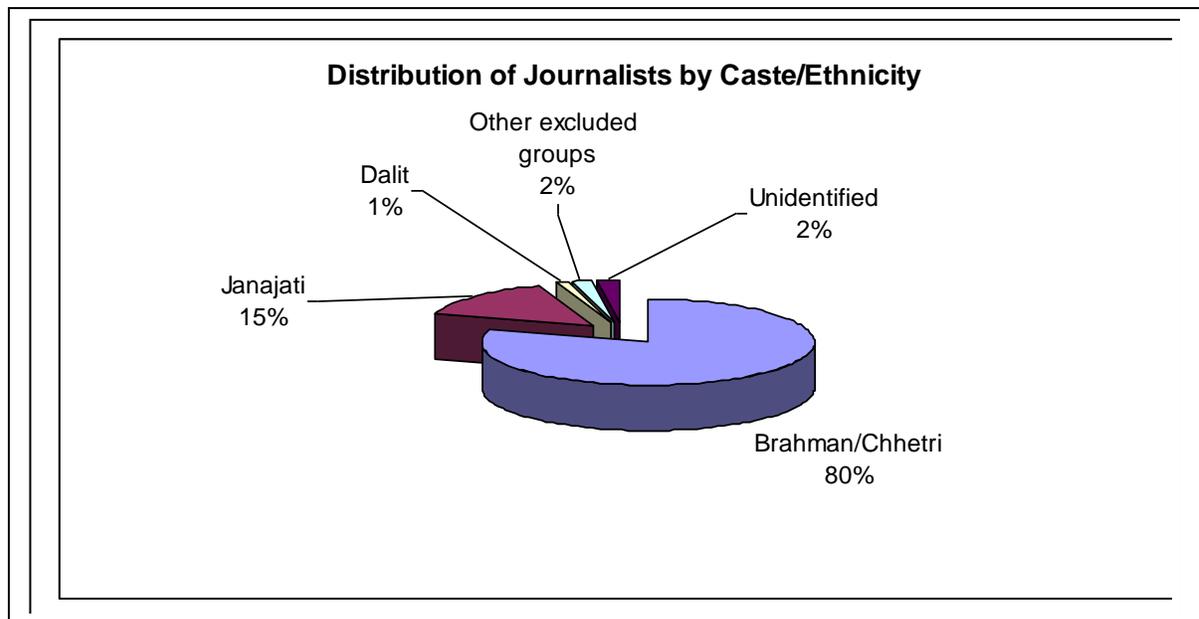
Source: <http://www.ngofederation.org/>

The emergence of organisations working on indigenous issues with links to grassroots indigenous constituencies has also led to interesting discussion on the difference between IPOs and NGOs. NEFIN, for example, suggests that IPOs are formed from among the indigenous constituencies, and have procedures for selecting representatives from among their members through an open mechanism. NGOs, on the other hand, are thought to be not necessarily rooted in or accountable to a particular constituency, and can be formed by a group of professionals to provide services. Currently, both NGOs and IPOs are registered under the same government act, but there remains a need to assess whether and how IPOs might be recognised and strengthened as distinct from generic NGOs.

²⁷ For example, minority indigenous groups such as Hayu, Thami, Surel, Jirel, Yolmo who fall within the state/province proposed as Tamsaling, where the Tamang are predominant, have come together to form an alliance to ensure their rights in the future federal Nepal. A similar trend can also be found in regions such as Limbuwan, Khambuwan and others so far named by the political parties.

Alongside the growth of Adivasi Janajati organisations, indigenous journalists have played an important role in the democratic process in Nepal. A study on the ‘ethnic media’ counted about 400 newspapers/magazines published by indigenous groups, although most come out only irregularly. The formation of the Association of Nepalese Indigenous Nationalities Journalists (ANIJ), in 1999, was an important step in support of this sector. Currently with some 500 members, the Association has branches in 29 districts,²⁸ and publishes a weekly news/wall magazine (*Indigenous Voice* in English and *Janajati Awaj* in Nepali) in collaboration with NEFIN. There are about 14 indigenous groups, including Newar, Magar, Limbu, Tamang, Gurung, Rai and Sherpa, that currently publish and broadcast through newspapers/magazines and FM radio, using their own language. Today, every major indigenous community has weekly programmes on national or local FM stations, though access to television programming remains limited.

