



UiT The Arctic University of Norway

Faculty of Humanities, Social Sciences and Education, Centre for Sámi Studies

The Impact of ILO 169 on State Commitments and Policies in Nepal

Susma Poudyal Ghimire

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Cover Photograph: The Raute: Nepal's Last Nomadic Tribe
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Susma Poudyal Ghimire

Master of Philosophy in Indigenous Studies

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Faculty of Humanities, Social Sciences and Education

UiT the Arctic University of Norway

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Supervised by

Professor Else Grete Broderstad

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Abstract

Nepal adopted ILO Convention No. 169 in 2007, and its principles have been applied in national legislation and policies to enhance the acknowledgment of indigenous peoples' rights in practice. The research highlights the changes in Nepal's acknowledgment and protection of indigenous peoples' rights after the country ratified ILO 169. Thus, it will investigate the Nepalese government's adoption of legislative measures including constitutional, legal, and institutional commitments. Similarly, it will shed light on government measures aimed at integrating legislative commitment to various policies and programs. In addition, I will point out the difficulties involved with the implementation of program policies aimed at addressing Indigenous peoples' rights.

Abbreviations

CA	=	Constitutional Assembly
CERD	=	Elimination of Racial Discrimination
FM	=	Frequency modulation
FPIC	=	Free, Prior and Informed Consent
IDEA	=	International Institute for Democracy and Electoral Assistance
ILO	=	International Labor Organization
ILO 169	=	Indigenous and Tribal Peoples Convention, 1989
INC	=	Indigenous Nationalities Commission
INGOs	=	International non-governmental organizations
IWGIA	=	International Work Group for Indigenous Affairs
LAHURNIP	=	Lawyers Association for Human Rights of Nepalese Indigenous Peoples
NFDIN	=	National Foundation for Development of Indigenous Nationalities
NGOs	=	Non-Governmental Organization
NHRCN	=	The National Human Rights Commission of Nepal
NLC	=	National Language Commission
NPC	=	National Planning Commission
SDGs	=	Sustainable Development Goals
UN	=	United Nations
UNDRIP	=	United Nations Declaration of the Rights of Indigenous peoples

UNESCO = The United Nations Educational, Scientific and Cultural Organization

WIPO = World Intellectual Property Organization

WTO = World Trade Organization

List of Figures

Figure I	: Nepal geographical map	10
Figure II	: Nepalese caste division	12
Figure III	: The Nepal caste pyramid	13

List of Tables

Table I: classification according to the level of development	11
Table II: Population groups and party representation in the first CA (2008–2012)	60

Table of Contents

1	General Introduction	1
1.1	Indigenous peoples of Nepal.....	1
1.2	Main focus.....	1
1.3	Literature review	2
1.4	Research questions	3
1.5	Position of the researcher	4
1.6	Methodology and methods.....	5
1.7	Research limitations	5
1.8	Guide through the thesis.....	6
2	Background of the Study	7
2.1	Introduction	7
2.2	Importance of ILO 169.....	7
2.3	Indigenous classification in Nepal	9
2.4	Impact of caste system and state restructuring process during 17th - 19th century..	12
2.5	From marginalization to inclusion during 19 th century - 20 th century	15
2.6	The ratification of ILO 169 in Nepal: Initiatives taken by different organization....	18
3	Analytical Framework	21
3.1	Introduction	21
3.2	Indigenous research methodology.....	21
3.3	Applying the concept of human rights indicator.....	25
3.4	Textual analysis research method	27
4	Presentation of the data	31
4.1	The NHRCN report	31
4.1.1	Introduction and structure	31

4.1.2	Consultation and participation	32
4.1.3	Status of linguistic rights	33
4.1.4	Free-Prior and Informed Consent (FPIC)	33
4.1.5	Self-determination, autonomy and self-governance	34
4.1.6	Access to justice.....	34
4.1.7	Right to health, and employment	35
4.2	The IWGIA’s report	35
4.2.1	Introduction and structure	35
4.2.2	Human rights violations in national parks	36
4.2.3	Land grabbing	36
4.2.4	Climate change.....	37
4.2.5	Covid_19 pandemic	37
4.2.6	Unstable government	38
5	Indigenous rights in Nepal: government commitment and its challenges	39
5.1	Introduction	39
5.2	International and national legal and institutional commitments	39
5.2.1	International legal commitments.....	39
5.2.2	Constitutional commitments	40
5.2.3	National Acts related to Indigenous people’s rights	45
5.2.4	Institutional commitment	48
5.3	The Nepalese government policies, plans and programs	51
5.3.1	National policies and its challenges	51
5.3.2	National development plan and its challenges	54
5.3.3	Affirmative action: practice of reservation/quota system and its challenges	56
5.3.4	Sustainable Development Goals 2016-2030	58

5.3.5	Participation of Indigenous peoples in constitution writing process 2008-2015 and its challenges	59
5.3.6	NHRCN Regional Offices	63
5.3.7	Language program	64
5.3.8	Action plan to address Indigenous rights.....	67
5.4	Conclusion.....	67
6	Conclusion	69
6.1	Discussion of the main findings	69
6.2	Limitation of the research	73
6.3	Recommendation for further study	73
	References	75

1 General Introduction

1.1 Indigenous peoples of Nepal

Nepal is a diverse country in terms of language, culture, ethnicity and geography. The total population of Nepal is divided into 125 caste groups. Out of that 59 caste groups are classified as *Adivasi/Janajati* by the state. *Adivasi/Janajati* is a widely accepted categorization of the culturally distinct groups of Nepal that are excluded from the dominant social and religious hierarchy and political processes. *Adivasi/Janajati* are identified, both by the Nepalese Government and by the groups themselves, as “Indigenous peoples” or “Indigenous nationalities” who are distinct from the rest of Nepal’s population (NFDIN, 2003:1). The National Foundation for Development of Indigenous Nationalities Act of 2002 was the first legislation established by the Nepalese government to address the challenges of Indigenous people. In addition, in compliance with the statute, the government established the ‘National Foundation for the Development of Indigenous Nationalities (NFDIN)’ (LAHURNIP, 2019). The NFDIN operates as an independent organization that advocates for *Adivasi/Janajati*’s equal representation in various state structures. NFDIN defines *Adivasi Janajati* as those “having their mother tongue, traditional rites and customs, distinct cultural identity, distinct social structure, and written or unwritten history” (NFDIN, 2003:2).

Nepal’s *Adivasi/Janajati* represents “36 percent of the total population of 30.2 million”, and speak more than 100 languages out of the 123 languages in Nepal (IWGIA, 2021:266). Nepal is the “first country in Asia to ratify ILO Convention 169 on Indigenous and Tribal Peoples (ILO 169)” (Dhir, 2015: 86). Since ILO 169 ratification in 2007, there have been significant changes in national acts and policies for addressing Indigenous rights issues. Thus, this thesis will focus on the impact of ILO 169 in Nepalese national policies, as well as the challenges associated with the implementation of such policies.

1.2 Main focus

This study focuses on the Nepalese government's attempts to address Indigenous peoples' rights, as well as the commitments aimed at fulfilling such rights. The data for this research is the monitoring report of the National Human Rights Commission of Nepal (NHRCN), which was published in 2019 under the title: ‘*Indigenous and Tribal Peoples Convention, 1989,*

Implementation Status Report'. This official report was prepared under the supervision of the NHRCN committee, which is made up of human rights experts who have contributed their life to promoting and to defending human rights in the country. The report also includes information regarding ILO 169 implementation processes and its impact on national policies.

Likewise, the global report of the International Working Groups for Indigenous Affairs (IWGIA) titled *Indigenous World 2021* is the second source of data for this research. IWGIA is a global human rights organization dedicated to promoting, protecting, and defending Indigenous rights globally. IWGIA works to empower Indigenous peoples through documentation, capacity development, and advocacy at local, regional, and international level. IWGIA's yearly reports provide updated information on progress and challenges associated with Indigenous rights implementation in different countries.

1.3 Literature review

Until 1990, Nepalese Indigenous peoples' issues were overshadowed by various political and government regimes. According to Toffin (2009:39), the Nepalese Adivasi/Janajati's status after the restoration of democracy in 1990 is progressive. The internationalization of the Indigenous movement and establishment of local Indigenous organizations in Nepal have helped them to connect with the members of other Indigenous communities. It also aided them in establishing contacts with national and international organizations such as the Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), the United Nations Permanent Forum on Indigenous Issues, and the Committee on the Elimination of Racial Discrimination (NHRCN, 2019). Their connection with these national and international organizations ensured that they are adequately, informed of their Indigenous rights. Moreover, social movement and protest demanding the recognition of Indigenous peoples have been organized in local and national level. The Nepalese government made changes in national policies, and adopt international legal instrument the concerns over Indigenous rights.

Secondly, Subedi (2011) reviewed the effects of caste system in Nepal and how it divided the whole population into different ranks with associated social duties. As with "economic-political development, social-political mobilization and internationalization, the caste system practices shifted in a new direction" (Subedi, 2011:11). The recognition of Indigenous peoples

by Nepalese state gave rise to new social practices. In the present context, there is wide recognition of these diverse groups by the government, the academic community, and by civil society. Various inclusive program such as quota system (reservation policy) have empowered Indigenous peoples, and have ensured equal representation in various sectors. The quota system is a 'social inclusion program that aims to promote the involvement' of underrepresented groups and communities in government jobs and education (Dhakal, 2013:4).

In a similar study, Dhir (2015:86) examined improvements made in the Nepalese national policies by government to 'help reduce the gap of inequality' among its inhabitants. The adaptation of international treaties and implementing such into domestic legislations and program has helped to reduce inequality and strengthened their empowerment in social and economic aspects. Some of the Nepalese government legislations that have empowered underprivileged populations include the Civil Service Act, the Local Self-Government Act, and the Reservation System. The ratification of ILO 169 by Nepal has considerable significance in emphasizing state restructuring and accommodation of Indigenous rights. However, there remain challenges regarding the implementation of ILO 169 in a meaningful way due to the varying and large number of Indigenous groups in the country (Dhir, 2015).

This brief literature review emphasizes the impact of social movement, international Indigenous human rights ratification, and the Nepalese government adaptation of national policies for addressing social and economic inequalities. The ratification of ILO 169 and changes in the Nepalese national policies have made a significant impact on the life of Nepal's Indigenous people. It has also made them more aware of their rights and given them the opportunity to participate equitably in various development processes. A more detailed review will be included in the discussion chapter to further highlight the national policies and the challenges the implementation process encounters.

1.4 Research questions

Since the 1990s, laws and policies on Indigenous rights have changed significantly. While the improvements made in Nepal's acts and policies since 1990 may appear insufficient in contrast to the rest of the world, they cannot be taken for granted. Some of the achievements such as the ratification of the ILO 169 are remarkable and worth considering. In the making of Nepal's

2015 Constitution, there was equal participation and representation of various marginalized groups including Indigenous peoples. This made the constitution making process more inclusive. In the constitutional assembly from 2008 to 2015, 26.9 percent of hill Janajati and 8.1 percent of Madheshi Janajati participated as members, which was proportionately equal to Nepal's Indigenous population (UNDP & SPCBN, 2014). As part of the government's inclusive agenda to embrace Indigenous rights, Indigenous people engage equally in the constitution-making process as constitutional members in the constitutional assembly. The 2015 constitution was enacted by the constitutional assembly. The 2015 constitution guarantees equal rights to all citizens and provides special protections for historically excluded and disadvantaged groups. Furthermore, through inclusive representation, it guarantees that such groups are represented in 'provincial and federal legislative bodies' (NHRCN, 2015:16). It also included a provision for the establishment of an Adivasi/Janajati Commission and a Tharu Commission. Based on the provisions ensured by 2015 constitution, as well as the changes made in national policies, my thesis will investigate the implications of ILO 169 in Nepal's national policies addressing Indigenous rights. In light of this, my main research question is:

What are the main legal and political impacts and challenges of the Nepalese adoption of ILO 169?

1.5 Position of the researcher

In order to understand the various classification of Indigenous groups in Nepal, an insight into the caste system in Nepal is important. The caste system, which is deeply established in Hinduism ideology, refers to a rigorous practice that assigns every member in society a certain social standing, profession, and methods of social life based on their distinct caste. The Nepalese population is divided into four hierarchical categories under the caste system and according to the caste system framework, Nepalese Indigenous communities fall in the 'second hierarchy' (Unequal Citizens, 2006: 6). Based on this structure, I am an outsider to the Indigenous community. However, I am in a privileged position in relation to the Indigenous groups, since I grew up in a mixed caste community, and have lived in proximity with various caste groups in the community. This makes me to some degree an insider to the Indigenous context. My dual outsider-insider position grants me the advantage of having a different view on how caste system works. I understand that although the caste system is not legally

recognized, it is neither completely erased in practical life in Nepalese social settings. Thus, in the background chapter, I will explain more about the caste system and its practice.

1.6 Methodology and methods

Based on qualitative research approaches, this research employs a textual analysis of reports where I will look into the textual content of the relevant reports. The content analysis approach according to Boreus & Bergstrom (2017:36), is used ‘to compare the same kind of text from different periods and to examine the attention paid to a particular topic’. Both reports in this research relate to Nepal’s Indigenous people's challenges and government legal measures and actions to address those challenges. I am comparing the national reports published in 2019 and international reports published in 2021 to identify the changes made in the Nepalese government’s policies around Indigenous rights issues.

Furthermore, I apply the human rights indicators as the lens for structuring. Human rights indicators are instruments designed to assist in monitoring, protecting, and realizing human rights problems. It also gives information on state human rights activities. Further, it helps to ‘assess and monitor the promotion and implementation of human rights within the states and how they comply with national and international human rights treaties’ (de Beco, 2008:24). From the perspective of de Beco (2008), I emphasize the concepts of structural and process indicators, leaving outcome indicators out since I am not investigating the implementation of rights. I will look into the state’s ratification and adaptation of legal instruments, as well as the state’s policy initiatives. Less focus will be made on the implementing of legal measures and human rights commitments in practical terms. The focus will be on the Nepalese government’s legal measures and policies toward Indigenous people’s rights, including the initiatives taken by the government to implement such policies.

1.7 Research limitations

Due to the COVID 19 pandemic situation, I had to cancel my previous research project and start all over again with this particular research topic. This limitation influenced my decision to use textual analysis for this research. Since the focus area of my focus is on Indigenous issues in Nepal, I am relying on online published reports for the data. This option has become necessary due to the difficulty in travelling to Nepal to gather primary sources for this research.

The reports that I have chosen for my research are national and international reports which provide insight into the situation of the Indigenous peoples in Nepal and the extent to which they are able to exercise Indigenous right. The reports are easily accessible online, and cover wide range of Indigenous rights issues. Owing to the focus of this research and time limit concerns, this thesis will focus only on the areas reports covers that are relevant to the research questions concerned.

1.8 Guide through the thesis

This thesis is divided into six chapters. The first chapter introduces the research. It provides a general information on the Nepalese Indigenous people, research question, research motifs, the research methods, the researcher's position positionality, and the limitation of the study. The second chapter is the background chapter. It covers information on the practice of caste-based discrimination. It also provides a historical overview of the state discrimination towards Indigenous peoples. In addition to that, the second chapter provides a brief information on ILO 169 and its importance for Indigenous people. The chapter ends with a brief information on the state's commitment towards Indigenous people in Nepal.

Third chapter details the methodological approach of this research, and it expands on the theoretical concept that will guide the analysis of this research. The fourth chapter provides the information about the research data. The fifth chapter is a discussion on the main findings of the study, which centered around the main research questions. The sixth chapter provides a summary of the findings of the study, and outlines the limitations of this research.

2 Background of the Study

2.1 Introduction

This chapter provide a general information on importance of ILO 169 for Indigenous people. It details the Indigenous classification structure, the caste system and its impact, and the state restructure and its impact. The chapter also explores the political movement and rise of Indigenous movements. Furthermore, it will also provide insights into the Nepalese government's adaptation and implementation of Indigenous rights in Nepal.

2.2 Importance of ILO 169

The term 'Indigenous peoples' refers to 5000 distinct peoples, with over 370 million people residing in over 70 different countries (ILO, 2013). Indigenous people are also refers as adivasi/janajati, mountain dwellers, hill tribes, hunter-gatherers in their national term. Indigenous people constitute "approximately 5% of the world population, but are 15% of the world's poorest population. Indigenous peoples spread across the world- from the Arctic to the tropical forest areas" (ILO, 2013:2). There is no universal definition of Indigenous peoples. The ILO 169 establishes a series of requirements to protect the rights of Indigenous and tribal peoples, which are embodied in Article 1(1) of the convention as follows:

(a) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; (b) peoples in independent countries who are regarded as Indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions. Article 1(2): Self-identification as Indigenous or tribal shall be regarded as a fundamental criterion for determining the groups to which the provisions of this Convention apply. (ILO, 2009:1)

According to the ILO 169 provision, Indigenous peoples are individuals whose social, cultural, and economic conditions separate them apart from the rest of the national community. Similarly, their position is fully or mainly determined by their own traditions or traditions, or by unique laws or regulations. ILO 169 also established Indigenous or tribal peoples' self-identification as a primary criterion for determining whether groups are included by the terms of this Convention.

Information on the International Labor Organization (ILO) website indicates that 24 countries have ratified ILO 169. Ratifying states are legally obligated to execute the convention in good faith, both legally and practically. This requires states to assess and match their legislation, policies, and programs with the convention's provisions. States must also guarantee that ILO 169 is put into reality. The Convention strives to eliminate discriminatory practices against Indigenous peoples while also allowing Indigenous people to participate in decision-making processes that influence their lives. The goal is to bridge the socioeconomic divide between Indigenous and non-Indigenous groups in society. The cornerstone of ILO 169 are the principles of consultation and participation. It also addresses a wide variety of issues affecting Indigenous peoples, such as “employment and vocational training, education, health and social security, customary law, traditional institutions, languages, religious beliefs, and transboundary collaboration” (ILO, 2013:5).