In order to promote indigenous media as an important part of civil society, Adivasi Janajati groups they have received some support from donor agencies, as well. These have included the DFID-funded Janajati Empowerment Project (JEP) discussed earlier; as well as the OHCHR-supported Indigenous Media Network (IMN), aimed at producing and disseminating relevant materials to wider audiences. Yet despite the growth that has taken place in indigenous journalism in recent years, both in term of content and medium of communication, Adivasi Janajatis still make up just 15 percent of the total journalists in the country.²⁹ The following figure shows the distribution of journalists in Nepal by caste and ethnicity³⁰:



Source: Parajuli and Gautam 2008

²⁸ Gurung, C.B. (2007) *An Assessment and Analysis of Ethnic Media in Nepal*, Kathmandu.

²⁹ Parajuli, S., and B. Gautam (2008) ‘Print mediamā Dalit ra Janajāti sahabhāgitā: Rāstriya Sarvechhyan’ [Dalit and Janajati participation in Print Media: National Survey] in P. Onta, H. Maharjan, D. Humagai and S. Parajuli (eds) *Samabeshi Media* [Inclusive Media], Kathmandu: Martin Chautari.

³⁰ Ibid.

Analysis of the composition of the executive committees of the journalist associations in Nepal shows a similar pattern. For example, in the 21-person central committee of the Nepal Patrakar Mahasangh, just three members are Adivasi Janajatis, of which two are Newar. Meanwhile, the Press Council Nepal and the Nepal Environmental Journalist Group, which respectively have 14 and 11 executive members, have no Adivasi Janajati representation.

7. Claiming, splitting and merging Adivasi Janajati identities

Throughout the years of the Adivasi Janajati movement, issues of identity and ethnic autonomy have remained central to the struggle. As such, indigenous activists are now vehemently advocating for ‘ethnic autonomy with right to self-determination’ as a principle in the federal design. The listing of 59 groups as Adivasi Janajatis or Indigenous Nationalities by the NFDIN Act of 2002 addressed the issue of state recognition of indigenous identity. As discussed previously, this state recognition has enabled the government, donors and indigenous peoples themselves to discuss the matter in more systematic ways, including measures for reservation.

However, the issue came into focus again when many groups began to demand to be included on the list as an indigenous group. This is clearly a change from 15 years ago, when bearing the ‘indigenous’ label would have meant a person of ‘primitive’ traits, uncivilised, backward, impure and lower in caste status. But as the movement has elevated the category to become a ‘rights-holder’ with ‘history’ and ‘territory’, many more groups now want to be identified in this way. Further, when on 10 February 2009 the government adopted an ordinance to make public service inclusive,³¹ it required the categorisation of different groups in order to allocate reserved seats.

In particular, the categorisation of groups within the Madhesi category has led to substantial controversy and agitation. (Indigenous activists hold that, in Nepal, ‘Madhesi’ people do exist, but not ‘Madhes’ as a geographic location; they also underline that the term only came into usage recently.) According to media reports, the Cabinet was in the process of including in the Madhesi category 22 Adivasi Janajati groups living in the Nepal Tarai, leading many groups (the Tharu Kalyankarini Shabha, along with NEFIN-affiliated IPOs and other political groups) to stage widespread demonstration. The proposal to categorise Tharus as Madhesi came as a surprise to many, given that Tharu and other indigenous organisations have long warned against such move as being detrimental to their identity. As mentioned earlier, the Nepali state had already recognised Tharus as part of the 59 indigenous groups through the NFDIN Act of 2002, and thus the proposed categorisation clearly contradicted the Parliament’s previous decision. In this context, the new categorisation was seen by many as a betrayal, and

³¹ *Magh 2065 vs Sarbajanik sewa lai samabeshi banaunaka lagi kehi Nepali Ain lai samsodhan garna baneko adhyadesh* (Ordinance to amend some Nepal Acts to make public service inclusive 10 February 2009).

much of the Adivasi Janajati community became increasingly suspicious of the government's intentions.

An additional part of this mobilisation included focus on demanding separate identities for those groups that thought they should have been included on the list of 59. For instance, while 'Rai' was one of the 59 groups, many sub-groups within that category (including the Kulung, Thulung, Yamphu and Mewahang) staged organised efforts demanding separate recognition, arguing that 'Rai' is actually a common title acquired through the state, rather than the name of a specific social group. They also pointed to the existence of a number of distinct, mutually unintelligible languages spoken by the groups that had been collectively classified as 'Rai'. Some of these also argued that the current Rai organisation, the Kirat Rai Yayokkha, was acting exclusively towards all but a few Rai sub-groups, and hence the others were being excluded in the NEFIN processes.