In addition to ILO 169, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is acknowledged as a significant legal document protecting Indigenous peoples' rights. The UNDRIP recognizes Indigenous peoples' right to self-determination, as well as their right to freely select their political status and economic, social, and cultural development (Gurung, 2009). It compliments ILO 169 by emphasizing Indigenous people’s rights to freely determine their political status, and to pursue their economic and socio- cultural development. The UNDRIP and ILO Convention 169 are complementary to each other. Ratification of international treaties and declarations on Indigenous rights, such as UNDRIP and ILO 169, “binds the signatory's nations with legal responsibility over the promotion and preservation of those rights” (Gurung, 2009:1).

2.3 Indigenous classification in Nepal

There is no universal criteria or definition for identifying Indigenous people. Indigenous people are described as a suppressed groups of people by states, majority communities, and social groupings. Numerous countries have acknowledged the concept of Indigenous peoples and have established “legislation to address it, while others have denied Indigenous peoples any distinct or positive status” (Dahl, 2012:8). Nepal's Indigenous peoples have long fought for recognition as inheritors and practitioners of distinct social, cultural, and political characteristics. Not only was their uniqueness overlooked, but they were incorporated into a state-defined communal identity that applied to all people.

Though there is no clear definition of Indigenous peoples in Nepal, the NFDIN act establishes a set of criteria to define this concept. According to the act, the Nepalese Indigenous peoples referred to those tribes or community with their “own language, rituals and traditions, distinct cultural identity, different social structure, and documented or unwritten history, as specified in the schedule” (NFDIN, 2003:1). Although the state officially recognizes 59 groups, numerous additional groups and organizations have expressed a desire for revision. They have demanded that the Nepalese government conduct study on the classification of Indigenous communities, stating that the list given in the schedule is insufficient (NHRCN, 2019:22).

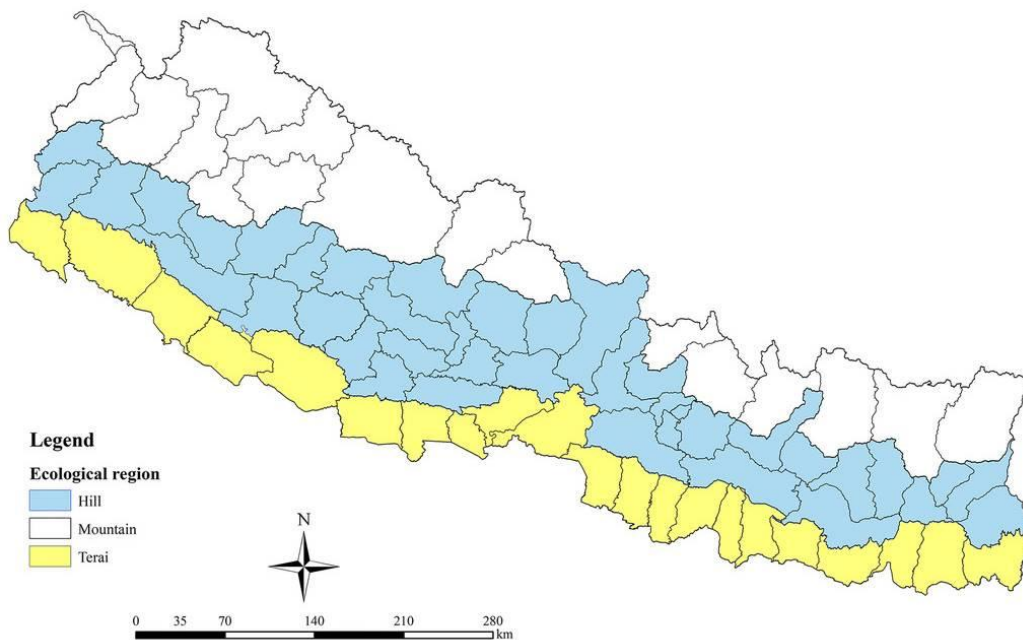
In response to the concerns, the government organized a task team to investigate the issues and suggest appropriate remedies. Under the leadership of Prof. Dr. Om Gurung, the task group prepared a report that suggested 81 groups as Indigenous nationalities. Furthermore, the task force report, which was overseen by Dr. Dil Bahadur Chhetri, proposed that Khas-Chhetri be included as Indigenous nations. Despite the government's efforts, with the assistance of NFDIN, is has “yet to be resolved” (NHRCN, 2019:23).

The Indigenous peoples of Nepal are known as *Adivasi/Janajati (Indigenous nationalities)* and “comprise 36% of the total population of 30.2 million” (Indigenous World, 2022: 266). Indigenous peoples are those groups in Nepal who have culturally distinct communities and have been excluded from the mainstream social, religious, and political structure and process. Spreading across the country, from the high Himalayas to the plain areas of Nepal, most of them live in remote and rural areas, and solely dependent on subsistence farming for their

living. The Nepalese Indigenous people have been residing in three different geographical locations of Nepal: the high mountains in the north, the high hills in the valleys in the middle, and the southern plain (Dhir, 2015).

Figure I

Nepal geographical map



Source: Adhikari, 2021

Every Indigenous community, regardless of geographical location, has its own set of customs, traditions, and religious practices. Those living in the high mountain areas are influenced by Tibetan Buddhism whereas those living in remote valleys and jungle- in the southern plains follow Shamanistic or Animist beliefs (Bennett et al., 2008). Similarly, Indigenous peoples in different geographic locations have different worldviews that are molded by their interactions with the environment, their own sociocultural milieu, and non-Indigenous civilizations. They

have their own set of experiences, perceptions, beliefs, conventions, and values that are passed down through generations.

Aside from geographical categorization, Nepal's Indigenous peoples are divided into groupings based on their developmental phases. According to the development phases they are classified as: “endangered, extremely marginalized, marginalized, disadvantaged, and advanced” (Dhir, 2015:85). The table below includes a list of the groups classified into each category.

Table I
classification according to the level of development

Classification	Indigenous groups
Endangered group	Kusunda, Bankariya, Raute, Surel, Hayu, Raji, Kisan, Lepcha, Mech, and Kusbadiya
Extremely marginalized group	Majhi, Siyar, Lohmi, Thudam, Dhanuk, Chepang, Satar (Santhal), Jhagad, Thami, Bote, Danuwar, and Baramu
Marginalized group	Sunuwar, Tharu, Tamang, Bhujel, Kumal, Rajbansi, Gangai, Dhimal, Bhote, Darai, Tajpuriya, Pahari, Topkegola, Dolpo, Phri, Mugal, Larke, Lohpa, Dura, and Walung comprise
Disadvantaged group	Chhairotan, Tangbe, Tinganule Thakali, Bargaule, Marphali Thakali, Gurung, Magar, Rai, Limbu, Sherpa, Yakkha, Chhantyal, Jirel, Byansi, and Yolmo
Advanced group	Newar and Thakali.

Source: LAHURNIP, 2019:65

Various rulers have employed caste hierarchy over many decades to unite diverse communities into a unified legal framework, with the goal of forging a ‘homogeneous national identity’ (Bennett et al., 2008:1). In the state restructuring process however, these Indigenous peoples

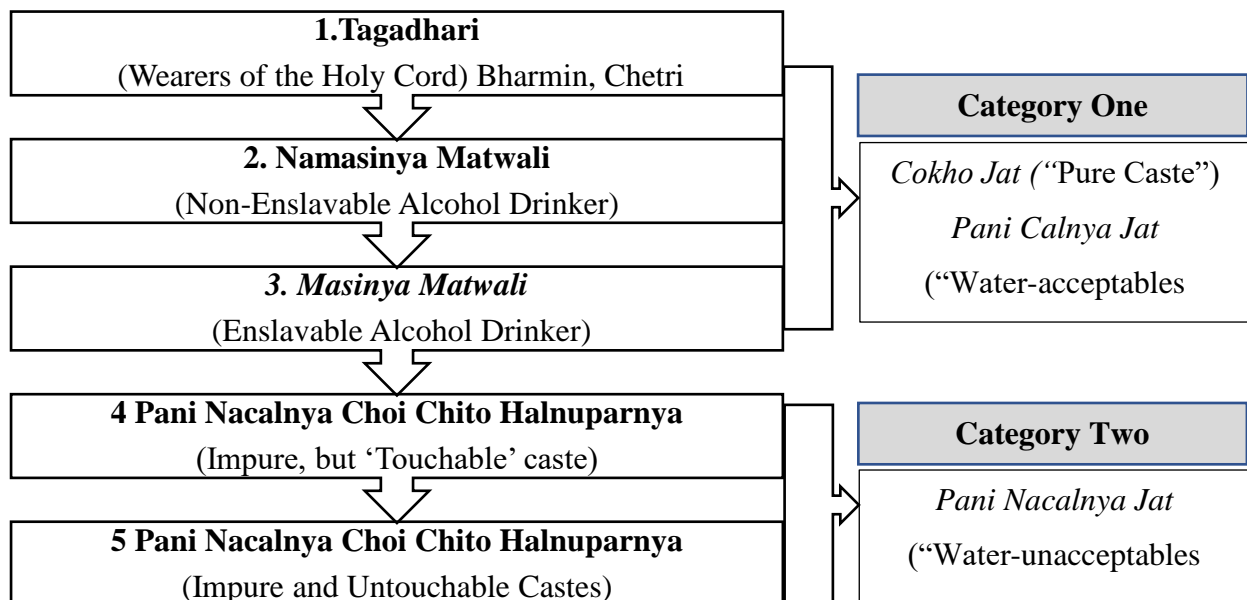
were discriminated and marginalized under “the caste arrangement, which led to their loss of land, territories, resources, language, culture, customary laws” (Dhir, 2015:85). Additionally, they have been denied political and economic opportunities.