Organised efforts to claim separate identity can also be seen in the functioning of the NGO Federation of Nepalese Indigenous Nationalities (NGO-FONIN), which states that there are 'more than 29 Kirati and other groups such as Karmarong, Ninwha, Tuchulung, and Ghale who have their separate identity with language, culture and history but not recognised as separate indigenous nationalities.'³² NGO-FONIN has supported groups aspiring for separate identities, appealing to political parties and concerned authorities, and helping them to produce the documents required to support their claims. As a result, the Ministry of Local Development is currently in the process of forming a taskforce to carry out a study and make recommendations to the government on how to revise the official list of indigenous peoples.³³ How this taskforce will be composed and how it will carry out its work, however, is not yet clear.

The issues raised by NGO-FONIN and affiliated organisations (mainly Kirati Rai sub-groups) have a number of important implications for the Janajati movement as a whole. On the one hand, Adivasi Janajati organisations are sympathetic towards, for instance, recognising Rai sub-groups as separate indigenous nationalities with their own unique language, culture and history; but some are sceptical about their claims to distinctiveness. Indeed, the Kirat Rai Yayokkha, which is a member of the NEFIN council, itself has reservations on this issue, considering such claims to be detrimental to the unity not only of Rai groups but also of all indigenous nationalities. (Some independent critics hold that the tendency towards fragmentation evident in this controversy could be a result of lack of democratic procedure and inclusive policy within IPOs and NEFIN for fair representation of its many constituencies, be they sub-groups, sub-regions or others.) Some have also voiced suspicion that this claim is partly based on a hope for immediate benefits from government and donor programmes, or simply an outcome of promises for affirmative action and political seats for each identity group. On the other hand, NGO-FONIN and affiliated groups feel that they have been deprived of their right to identity, and insist on immediate recognition of their distinct identities by all organisations. Either way, without in-depth empirical linguistic and ethnographic research, NEFIN and affiliated organisations have found it difficult to reach a clear decision on the issue, and

³² NGO-FONIN Annual Report 2064-065.

³³ Personal communication with Hom Yamphu Rai in NGO-FONIN.

the insistence by the Rai sub-groups has made it difficult to discuss and analyse the issue in a systematic way.

Even as some of sub-groups aspire for separate identities, thus breaking away from the larger group, there is also an opposite trend in which smaller groups seek to merge into a larger identity. The Danuwar, who were previously separated into hill and Tarai sub-groups, have formally come together as a single group. Such a process is likewise expected to take place among some of the indigenous groups in the mountain region, on the basis of commonality in language and cultural practices.³⁴ Linked to this issue is the aspiration and demand of other groups to be enlisted as indigenous groups. In addition to the 59 officially recognised indigenous groups, there are currently 57 other groups who have applied to NFDIN for recognition as indigenous peoples. Interestingly, the majority of these are thought to be groups from the Tarai, who were placed either in the ‘Tarai other caste’ or ‘Tarai Dalit’ category in the GSEA study report. Ultimately, however, each of these three trends – of demanding a separate identity, of merging into a single group, or inclusion as an indigenous group – shows that the category of ‘indigenous people’ in Nepal is emerging from a previously stigmatised label to a valued identity and form of cultural capital.

8. Challenges

As the Adivasi Janajati movement’s organisational membership, networks and alliances have expanded, it has acquired recognition from the state, political parties, civil society and international community. In particular, today both NEFIN and its affiliated IPOs are recognised as legitimate organisations that need to be regularly consulted by the government and donor agencies. However, the internal challenges within the movement remain serious. There is broad-based concern among the Adivasi Janajati communities, for instance, that the leadership of NEFIN and other IPOs may have been hijacked or co-opted by the major political parties.³⁵ Understandably, Adivasi Janajati leaders are linked to a range of different parties, and so are fragmented. Yet even those in the same party compete among themselves, more often than not on issues outside of the Adivasi Janajati agenda.

Meanwhile, frustration with the ineffectiveness of the performance of Adivasi Janajati leaders seems to have led to a proliferation of competing organisations and ideas, thus reducing the coherence and effectiveness of the collective voice of the Adivasi Janajati movement. This fragmentation is further augmented by competition for resources. The JEP experience indicates a trend of increased competition between IPOs for donor resources: instead of solidarity, the JEP generally ended up promoting antagonism between large and small IPOs, as between highly marginalised and less marginalised groups. The current demands for distinct identities by some Adivasi Janajati groups are seen as a result of this competition. How to transform this competition into a natural part

³⁴ Personal communication with Dr. Om Gurung, former NEFIN general-secretary and anthropologist.

³⁵ For instance, the CPN-UML chose NEFIN Chairperson Pasang Sherpa to be a Constituent Assembly member, while NEFIN General-Secretary Ram Bahadur Thapa-Magar was nominated by CPN (Maoist).

of an open democratic process, rather than a source of fragmentation, is one of the most significant challenges currently faced by the movement.