2.4 Impact of caste system and state restructuring process during 17th - 19th century

In order to know about the Indigenous people of Nepal, general information on the caste system is necessary. Despite the fact that the caste system has been practiced from ancient times, there is no trace of a legal instrument that accorded the caste practice before to 1854. The caste system in Nepal was legalized only when then-prime minister Junga Bahadur Rana issued the ‘Muluki Ain’ (Country Legal Code) in 1984. The 'Muluki Ain' was the first legal instrument to introduce the caste system, and it was the principal cause that ‘segregated Nepal's whole population into five separate caste groupings’ (Hofer, 2004:xxv).

Figure II

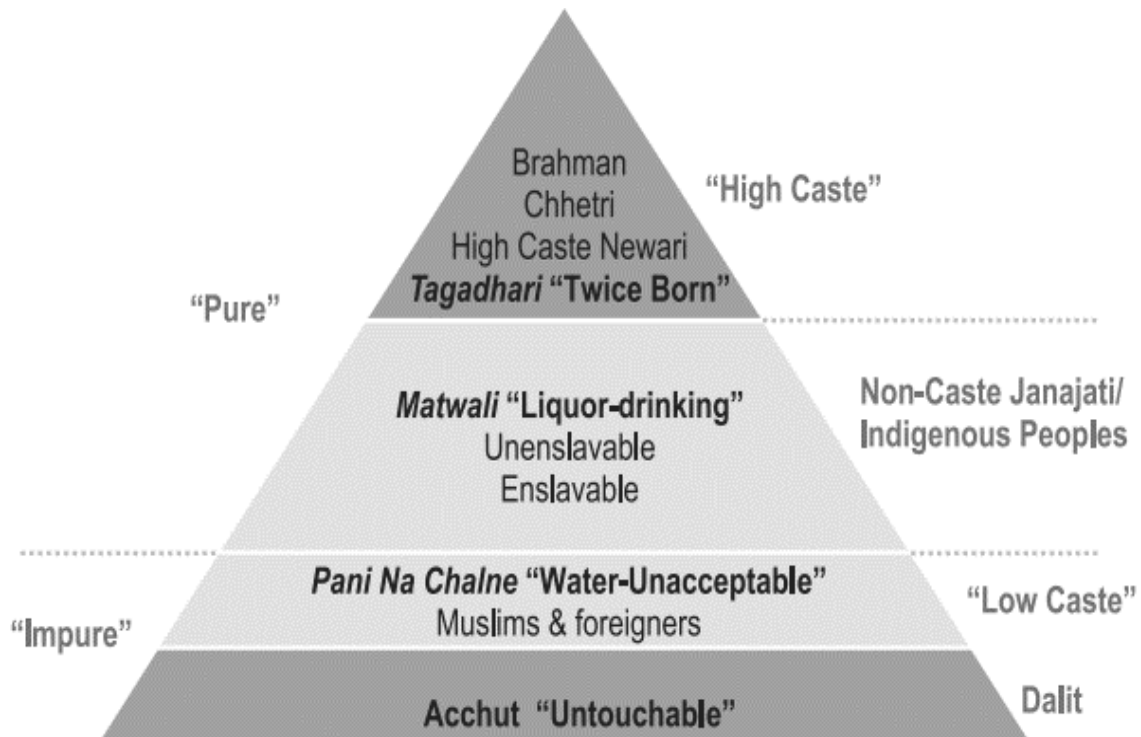
Nepalese caste division



(Source: Hofer, 2004:10)

Figure III

The Nepal caste pyramid



(Source: Unequal Citizens, 2006:6)

The chart and pyramid above show that the Brahmin and Chhetri occupy the high-ranking position than the rest of the population. Because of their caste status, the Brahmin and Chhetri comprise the country's main groups, serving as landlords, priests, administrators, soldiers, and cops. According to the Nepalese caste system, the officially recognized Nepalese Indigenous communities fall into the second and third groupings, as indicated in Figure II. Whereas, according to the pyramid division they fall under "second group of classification" (Gelliner, 2007:1823).

Despite the diversity of Nepalese cultures, customs, and religious practices, the caste system divides the whole people into separate groups and assigns professional limits accordingly. The caste system not only became a major determinant of Nepalese social identity, but it also influenced the "government's economic policies and decision-making" (Bennett et al., 2008:1-2). Furthermore, a person's caste standing is determined by their surname under the caste

system. Thus, “not only do people always know what their own assigned identity is intended to be, but others typically do as well, simply based on their surname” (Gelliner, 2007:1823). As a result, this became the major reason for the conception of discrimination.

The history of social exclusion based on caste discrimination in Nepal can be traced back to the 14th century when King Jayashiti Malla introduced 64 vertical occupational caste groups among the Newar community. This was against the traditions and customs of the people, as the caste system it introduced was “never part of their socio-cultural practice” (Dong, 2016:121).

Until the early 17th century, the Indigenous groups had exercised control over their lands and territories under autonomous chiefdoms. Lands, territories, and natural resources are a significant feature of Indigenous identity; yet they begin to decline following the introduction of land tenure systems such as the Birta and Jagir. Birta and Jagir were systems of discriminatory land tenure that permitted the dominant caste, the Bahun-Chhetris, to hold and manage Indigenous peoples' lands. Similarly, forests were nationalized, severely affecting the livelihoods of Indigenous communities. Indigenous people began to lose their ancestral land when forests were nationalized and turned into national parks, wildlife reserves, protected land, and community forest reserve initiatives. This displaced them since it destroyed their communal ways of life (Bhattachan, 2012:1).

Later in mid- 18th century, with the conquest of the former Himalayan kingdom by King Prithivi Narayan Shah, large population were displaced from their home lands and territories. Influenced by this caste hierarchical system, he declared Nepal as a garden of four varnas and 36 castes. He also proclaimed Nepal as a “Hindu Kingdom - a pure Hindu state” (Dong, 2016:121). His conquest of “the former Himalayan kingdom and the construction of its multi-ethnic state have greatly contributed to producing communal identities” (Toffin, 2009:38). Later during the Rana Rule¹ (1846-1951), a legal code called Muluki Ain was introduced Hindu caste system, and the entire population become subject of this legal code. The Muluki

¹ Rana Rule, (1846–1951) in Nepal, the period during which control of the government was seized from the King by Jung Bahadur Rana, and was in control of the Rana family.

Ain is Nepal's "most contentious written legal instrument, which was subsequently abandoned following the Interim Constitution in 1951" (Unequal Citizens, 2006: 6).

During the Panchayat era² 1960-1989, the state introduced the "Hindu religion, Hindu monarchy, and Nepali language" as the signifiers of national community. It further introduced the "one language, one dress, and one culture" policy and the "slogan our king, our country values based on Hindu religion and Hindu Monarchy" (Dong, 2016:122). The caste system and the adaptation of Hindu values by the state forcefully excluded and discriminated non-Hindu citizens. Likewise, the state's formation of a communal identity and one language policy affected the collective identity of diverse groups by forcing them to disown their language and cultural values. Similarly, their cultural and traditional practices were also overshadowed by emphasis on Hindus Brahmin practices (Dhir, 2015:85).

2.5 From marginalization to inclusion during 19th century - 20th century

In the state development of the caste system and the state's accommodation of Hindus values and Brahmin practices, 81% of the population registered themselves as Hindu in the 2001 census of Nepal (Bennett et al., 2008:1). It was only after the abolishment of caste-based discrimination in 1963 Indigenous people were able to raise their voice against assimilation and discrimination. Prior to the establishment of democracy in 1990, Nepal's Indigenous people were designated as "tribal/ethnic groupings, but they now have statutory recognition as Indigenous people by the state" (Tomei, 2005:34).

After the promulgation of the Constitution in 1990, Indigenous issues began to be addressed by the state. The Constitution declared Nepal as a 'multi-ethnic, multi-lingual and democratic' country. This declaration ensures the rights to promote and to protect languages, scripts, and culture of all communities as well as the opportunity to "establish various political parties (which was forbidden before)". The 1990 constitution also "affirmed the equality of all citizens, irrespective of religion, race, gender, caste, tribe or ideology" (Unequal Citizen, 2006:xvii).

² Panchayat era, (1960-1990) was a partyless political system incepted by King Mahendra

Despite these constitutional guarantees, Nepal went into 10 years of civil war starting from 1996. The Communist Party of Nepal (Maoist) declared civil war against the Nepalese government. The war known as "People's War/insurgency" advocated that the Nepali state be restructured in accordance with its ethnic and cultural diversity. According to Limbu (2020), during the civil war, Maoists advocated for disadvantaged populations that had faced historical injustices and structural crimes. It also promotes Indigenous peoples' right to ancestral lands, self-determination, and a communal way of life. Indigenous communities, as well as numerous underprivileged groups, were drawn to the battle and joined the Maoist war (Limbu, 2020). This conflict included Indigenous communities like as the Magar, Tharu, Gurung, Tamang, Rai, and Yakthung. Consequently, Maoists were able to control more than 80% of the country's regions by enlisting Indigenous peoples and others in their cause. They also advocated for the establishment of regions based on Indigenous identity, such as “Limbuwan for Limbu, Khumbuwan for Khumbuwan, Tamsaling for Tamang, Tharuwan/Tharuhat for Tharu, Magrant for Magar, Tamuwan for Tamu, Newa Rajya for Newar” (Limbu, 2020, 4).