From the General Assembly in 2006, the NEFIN leadership largely shifted to leaders from Adivasi Janajati groups with smaller populations. This has proved to be a positive development in terms of including minority groups in decision-making positions, though the gender imbalance continues to be a major problem. (Out of 13 members on the current NEFIN executive committee, only two are women.) Similarly, Adivasi Janajati activists reflect that the leadership composition should be more balanced in terms of representation from all groups, in addition to those with longer experience in the movement and those from the new generation.

One of the major areas in which efforts are needed is in the balanced development of the leadership skills and organisational capacity of NEFIN and its affiliated IPOs and DCCs. Although NEFIN and its IPOs have sharpened their advocacy skills, they still require strong support from professional groups in technical matters. These organisations will need to strike a balance between advocacy skills and technical/professional knowledge if they are to respond to emerging expectations and situations.

Finally, with the relative success of the Adivasi Janajati movement in influencing state-resource distribution and ‘cultural capital’ formation, some of Nepal’s caste groups are now demanding to be officially categorised as indigenous groups. This demand could cause considerable damage to the movement, ultimately turning its agenda back to the issue of identity. A proper scientific classification of various groups cannot be made without an extensive and unbiased ethnographic/anthropological survey of Nepal. Such a survey, preferably combined with a linguistic survey, is also extremely important for better information collection during the 2011 Census. However, no agency has thus far come forward to undertake such research.

9. Adivasi Janajati aspirations and demands

For the purpose of this discussion, I have categorised the Adivasi Janajati demands into three broad categories.³⁶ The first is the demand for immediate action, including the implementation of the 20-point agreement. The second is related to the new constitution and federal design, although the final suggestions on this point are still being refined. Third are the themes related to Adivasi Janajati rights as enshrined in ILO Convention No. 169 and UNDRIP. The Adivasi Janajati movement contains many organisations and points of view, and not all Adivasi Janajati groups agree with all these demands. Nevertheless the following represents the broad consensus reached through processes set up by NEFIN, which remains an anchoring entity in the movement due to its wider and more inclusive processes and transparency in approach.

³⁶ For more details see ‘Kathmandu Declaration’ by NEFIN, released on International Indigenous People’s Day, 9 August 2008; agreement between the government and Janajatis, 7 August 2007; and Subba, C., J. Rai and S. Thapa-Gurung (2008) *Janajati Empowerment Project (JEP) Review of Achievements and Impacts (2004-2008)*, Kathmandu: NEFIN.

On implementation of the 20-point agreement and other immediate actions

- i. Formation of an Adivasi Janajati Commission with semi-judicial authority to protect and promote social, economic, cultural and political rights of the people
- ii. Effective implementation of affirmative action and reservation in the civil service, education and employment
- iii. Rehabilitation of freed *Kamaiyas* (bonded labourers) and an end of slavery
- iv. Formation of DDCs and VDCs as local governance bodies following principles of proportional representation
- v. Consultation with NEFIN and NIWF when forming government DCCs at district levels
- vi. Implementation of the use of local languages in local bodies
- vii. Scientific rescheduling of the official list of 59 Adivasi Janajati groups, which would involve an ethnographic and linguistic survey
- viii. Respect of indigenous peoples' right to consultation and participation by development agencies in implementing development projects that affect them
- ix. Special programmes for highly marginalised indigenous groups based on available recent data on social exclusion.

On constitution-making

- i. State-restructuring along the line of federalism that respects historical, linguistic and territorial aspects of indigenous peoples
- ii. Constitutional guarantee of the autonomy of the state that provides constitutional guarantee of the power to the people at low [unclear]
- iii. Representation of Janajatis in proportion to their population, and special representation for Janajati groups with small numbers in political bodies, civil service and all state organs
- iv. Rights over natural resources to indigenous peoples
- v. Affirmative action – that is, special efforts, measures and targeted programmes for the economic empowerment and social development of Janajatis
- vi. The right to use one's own mother tongue in education, office and courts
- vii. Effective implementation of secularism
- viii. Protection, preservation and promotion, as well as equal treatment, of all languages and cultures
- ix. Incorporate rights of the indigenous peoples as fundamental rights in new constitutions
- x. Recognition of historical injustice to Adivasi Janajatis through Gorkha conquest to be included in the constitution and history textbooks.

On implementation of ILO Convention 169 and UNDRIP

- i. Revision of existing domestic legal measures to align with the provisions of Convention 169 and UNDRIP to protect the rights of indigenous peoples

- ii. Approve and implement National Action Plan for the implementation of Convention 169 drafted by the taskforce and by relevant ministries
- iii. Special measures to end the historical domination and injustice to indigenous peoples
- iv. Recognise the right of indigenous peoples to self-determination, subsistence rights and rights to lands, territories and resources
- v. Recognise and respect indigenous and tribal peoples' cultures and identities as an integral part of their lives, and that their way of life often differs from that of the dominant population
- vi. Recognise customary law and access to justice
- vii. Ensure rights for self-governance and self-management
- viii. Ensure proper process of consultation, participation and 'free, prior and informed consent' for development projects, administration and the making of laws that affect their livelihoods
- ix. Recognise and promote traditional occupations, and ensure employment
- x. Respect indigenous peoples' right to fully enjoy, as a collective or as individuals, all human rights and fundamental freedoms as recognised in the Charter of the United Nations.

10. Conclusion

Nepal has experienced momentous political changes between 2005 and 2009. The Adivasi Janajati movement has actively participated in bringing about this political transformation, and in so doing has established itself as a champion of inclusion and values such as secularism and ethnic and linguistic equality, which are fundamental to democracy. As a result, in the new public discourse, 'social inclusion' has become shorthand to describe Nepal's journey towards the future. Nepal's policy commitments, planning documents and the Interim Constitution itself are replete with the promises for inclusion of historically marginalised groups.

However, these policy changes are yet to be translated into practice. Secularism needs to be implemented by removing those Hindu practices that have been embedded in the political system since the time of the Gorkha conquest in the mid-18th century. Programmes for preserving and promoting Nepal's diverse languages and cultures need to be developed. Special measures, including affirmative action, are yet to be devised to implement the commitment to inclusion of indigenous peoples and other marginalised groups in public institutions. Doing so will not be easy. Despite the formal recognition of the agenda of inclusion in the public discourse, high levels of resistance continue to exist. If this persists and visible progress is not made soon, there is a danger that conflict could re-emerge.

In this sense, the situation has changed little in Nepal. The indigenous movement remains a struggle of historically marginalised groups. Despite the successes that have been achieved thus far in bringing about changes, the movement still lacks the intellectual resources, organisational capacity and broad-based leadership required to have a fuller impact, largely due to background conditions of poverty and powerlessness among

indigenous peoples. The Adivasi Janajati movement is at a critical juncture, where it needs to refine its approach in such a way that its members are better able to negotiate with and influence the major political parties, while continuing to use peaceful methods. The movement's members also need to find ways to reassure the fears that respecting Adivasi Janajati rights will be a threat to other castes and ethnic groups.

The first priority for Adivasi Janajatis, however, is to help to craft a constitution that they can own and that gives them security and respect as equal citizens of Nepal. Despite all of the challenges in achieving inclusion, the trend over the last three years supports an optimistic view – that progress is indeed being made towards healing historical wounds and creating a New Nepal. The following points summarise the key points relevant to future policy interventions on Janajati inclusion in Nepal:

- ❖ Despite its diversity of views and organisations, the Adivasi Janajati movement is united, and has contributed to the promotion of democracy in Nepal. The movement should be regarded as an important civil-society actor for democratic process, and needs to engage with its agenda for sustainable peace and inclusive processes.
- ❖ There have been some interesting developments in constitutional recognition of the rights of indigenous peoples. The Interim Constitution as well as some other pieces of legislation have included measures for addressing the demands of indigenous peoples. Nevertheless, these now need to be translated into practice.
- ❖ The ratification of ILO Convention No. 169 and the adoption of UNDRIP have sent a message that the state of Nepal is serious about protecting the rights of its indigenous peoples, which comprise about 40 percent of the total population. The ratification also contributed to the peace process, as this was done when the peace process was ongoing. The delay in the implementation of the Convention after ratification, however, has caused anxiety and frustration among indigenous activists. Similarly, lack of proactive measures from the government in raising awareness on Convention 169 has increased unsympathetic views, or even a certain level of hostility, among some non-indigenous communities. The national and international effort to implement the Convention should be priority.
- ❖ In their decision-making structures, Nepal's political parties continue to be exclusive. Nevertheless, the political process engendered by the Constituent Assembly election and constitution-writing has created substantive pressure for inclusiveness. Despite such pressure, however, resistance on the part of political leaders in favour of the status quo seems to remain problematic.
- ❖ The outcome of the Constituent Assembly process is not yet clear. Whether the new constitution will incorporate the rights of indigenous peoples and other historically marginalised groups in meaningful ways is yet to be seen. Nonetheless, it is clear that a new constitution that is owned by the indigenous peoples and other historically marginalised groups is critical for the future of Nepal. There is a danger that public debate could be diverted to the issue of an 'ethnic-based state' in the federal design,

which could thus overshadow the other aspects of Adivasi Janajati rights and inclusion in the constitution, such as affirmative action, substantive equality and others.