In addition to that, the royal massacre³ in 2001 set the political situation in Nepal into different direction. Following the massacre, Prince Gyanendra Bir Bikran Shah was crowned King of Nepal, and upon taking power, “he dissolved Nepal's parliament, assumed political authority, and governed under autocracy” (Dong, 2016:122-123).

Although Nepal was going through various transition period and difficult political situations, in 2002, the Nepalese Government abolished the practice of *Kamaiya Pratha* (agriculturally based bonded labour system). In this practice a person works as farm laborer for specific landlord as a way of paying off their personal or family debt (Giri, 2009:600). The Kamaiya practice had a devastating effect on the large Indigenous Tharu population living in western Tarai districts. Following the abolition of the Kamaiya practice, a legislation was enacted to ensure their systematic rehabilitation. In line with legislation, most Kamaiya family were evicted from the landowners' residence and granted public land (Giri, 2009).

³ Nine members of the royal family, including King and Queen were killed in a mass shooting during a gathering of the royal family at the palace.

Similarly, the Nepalese government passed the National Foundation for the Development of Indigenous Nationalities statute in 2002, and an NFDIN organization was established in accordance with the act. NFDIN is in charge of ensuring Nepal's social, economic, and cultural development, as well as resolving concerns surrounding Indigenous peoples' rights. Since 2002, NFDIN as a governmental body have been advocating Indigenous nationalities equal representation in various state structures (NFDIN, 2003).

During the period 1990-2006, the Nepalese Indigenous people, Indigenous activists, and numerous national organizations advocating for Indigenous rights started a peaceful Indigenous rights movement. The movement campaigned for the acknowledgement of past injustices such as caste discrimination, equitable representation, and Indigenous peoples' right to self-determination. During this movement Nepal became member of the Asian Indigenous People's Pact and the UN Permanent Forum on Indigenous Issues (Tamang, 2017).

The people's movement of 2006 is a major turning point for state structure and political transition in Nepal. It brought decade-long Maoist insurgency into the peace process (Khanal, 2014). The key demands of the peace agreement were the adoption of an interim constitution, the formation of a constitutional assembly, and the protection of ethnic rights. The peace agreement emphasized the recognition of ethnic groups and diverse culture as a "key focus" (Nilsson & Stiden, 2014:5). In regard to ethnic rights incorporated in the peace treaty is "ethnic autonomy, the abolition of ethnic persecution, linguistic equality, a secular state, and regional decentralization" (Jones & Langford, 2011:373). In accordance with the peace agreement, the Nepalese government implemented several legislative steps and adopted an inclusive strategy to ensure Indigenous peoples' participation in various state structures.

The year 2006 -2007 is landmark periods in Nepalese politics. It not only brought an end to the Maoist decade-long conflict, but it also dissolved Nepal's absolute monarchy. It compelled the King to surrender ultimate power and reconstitute the parliament, which he had dismissed during his active rule. On December 28, 2008, the "parliament was reconstituted, and Nepal was declared a republic, ending the country's 250-year-old monarchy" (Limbu, 2020:4). In 2007, the Nepalese Government adopted UNDRIP and ratified ILO 169. UNDRIP and ILO 169 is an important international legal framework for ensuring Indigenous rights. International

Indigenous human rights law holds the Nepalese government accountable for ensuring the state's adherence to the appropriate protective measures for Indigenous peoples in Nepal.

Various transition since 2006 onwards have strengthened and supported the issues concerning Indigenous people rights than in previous years in Nepal's history. Referencing the views of Professor Yash Ghai, Roy and Henrikson (2010:9), explained the various transition periods as a journey transition:

From monarchy to republic; transition from authoritarianism to democracy and human rights; transition from hegemonic to a participatory system of governance; transition from a state wholly pervaded by one religion to secularism; and transition from a centralized unitary system to decentralization and autonomy.

Nepal's progress toward resolving Indigenous rights concerns has been modest during the state's transition from one to another, including periods of unstable government. However, the period after 2006 saw the Nepalese Government adopting various measure to address Indigenous people's concern. The implementation of various policies ensured effective participation of Indigenous people in various state activities. In addition to that, the incorporation of legal obligations into domestic legislations and policies, has paved way for the construction of various implementation programs.

2.6 The ratification of ILO 169 in Nepal: Initiatives taken by different organization

The Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) is committed to protecting, promoting, and defending Nepal's Indigenous peoples' rights. LAHURNIP produced a “feasibility assessment study in 2004 after examining the legal background” (NHRCN, 2019:3), emphasizing the necessity of Nepal ratifying ILO 169. Similarly, in 2004, a national symposium on Indigenous Peoples' Rights was held. The conference was attended by “Rajparishad Standing Committee⁴ Chairman and former ILO

⁴ was a constitutional body in the Kingdom of Nepal in which the monarch selected the leaders of other constitutional bodies and numerous members. The monarchy was abolished in 2008, and therefore so were the king's councils.

Director Laila Tegmo Reddy, as well as delegates of Indigenous communities in other countries” (NHRCN, 2019:3). This seminar sparked a debate on indigenous issues and emphasized the importance of Nepal ratifying the ILO 169.

Similarly, on the initiative of NFDIN, an international conference on ILO 169 and Peace Building was organized in Nepal in 2005 (NHRCN, 2019). At this conference, the NHRCN delivered a working paper on the significance of ILO 169 ratification in Nepal. The Nepalese government expressed its desire to ratify ILO 169 by participating in an extensive conversation with national and international Indigenous rights activists, Indigenous peoples. The government also examined the NHRCN's report during the conversations. On August 22, 2007, the Nepalese government “ratified the ILO 169 Convention after a series of investigations, policy changes, and reforms to Indigenous rights law. The UNDRIP was later endorsed on September 13, 2007” (NHRCN, 2019:11).

Currently, Nepal as a Federal Democratic Republic has implemented social inclusion and affirmative action policies to address gender, caste, and ethnic-based disparities. In addition, to that, the Nepalese government has implemented a number of inclusive programs to ensure the equitable involvement of excluded groups such as women and Indigenous peoples in mainstream development plans.

3 Analytical Framework

3.1 Introduction

Based on the qualitative research approach, this research used textual analysis of relevant reports to gather qualitative data. As already mentioned in the previous chapters, limitations brought about by the Covid-19 situation have made it necessary to adopt the textual analysis approach as the main data gathering method for this research. Moreover, due to other financial difficulties in gaining public access to information and communication systems in Nepal, conducting interviews and facilitating survey over internet became almost impossible. Likewise, I limited the source of data to online sources written in English in order to save time from both translation as ordering physical books from Nepal. So, while exploring different topics using available sources, I limited my research to this topic, as the relevant data material are readily available online and are published in English language.

By relying on the qualitative content analysis method to analyze and interpret the data, I am using the NHRCN's and IWGIA's reports as my data source. This thesis also applies the concepts of human rights indicators to structure the content of the reports and relate that to how the Nepalese state comply with Indigenous human rights.

In this chapter I discuss the aspects of Indigenous research methodology, the relevance of human rights indicators, and the importance of textual analysis.

3.2 Indigenous research methodology

According to Linda Smith (2008:173) research methodology as a process of “matching the problem with an 'appropriate' set of investigative strategies”, which helps to shape the research questions, guides the method, shapes the analyses, and helps to address the central problems of the research. Indigenous methodology, according to Denzin and Lincoln (2008), is a convergence of discourses, in which “theories of performance, pedagogy, and interpretive practice come together and produce a focus on performance, interpretive pedagogies, Indigenous inquiry practices, and theories of power, truth, ethics, and social justice” (Denzin & Lincoln, 2008:3). The primary goal of Indigenous research is to analyze the advantages it provides to Indigenous people without bias or stereotype. Engaging with the community and

investigating problems of interest through fieldwork is a crucial component of Indigenous research.

However, due to the Covid 19 situation, I was unable to conduct my field trip and had to shift my research to textual analysis. As a result of my inability to perform field-based research, I am unable to match the research with the relevant Indigenous methodologies. This study was created with the help of a report that provides insight into the Nepalese government's adherence to international Indigenous human rights standards and reflects on Nepalese government initiatives to address Indigenous people's rights. The study aims to provide insight into Nepalese legislation and policies concerning Indigenous peoples' rights, as well as to evaluate the implementation of government programs by investigating the extent to which Indigenous peoples exercise their rights.