- ❖ The issue of identity continues to be central to the movement, and has become part of the debate on social inclusion. From previously stigmatised ethnic identities of ‘backwardness’ and ‘impurity’, the label ‘Adivasi Janajati’ has been elevated to ‘rights-holder’, and one who deserves affirmative action and reservation. As a result, even Brahmans and Chhetris today have mobilised themselves to be included as indigenous groups. At the same time, sub-groups within enlisted indigenous categories also express their desire to acquire a separate identity. The country thus needs to deal with these sensitive and complex issues of social categorisation. Due to the absence of systematic ethnographic and linguistic survey, the task of social categorisation in Nepal has become even more complex.

To some extent, the government and donors have started to allocate resources for the development of indigenous peoples. But these are not yet adequate. The promises in the policy documents are abundant, but there exists a substantial gap between promise and practice, while the donors’ approach to the development of indigenous peoples continues to be ambivalent.

Annex 1

ILO Convention No. 169

ILO Convention No. 169 is a legally binding international instrument open to ratification, which deals specifically with the rights of indigenous and tribal peoples. Today, it has been ratified by 20 countries, mainly in Latin America, Europe and the Asia-Pacific region. Once it ratifies the Convention, a country has one year to align legislation, policies and programmes to the Convention before it becomes legally binding. Countries that have ratified the Convention are subject to supervision with regards to its implementation.

Securing rights and respecting differences

The Convention recognises that indigenous and tribal peoples' cultures and identities form an integral part of their lives, and that their way of life often differs from that of the dominant population. These differences are to be respected through the recognition of, among other things, their own customs and institutions, languages and beliefs. The spirit of the Convention is one of non-discrimination. In recognition of the fact that indigenous peoples are likely to be discriminated against in many areas, the Convention from the outset states their right to enjoy the full measure of human rights and fundamental freedoms. It calls for the adoption of special measures to safeguard the persons, institutions, property, labour, cultures and environment of these peoples, and stipulates that these special measures should not go against the free wishes of indigenous peoples. Convention No. 169 has 44 articles covering issues ranging from indigenous peoples right to land, social security and health, vocational training and rights concerning recruitment and conditions of employment.

Consultation and participation

One of the major problems facing indigenous and tribal peoples is that they often have little or no say in decision-making that directly affects their lives. Therefore, the right to consultation and participation is regarded as the cornerstone of the Convention, on which all its provisions are based. The Convention requires that indigenous peoples are consulted and can freely participate at all levels of decision-making, in policy, legislative, administrative and development processes affecting them. The Convention provides a framework for dialogue and negotiations between governments and indigenous peoples, with the objective of reaching agreement or consent. The regular supervision of the implementation of the Convention is undertaken by the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR), which monitors the implementation of all ILO Conventions.

Source: <http://www.ilo.org/indigenous/> and <http://pro169.org>

Annex 2

The UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

What is the Declaration on the Rights of Indigenous Peoples?

The Declaration is a comprehensive statement addressing the human rights of indigenous peoples. It was drafted and formally debated for over twenty years prior to being adopted by the General Assembly on 13 September 2007. The document emphasises the rights of indigenous peoples to live in dignity, to maintain and strengthen their own institutions, cultures and traditions and to pursue their self-determined development, in keeping with their own needs and aspirations. Other U.N. bodies address indigenous rights through Conventions such as the International Labour Organisation's Convention No.169 and the Convention on Biological Diversity (Article 8j).

What rights are ensured by the Declaration?

The Declaration addresses both individual and collective rights, cultural rights and identity, rights to education, health, employment, language, and others. The text says indigenous peoples have the right to fully enjoy as a collective or as individuals, all human rights and fundamental freedoms as recognised in the Charter of the United Nations, the Universal Declaration of Human Rights and the rest of international human rights law. Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity. Indigenous peoples have the right to self-determination. By that right they can freely determine their political status and pursue their economic, social and cultural development. They have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they choose to, in the political, economic, social and cultural life of the state.

Some highlights of the Declaration

- ❖ Seventeen of the forty-five articles of the Declaration deal with indigenous culture and how to protect and promote it, by respecting the direct input of indigenous peoples in decision-making, and allowing for resources, such as those for education in indigenous languages and other areas.
- ❖ Fifteen of the forty-six articles of the Declaration are about indigenous peoples' participation in all decisions that will affect their lives, including meaningful participation in a democratic polity.
- ❖ The Declaration confirms the right of indigenous peoples to self-determination and recognises subsistence rights and rights to lands, territories and resources.
- ❖ The Declaration recognises that indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.
- ❖ Essentially, the Declaration outlaws discrimination against indigenous peoples, promotes their full and effective participation in all matters that concern them, as well as their right to remain distinct and to pursue their own visions of economic and social development.