Indigenous research is about methodology, but even more is also about providing Indigenous issues a voice and investigating the connection between the state and the Indigenous people. In this regard, Thuen (2006) writes that Indigenous researchers must examine “the changing relationship between Indigenous peoples and the governments and majorities within which they live, as it is revealed in national and international discourses on collective rights” (Thuen, 2006:25). This research focuses on the reforms made by the Nepalese government in national legislation and policy to address Indigenous rights. It will also evaluate the impact of ILO 169 and other international Indigenous human rights requirements manifested in government commitments. This will be done based on the findings of the two reports I used as my data source.

Indigenous research is less about methodology and more about giving Indigenous people and perspectives a platform. Bagele (2012:30) emphasizes the significance of decolonization in research, which she defines as “a process of researching to help victims of oppression and marginalization with a space to communicate their experiences from their frames of reference.” The Nepalese Indigenous peoples experience deep structural marginalization. Being diverse in terms of language, tradition, unique cultural practices, and social life, as a result of the caste system, Indigenous people have faced severe discrimination. Based on the difficult transition in various state structures and governed by international legal framework, the government of Nepal has established and implemented a variety of policies and programs to address the rights

of Indigenous people. The adoption of UNDRIP and ratification of ILO 169 are viewed as significant steps toward eradicating disparities. The state's legal commitment to respect and preserve Indigenous rights is viewed primarily as an immediate obligation. As a result, this study focuses on the Nepalese government's pledges and initiatives to satisfy international legal duties to Indigenous people.

The researcher's engagement in research is crucial in influencing the research. According to Olsen (2017), Indigenous approaches are thoughts on how to do research as an Indigenous and non-Indigenous researcher. Non-Indigenous scholars pursuing Indigenous research should “de-center themselves from prior understanding of the subject” (Olsen, 2017:212). In order to promote an Indigenous research agenda, the researcher must be multivocal and multidimensional, and they must reflect on their privileges and how they affect their research. In regard to my position, although I do not belong to any Indigenous groups, but as a master student in Indigenous Studies, I am aware of Indigenous people’s struggle for their rights and to maintain their identity. I am in the process of expanding my knowledge about global Indigenous people’s status, particularly focusing on the Nepalese Indigenous people’s issues. Therefore, I am taking this research as an opportunity to express the concerns of the Nepalese Indigenous people by highlighting government initiatives to address Indigenous rights issues in Nepal.

In the process of conducting research, according to anthropologist Kuper (2006), researcher should understand the complexities of local situations, including the processes of ethnic-group formation and the meaning of ideologies. In research, researcher “degree of objectivity and detachment” (Kuper, 2006:22) is necessary. Social identity is an integral part of human life, which is always fluid and dynamic and is affected by historical and social changes. Detachment from past experiences, preconceptions, and views is vital when conducting research, but the amount to which the researcher can halt the impact is unknown. Despite their best efforts, “researchers' social status influences how they approach, investigate, and evaluate data; it changes the lens through which they experience the world” (Jacobson & Mustafa, 2019:8).

Researcher detachment from research, for Bagele (2013), is impossible because “the researcher's perceptions of reality, what counts as knowledge and values, have an impact on the way research questions are conceived, research approaches, data-gathering instruments,

analysis, and interpretation and dissemination of research findings” (Bagele, 2013:21). My perception of the caste system differs greatly from the reality of the caste system. Growing up in a mixed-caste society, I witnessed little prejudice between caste groups in many facets of communal life, except in the context of arranged marriages. Arranged weddings include consensual agreements between the couple's families/guardians regarding marriage. As a result, in an arranged marriage, each caste group approaches their respective caste groups to reach a mutual agreement. However, marriage is recognized with mutual understanding inside or beyond the caste group in the case of love marriage.

Bagele (2012:30), defines four dimensions of Indigenous research. First, the researcher has to look into a local phenomenon to identify and define a research issue. The Nepalese Indigenous rights is an issue of local concern I identified in Nepal’s context. In addition, as the Nepal’s Indigenous peoples are spread across the country, the government policies that I am looking into relate to all Indigenous people in the country.

Secondly, according to Bagele, the researcher needs to focus on “locally relevant constructs, knowledge, values, theory and practices that are derived from local experiences and Indigenous knowledge systems” (Bagele, 2012:30). Caste discrimination has significant impacts at the community and regional level than it is at the national level. It was only after the national movement and mobilization of Indigenous people that many Indigenous groups were able to speak out about their rights. Furthermore, international treaties strengthened their right by placing a legal obligation on Nepal to cater the demands of the country’s Indigenous people. In light of that, this research looks into the impact of international Indigenous human rights principles on how local government institution in Nepal accommodate such principles. Specifically, this research examines the impact of Indigenous human rights obligations on national policies.

Thirdly, according to Bagele, “Indigenous methodology can be integrative: combination of Western and Indigenous theories” (Bagele, 2012:30). In this research, Indigenous research perspectives in term of promoting Indigenous rights are combined with concepts such as human rights indicators, applied to structure and analyze the data.

The fourth dimension of Indigenous research is its assumptions about “what counts as reality, knowledge, and values” (Bagele, 2012:30). The research data report is prepared by the Nepalese government to track the realization of the Indigenous human rights and to assess state’s compliance with international treaties. I am taking Bagele’s perspective as the point of departure and try to critically assess state compliance and policies.

3.3 Applying the concept of human rights indicator

Human rights are universal legal protections, and every human being is entitled to them without regard to race, color, gender, ethnicity, language, religion, or other human characteristics. Human rights are safeguarded by international treaties that nations have ratified and are obliged by. According to de Beco (2008), state compliance with international human rights may be examined and verified by using human rights indicators. Human rights indicators help states put their legal obligations into action by providing concrete and practical tools for implementing and monitoring human rights compliance. Furthermore, it provides “information on state activity related to human rights and helps to assess and monitor the promotion and implementation of human rights” (de Beco, 2008:24). However, the question is to what extent states abide by their legal obligations, and to what extent are the right-holders exercising their human rights.

States that have ratified human rights instruments are asked by treaty organizations to produce human rights indicators to monitor their compliance with human rights treaties. These indicators include “components of human rights and hold nations accountable for their human rights duties” (de Beco, 2008:25). Human rights indicators measure state commitment, and state efforts and examine the outcomes. Furthermore, they provide necessary feedback by helping to revise/reexamine unsuccessful policies and identify challenges. The human rights indicators also help in determining the external constraints that the state is unable to overcome. The indicators are divided into three forms: structural (state commitments), process (state efforts), and outcome (results) indicators (de Beco, 2008:34).

According to de Beco (2008), structural indicators measure the ratification of human rights treaties by state and their incorporation into domestic legislation. These shed light on national human rights legislation, and the adoption of specific policies to address the obligation of

human rights treaties. The ratification of the human rights treaties by states does not necessarily contribute to improving the human rights situation, “as it could be an empty declaration made for other reasons. Structural indicators often generate yes or no questions and the data for these indicators are collected from many sources which may be sometimes overused” (de Beco, 2008:42).

Ratification of ILO 169 and adaption of UNDRIP, as well as incorporation of these treaties' provisions into national legislation, by the Nepalese government, can be viewed as structural indicators of state commitment. The same can be said about the formation of the NHRCN responsible for monitoring national and international human rights treaties in Nepal, as NHRCN launch inquiries and conduct investigations into alleged human rights violations. It can also recommend legal or departmental action against human rights violators. Furthermore, NHRCN offers the Nepalese government with required comments and ideas if any treaties are discovered to be not being implemented in compliance with human rights standards.

International human rights treaties bind states with legal obligations for the promotion and protection of human rights. To assess the state transformation of legal commitment into realities, process indicators are used. Process indicators focus on the conduct of the state and evaluate state policies that “aim to implement civil and political as well as social, economic and cultural rights [...] and how far states enable people to participate, respect equality and create accountability mechanisms when implementing human rights” (de Beco: 2008:45). It assesses the activities carried out by states to implement human rights but does not look into the results.

The outcome indicator is concerned with the results of the state's efforts. It evaluates a state's human rights policy, with a focus on human rights protection. It is interested in the consequences of certain government projects. It measures a state's human rights performance and focuses more on results of effort and less on the actual effort. Structural, process, and outcome indicators are complementary to each other (de Beco, 2008:45).

Nepal is a developing country that is still going through various state restructuring processes. This state of affairs is creating difficulties in measuring the outcome of implemented policies. Considering the limited access to requisite data to examine outcome, the focus of this research

is limited to the concept of structural indicator and process indicator. In place of applying the concept of human right indicator to analyze my data, this research utilizes the concept of human rights indicator as a method to structure and discuss the data gathered. While indicators are often based on quantitative information, I apply the concept of indicators as tools of qualitative assessment of human rights compliance (NIM, 2020; Broderstad 2022). In line with that, the discussion chapter is divided into two sections. The first section investigates the structural indicator aspects of the data. It will provide insight into the Nepalese Government ratification of international Indigenous human rights treaties, and its incorporation in domestic legislation and policies. The second section provides insight into the process indicator aspects of the data. This will provide insight into the various government programs that are targeted towards ensuring the commitment of the legislations and policies for addressing the concerns of Nepal's Indigenous peoples.

3.4 Textual analysis research method

Textual analysis in research, according to Lindberg (2017:117), refers to the process where the “meaning of the result is interpreted by identifying, interpreting, describing, and analyzing the specific ideas and the specific ideological content” (Lindberg, 2017:117). Texts are “concrete manifestations of discourse” (Bergstrom & Boreus, 2017:7), and “to analyze the text is to study the empirical domain” (Bhaskar, 2008:56) - “how power is reproduced and how it changes” (Fairclough, 1992:113).