What is the significance of the Declaration?

Many of the rights in the Declaration require new approaches to global issues, such as development, decentralisation and multicultural democracy. In order to achieve full respect for diversity, countries will need to adopt participatory approaches to indigenous issues, which will require effective consultations and the building of partnerships with indigenous peoples.

Is the Declaration legally binding?

UN Declarations are generally not legally binding; however, they represent the dynamic development of international legal norms and reflect the commitment of states to move in certain directions, abiding by certain principles. The Declaration, however, is widely viewed as not creating new rights. Rather, it provides a detailing or interpretation of the human rights enshrined in other international human rights instruments of universal resonance – as these apply to indigenous peoples and indigenous individuals. It is in that sense that the Declaration has a binding effect for the promotion, respect and fulfillment of the rights of indigenous peoples worldwide. The Declaration is a significant tool towards eliminating human rights violations against the over 370 million indigenous people worldwide and assisting them and States in combating discrimination and marginalisation.

Source: <http://www.un.org/esa/socdev/unpfii/en/declaration.html>

Annex 3

Agreement between the Government and Janajatis (7 August 2007, 22 Saun 2064)

1. While nominating candidates for the first-past-the-post electoral system arranged for the Constituent Assembly election in the present constitution, candidacy will be determined so as to ensure proportional representation of all castes and Janajatis.
2. While preparing a proportional list, all political parties participating in the election will make arrangements to ensure representation of each of the listed indigenous Janajati communities.
3. In case a listed indigenous Janajati group is unable to secure its representation through both electoral systems, the Government of Nepal and the eight parties will reach a mutually acceptable conclusion in order to ensure that there is at least one representative of such a group and that the representation is legal and constitutional.
4. A state-restructuring commission will soon be formed to present recommendations to the Constituent Assembly regarding a federal state structure based on ethnicity, language, geographic region, economic indicators and cultural distinctiveness, while keeping the national unity, integrity and sovereignty of Nepal at the forefront. The commission will include indigenous Janajatis, Madhesis, Dalits, women and eminent experts from various groups, regions and communities.
5. A commission for indigenous Janajatis will be formed.
6. While so far only Nepali has been recognised as the government's official language, the Constituent Assembly will also make arrangements to give recognition to locally spoken mother tongues along with Nepali. The government will remain committed towards ensuring linguistic rights of its citizens.
7. Arrangements will be made for the general public to seek and receive information on matters of public importance, including the Constituent Assembly, in their respective mother tongues.
8. The Government of Nepal has agreed in principle that all groups, genders, communities, castes and ethnicities should be represented in political parties at all levels. A fully representative taskforce will be formed immediately to conduct a study in order to ensure inclusive participation and proportional representation of all castes, ethnicities, groups, communities, genders and regions in all bodies and levels of the state.
9. All sectors will take initiatives to practically implement their legal and policy-level commitments to ensuring inclusive and proportional representation of all genders, classes, regions and communities, including indigenous Janajatis, in all bodies and levels of the state.
10. A system will gradually be developed to receive advice and consultation from concerned groups and bodies while making important decisions regarding various groups, regions, genders and communities, including indigenous Janajatis.
11. Arrangements will be made to immediately pass the proposal to ratify and adopt Convention 169 of the International Labour Organisation.
12. Appropriate steps will be immediately taken to complete the necessary legal process for adopting the United Nations Declaration on the Rights of Indigenous Peoples.
13. A District Coordination Committee for indigenous Janajatis will be formed in a democratic and transparent manner. Also, high importance will be given to the involvement of the Nepal Federation of Indigenous Nationalities and the National Federation of Indigenous Women in this process.
14. In keeping with the spirit and sentiment of gender mainstreaming in development plans and programmes, including interim planning, and paying attention to women and diversity in programme implementation and profit sharing, emphasis will be laid upon the participation of women from indigenous Janajati, Dalit and Madhesi groups.
15. As party to the Convention on Biodiversity, the country will ensure that the traditional knowledge, skills, practices and technology of indigenous Janajatis are harnessed and preserved.
16. The country will honour the renowned geographer Dr. Harka Gurung.
17. Arrangements will be made to provide Rs. 1 million each as relief and compensation to the families of all Nepalis who died in the helicopter crash in Ghunsa, Taplejung.

18. The process started by the government to find a permanent solution to the problems faced by freed Kamaiyas (bonded labourers) will be taken forward in an effective manner as per the agreement.
19. The government will make a serious effort to reach an agreement for addressing the demands of various groups and communities, including Madhesis, women and Dalits, through talks and discussions with the respective groups.
20. The Nepal Federation of Indigenous Nationalities, Indigenous Nationalities Joint Struggle Committee and National Indigenous Women Federation request all indigenous communities in the country to unite for the success of the upcoming Constituent Assembly election.

Ram Chandra Poudel, Coordinator, Government Talks Team; Dr. Om Gurung, Coordinator, Nepal Federation of Indigenous Nationalities; K.B. Gurung, Coordinator, Indigenous Nationalities Joint Struggle Committee

[Translated from *Kantipur*, Wednesday, 8 August 2007 (23 Saun 2064), 15 (171): 7.]

Annex 4

[Unofficial translation from the original Nepali, by the United Nations Mission in Nepal (UNMIN)]

**Agreement between the Government Talks Team comprising the Seven Parties and
the Federal Republic National Front, Nepal
on 2 March 2008 (2064 Phagun 18)**

In keeping with the spirit of the movements of the Limbuwan, Khambuwan, Tamangsaling, Tharuhat and Dalit women; ending all forms of discrimination that evolved over a period of 239 years, because of the centralised feudal state, against the aspirations of indigenous nationalities, Madhesis, Dalits, women, backward groups, minorities and Muslim communities; we, the signatories, have reached the following written agreement, expressing commitment to build a peaceful, prosperous and modern new Nepal, incorporating all Nepali people, including indigenous nationalities, Madhesis, Dalits and women into the national mainstream, by establishing a federal democratic republic based on a new state structure as per the [principles] of a federal system with a proportional inclusive democracy and an autonomous federal state.

1. Those who attained martyrdom during the movements of the Limbuwan, Khambuwan, Tamangsaling, Tharuhat and Dalit people shall be given due respect and declared martyrs. Rupees 1,000,000 (one million) shall be provided to every dependent family. Arrangements shall be made to provide employment to one family member of the martyr, free education and treatment to injured agitators, charges filed against leaders and cadres shall be repealed and those detained shall be immediately released. A taskforce comprising the government and agitating sides shall be immediately formed, and work shall be initiated to identify those who attained martyrdom and those who were injured during the movement.
2. By abolishing the monarchy, Nepal shall be proclaimed a federal democratic republic through the Constituent Assembly, and the seven parties shall remain committed to its implementation.
3. By keeping Nepal's sovereignty, national unity and integrity intact, provision shall be made for scientific autonomous federal republic states by the Constituent Assembly based on the historical backgrounds, languages, geographical regions and economic resources and viability of Limbuwan, Khambuwan, Tamangsaling and Tharuhat as well as other indigenous nationalities, Dalits, backward classes and ethnicities by abolishing the 239-year old centralised system of governance. To ensure this, [a proposal to this effect] shall be submitted and ratified by the Council of Ministers and conveyed to the parties concerned. In the process of forming a new national structure, the self-respect of all groups and ethnicities shall be protected. The structure of the autonomous states of the republic, complete details and division of power between the Centre and the states, shall be determined by the Constituent Assembly. For its implementation, this agreement shall be sent to the Commission for Restructuring, which is to be formed in connection with the new national structure.
4. Arrangements shall be made for the inclusive proportional participation of indigenous nationalities, natives of the Tarai, Dalits, backward classes, minority Muslims, women, etc. in all organs of the state.
5. All *bandhs*, including the general strike called by the Federal Republic National Front, Nepal, shall be withdrawn to enable a successful Constituent Assembly election scheduled for 10 April 2008 (2064 Chait 28), and all political factions of this Front shall help to conduct the election in a conducive atmosphere.

**On behalf of the Federal Republic
National Front, Nepal**

[Signed]
(Mr. D.K. Buddhist)

**On behalf of the Government Talks Team
comprising of seven parties**

[Signed]
(Mr. Ram Chandra Poudel)

Chairperson, Federation, Federal
Democratic National Forum

[Signed]
(Mr. Kumar Lingden 'Mirak')
Chairperson, Federal Limbuwan State
Council

[Signed]
(Mr. Laxman Tharu)
Chairperson, United Tharu National
Front-Nepal

[Signed]
(Mr. Bisendra Paswan)
Chairperson, Dalit Janajati Party

[Signed]
(Mr. Singman Tamang)
Vice-chairman, Tamangsaling
Autonomous State Council

Convenor

[Signed]
(Mr. Shanker Pokharel)
Member

[Signed]
(Mr. Dev Prasad Gurung)
Member

[Signed]
(Mr. Ghanashyam Sharma Poudel)
Member

[.....]
(Mr. Sunil Prajapati)
Member

[Signed]
(Mr. Keshav Nepal)
Member