The data of this research are prepared by human rights expertise to inform the Nepalese Government about Indigenous right issues. The first data report is a national report published by the National Human Rights Commission of Nepal (NHRCN). This report is prepared under the supervision of NHRCN's officials: full-time employee who work as chairpersons, commissioners, and secretaries. To be the NHRCN's chairman one to have be a retired Chief Justice or retired Judge of the Supreme Court, or have made tremendous contribution to the protection and promotion of human right, or have spent at least twenty years working in fields of national life to safeguard and promote human rights (Source: www.nhrcnepal.org).

Similarly, to become a member of the NHRCN, one must have contributed to and been active in the field of human rights, be a well-known individual, and be over the age of 40.

Furthermore, must have experience in active involvement and rendered outstanding contribution in various field of national life within at least 20 years. In addition, must be a person of high moral character without political involvement at the time of appointment. This official is appointed by the president upon the recommendation of the Nepal's constitutional council (www.nhrcnepal.org). As a national human rights organization in Nepal, NHRCN is dedicated to protecting the rights that the Nepalese government has pledged to international institutions. In regard to this, the NHRCN report is dedicated to presenting information on Indigenous peoples' situation and government initiatives to promote Indigenous peoples' rights.

The second report is published by the International Work Group for Indigenous Affairs (IWGIA), a global human rights group whose mission is to provide thorough updates on the status of Indigenous Peoples across the world. This worldwide report was created by the IWGIA secretariat, who include Indigenous rights experts and consultants (Source: www.iwgia.org). The articles in the IWGIA report are written on a volunteer basis and reflect the writers' personal views and opinions. The IWGIA report is available in English and Spanish, and published with the financial support from the Danish International Development Agency (IWGIA, 2021).

The Nepalese government's commitment to respecting international Indigenous human rights obligations is measured by the NHRCN and IWGIA reports. The reports also measure the effort taken by the government to meet those obligations, as well as the efforts in ensuring the realization and of Indigenous human rights by the Indigenous people in Nepal. The NHRCN' report is more descriptive in nature, as it discusses a wide range of issues including the Nepal's 2015 constitution. The IWGIA's report is brief content report with updated information about the challenges encountered by Indigenous peoples in Nepal. The texts in NHRCN's and IWGIA's report are normative in form and describes the positive and negative impacts of the Nepalese government policies on Indigenous peoples. Normative arguments are useful in research as they "convey an appraisal of the issue and describe things as excellent or bad, better or worse, in relation to some standard or alternative" (Boreus, 2017:73). The discussion part of this research will use normative reasoning to assess the government commitment in compliance with the ILO 169 legal requirement. Furthermore, the success and challenges associated with the implementation process will be examined.

In research, qualitative content analysis method is useful for examining the attention paid to a certain issue and comparing changes over time. In using this approach, the researcher will examine, “the extent to which something is valued positively or negatively and/or whether there is any difference in such evaluations between different sources or whether the same source makes different evaluations of a phenomenon” (Boreus & Bergstorm, 2017:40).

The IWGIA study analyzes the situation of Indigenous Nepalese peoples. The report examines the situation of Nepalese Indigenous women, provides insight into the human rights action plan aimed at Indigenous people, the progress of self-determination activities, and the problems encountered in exercising free, prior, and informed consent. Furthermore, it provides insight into Indigenous peoples' rights to land, territory, and natural resources by focusing into the areas on electrical transmission and commerce projects, hydropower projects, and national conservation areas.

Both of the reports I chose as data sources are published by national and international social organizations dedicated to the advancement of Indigenous peoples' rights. The main motive for publishing these reports is to highlight the situation of the Nepalese Indigenous people. Furthermore, to inform about the initiatives taken by the Nepalese government and the extent to which Indigenous peoples are exercising their rights. Reports prepared by “social organization, political groups, think tanks, lobby groups, and NGOs”, according to Boreus (2017:72), “enable people to see society in particular ways and persuade it by arguing.” In addition to information on Indigenous people situation in Nepal, both reports discuss the challenges of Indigenous people, while reminding governments about their commitment towards Indigenous rights obligation.

4 Presentation of the data

4.1 The NHRCN report

4.1.1 Introduction and structure

The first source of data for this research is an 88-page, monitoring report published by the National Human Rights Commission of Nepal (NHRCN) in 2019. The report is titled *ILO Convention No. 169 Implementation Status Report*. The NHRCN is a Nepalese constitutional body that promotes, protects, and defends human rights. It was formed as a statutory organization in 2000 under the Human Rights Commission Act of 1997. The commission also adheres to the principles outlined in the Paris Principles - is a set of international standards which frame and guide the work of National Human Rights Institutions. NHRCN conducts inquiries and investigations into suspected human rights abuses and can suggest legal or departmental action against those who violate human rights. (Source: www.nhrcnepal.org).

The focus area of the NHRCN report is on social organization and Indigenous groups initiatives to convince the government to ratify the ILO 169. It also follows up on implementation status of ILO 169 in Nepal, and implementation challenges. In addition, it focuses on the Nepalese Government adaptation of policies and legal measures to meet international Indigenous rights commitment. Furthermore, the Indigenous rights clauses incorporated in Nepal's 2015 constitution is the main legislation discussed in the NHRCN, as well as the challenges Indigenous peoples encounter in exercise such rights.

The NHRCN's report is published to meet the obligation assigned by the Nepalese constitution of 2015 to monitor the implementation status of ILO 169 and to make recommendations in that regard. This report is prepared under the supervision of the NHRCN committee, which consists of human rights professionals and activists dedicated to the preservation and promotion of human rights in Nepal. This is the first report prepared 10 years after the ratification of ILO 169 in Nepal. The data that drove the preparation of this report are based on: issues raised in the process of drafting the Nepalese Constitution of 2015, existing international treaties/national existing policies, and legal issues related to Indigenous rights which the Nepal's government is bound to (NHRCN, 2019).

Similarly, information gathered from the Nepalese government programs implemented to meet the ILO 169 legal obligations, National Human Rights Commission recommendations reports, “published documents including studies and research reports prepared by national and international social organizations working for Nepalese Indigenous People, were also used as data to prepare this report” (NHRCN, 2019:7). The main purpose of this report is to update the implementation status of ILO 169, and to offer recommendations to the concerned parties such as NGOs, INGOs, and the Nepalese Government on the status of Indigenous rights in Nepal (NHRCN, 2019:8).

The NHRCN reports are divided into five chapters. The first chapter examines the global notion of Indigenous peoples and its significance in the categorization and creation of Nepalese Indigenous Peoples. Furthermore, it focuses on government initiatives to protect Indigenous rights, as well as state ratification of international treaties and legal instruments. In addition, objective, methodology and limitation of the report is also discussed. Chapter two provides background information of ILO 169, and process undertaken by state to ratify the ILO 169 agreement. Chapter three discusses the discourse of the global Indigenous identity and its reflection on the Nepalese context, ILO 169 implementation status in Nepal, progress and problems in addressing Indigenous people rights is discussed. Chapter four provide information on international Indigenous human rights mechanism and provide information on the Committee on Elimination of Racial Discrimination, The Expert Mechanism on the Rights of Indigenous Peoples, Special Rapporteur on the Rights of Indigenous Peoples, United Nations Permanent Forum on Indigenous Issues, UN Commission on the Status of Women, The Committee on the Elimination of All Forms of Discrimination Against Women. Chapter five provides recommendation to the Nepalese Government and civil society (NHRCN, 2019).

4.1.2 Consultation and participation

The Nepalese constitution ensures the rights to participate in state institution on basis of principles of proportional inclusion. This is granted to groups who are deprived of social justice such as Indigenous groups, while acknowledging the issue of right to autonomy and self-governance. Reservation policies have been implemented in bureaucracies: in House of Representatives: 35.3 %, in Cabinet 30.8%, in Local Level Election 33.5%, in Judiciary representation 21.05 %, in High Court 9.66 % and in District Court 3 % (NHRCN, 2019).

The value of inclusive participation is also introduced in National Judicial Academy which is the ultimate and supreme authority to deliver justice in Nepal. Furthermore, to make national security more inclusive, the proportional inclusion is introduced in the Nepal's armed force units. Furthermore, the right of Indigenous peoples "to make decisions on issues affecting them is guaranteed under the 2015 constitution" (NHRCN, 2019:30). Though the Indigenous people rights to participation is highlighted in the report, their rights to consultation is not address in the report.

4.1.3 Status of linguistic rights

Nepal as a multi-lingual country. The official language is Nepali using Devnagari Script, however the rest of the languages have been designated as national languages under the 2015 constitution. Similarly, the 2015 constitution ensures the right to use the language spoken by the majority community as the official language in addition to the use of Nepali language as per the laws of the province concerned. In addition, to promote and to preserve the languages of Nepal, the "National languages Commission was formed in 2016 under Nepal's 2015 constitution provision" (NHRCN, 2019:50).

4.1.4 Free-Prior and Informed Consent (FPIC)

According to the NHRCN's report, in the absence of a clear policy and mechanism, FPIC has not been properly implemented in Nepal. Indigenous rights to FPIC are not taken into account when plans and programs are developed at various phases of the planning process in any ministry, department, parliament, or bureaucratic structure. Similarly, communities living in specific project areas are not informed or consulted on the effects of government development projects such as dam building, road expansion projects, hydro-power projects, and electricity expansion projects. Numerous cases have been filed against the government development projects. In regard to the filed cases, NHRCN conducted "monitoring activities to those development areas to assess the effects of the development project" (NHRCN, 2019: 28). Thus, Indigenous peoples are mounting pressure on the government to adopt appropriate policies, laws and regulations to address such issue of non-consultation.

Furthermore, several complaints and lawsuits have been brought against government development projects before the Supreme Court of Nepal, the NHRCN, the United Nations

Human Rights Mechanisms, and the International Labor Organization. Some of complained against development projects are: “the Kathmandu-Terai Fast Track, Khimti-Dhalkebar Electric Transmission lines project” (NHRCN, 2019:39-41). The lawsuit was filed because Indigenous and local communities living in such areas were not notified or consulted before to or during the execution of the development initiatives.

4.1.5 Self-determination, autonomy and self-governance

The right to self-determination refers to Indigenous people rights to determine their political status, and to determine their forms of economic, cultural and social development. According to the NHRCN’s report Indigenous people demand to the federal political system based on ethnic identity is outlined in the 2015 constitution. The constitution makes provisions related to special and protected autonomous regions and has ensured Indigenous people’s rights to make decisions about their economic, social, and cultural development, and to manage their natural resources. Thus, the Nepalese government need to introduce necessary steps for the effective implementation of these provisions, and to enable Indigenous people to freely self-determine their socio-economic interests (NHRCN, 2019:30).

4.1.6 Access to justice

According to the NHRCN’s report, Indigenous people’s representation at the policy-making level and justice system is very low. Among the 19 judges of the supreme courts, only two communities- Newar and Tamang are represented. This questions the government introduced policy regarding inclusive participation and proportional representation. The convention on Civil and Political Rights 1966 to which Nepal is a party has guaranteed rights to have free assistance of an interpreter to the accused of the language that he/she understands for the purpose fair trial. The Indigenous people of Nepal have not been able to fully enjoy their rights as guaranteed by the 1966 treaty. Although some district courts have also made provision for the services of translators, many courts are unable to provide the right translators. This has been causing problem in accessing justice due to language issues preventing the people from presenting their case and getting appropriate response. Moreover, language barrier problem is making it difficult for court officials to understand the case presented to them. This problem

continues to affect information needed to process issues of rights violations (NHRCN, 2019:44-45).

4.1.7 Right to health, and employment

According to the NHRCN's report (2019), the Nepalese government has implemented fourteenth period plan which covers free health services and basic education to marginalized groups including Indigenous people. The strategy has not been properly implemented due to a lack of suitable program and budgeting. Furthermore, the Nepalese government's refusal to maintain Indigenous peoples' traditional healing methods is driving their knowledge system to extinction. Furthermore, modern medicine is displacing old treatment ways; consequently, the Nepalese government's attention is essential to maintain and improve their technique and knowledge system.

Similarly, due to fast growth of enterprises and technology, as well as insufficient government actions, Indigenous people are experiencing an economic crisis and a lack of interest in their traditional lifestyle. For example, the Raute community are known for making wooden household utensils. They trade their wooden items with other communities for other essentials items. The Kumal relies on making clay pots, while Majhi, Bote, Kewat engage in fishing and boat making for their livelihoods. However, the increasing level of intervention and advanced technologies has displaced them and has affected their traditional livelihood system (NHRCN, 2019:56-58).

4.2 The IWGIA's report

4.2.1 Introduction and structure

My second source is the IWGIA global report titled *Indigenous World 2021*. IWGIA is committed to promoting, safeguarding, and defending Indigenous peoples' rights across the world. IWGIA was founded in 1968 with the goal of empowering global Indigenous peoples via diverse activities such as documentation, capacity building, and advocacy on a local, regional, national, and worldwide scale. IWGIA's global reports have been published for 35 consecutive years. The 2021 reports include detailed country reports which is prepared in collaboration with the Indigenous community of authors, scholars, experts, and activists in the

Indigenous field (Source: www.iwgia.org). The IWGIA's 2021 report contains updated data on worldwide Indigenous peoples' difficulties and challenges. My concentration is on the Nepal section of the report, which addresses the difficulties and challenges faced by Nepalese Indigenous peoples. Informative content is covered within 13 pages and is prepared by one of Nepal's leading sociologists and Indigenous activists, Krishna B. Bhattachan who is also representative of the Thakali Indigenous group (IWGIA, 2021:278). The purpose of the report is to inform the global audience about the situation of Indigenous people. The Focus areas of the Nepal's section is on the issues concerning land grabbing, human right's violation in national parks, impact of the climate change, Indigenous women, impact of COVID-19 pandemic, and unstable governance.

4.2.2 Human rights violations in national parks

According to the IWGIA study, breaches of Indigenous peoples' human rights by park administrators and army troops have been documented in national parks and protected areas. Various cases have been filed in the courts of killing, forceful eviction, sexual abuse, harassment, verbal and physical abuse. The authorities of Chitwan National Park forcefully attempted to evict 10 *Chepang* families from a buffer zone in South Central Nepal. In another case, one among the six *Chepang* youths who had gone to mud-water snails from a river inside the Chitwan National Park died. The “father of the victim filed a complaint at the District Police Office claiming that tortured by the Army patrol led to his son death” (IWGIA, 2021:280). Likewise, “Indigenous peoples from Upper Dolpo, who have a customary practice of long-distance trade between Tibet and the lowlands of Nepal, are facing difficulties because the trail path that comes inside the Shey-Foksundo National Park” (IWGIA, 2021:281). Because of the trail path inside the national park, they need to plan their journey according to the park regulation which prevent them to freely plain their journey during the time of seasonal migration.

4.2.3 Land grabbing

According to the IWGIA report, the government's different development projects escalate the conflict between Indigenous peoples and the state. Indigenous peoples' land grabbing has been widely documented in many parts of the country. Protests over land grabbing in Khokana,

Indigenous Newa region, ended in a fight between protesters and police. UNESCO and ILO representatives conducted a field visit to study Nepalese government initiatives and their implications on the Newa's cultural heritage in the ancient sites of Khokana and Bungmati. Similarly, representatives of the Yakthung ("Limbu") clans and LAHURNIP filed a complaint with the NHRCN against the installation of a cable car against a private company. They ask the NHRCN to apply pressure on the government to stop the corporation from damaging their sacred place. By building a cable car without first obtaining free, prior, and informed consent from the surrounding people, the corporation was damaging Indigenous sacred places in order to convert it into tourist destinations. Similarly, Majhi communities in Rabhunwaghat and Ramechhap and Magar in Tanahau are protesting against hydro power project in their respective areas. They are pleading the Nepalese government to stop the project as if the hydropower project “goes through, they will be evicted and lose their land, their livelihood and their culture” (IWGIA, 2021:281-282).

4.2.4 Climate change

The government passed an Environment Protection Regulation Act on 7 October 2020 without consulting or obtaining FPIC of Indigenous peoples. Indigenous peoples are custodians of much of Nepal's biodiversity, instead of acknowledging their expertise in the field of environment, the government excluded them from the environmental discussion. (IWGIA, 2021:283)

4.2.5 Covid_19 pandemic

Nepalese Government imposed nation-wise lockdown from 24 March and lifted it on 21 July 2020. The lockdown period made marginalized and Indigenous peoples lives more miserable than ever. Indigenous peoples died due to a lack of medical attention during the Covid 19 pandemic. In addition, they faced job loss, food hardship, racial and gender discrimination, and interpersonal violence. During lockdown the government introduced various development projects which scaled up the repression and land grabbing and extortion of natural resource in the lands and territories of Indigenous people (IWGIA, 2021:284).

4.2.6 Unstable government

On 20 December 2020, the President dissolved the House and declared elections - the collapse of the elected government within three years of the five-year terms. Unstable government is one of the major reasons for repression against Indigenous peoples. During 2021, cases like violations of human rights and fundamental freedoms, ancestral lands grabbing, forced evictions, the marginalization of customary self-government systems, and cultural genocide was intensified. Initiatives taken by government to implement the ILO 169 and the UNDRIP is not functioning in the full form. In terms of exercising their human rights, Indigenous peoples will face substantial challenges in 2021 and beyond. According to the IWGIA report, the Nepalese government serious attention and global support is more needed than ever before to prevent and to protect the rights of the Nepalese Indigenous people (IWGIA, 2021:285).

5 Indigenous rights in Nepal: government commitment and its challenges

5.1 Introduction

This chapter focuses on the constitutional, legal, and institutional developments of the Nepalese government, as well as the development of plans and strategies to address Indigenous challenges. In addition to the NHRCN and IWGIA reports, I will include information from social organization reports, research papers, and study reports that address government commitments and highlight challenges to their implementation. I have separated the section into two main parts. The first part focuses on the government's commitments, where the concept of structural indicator shed light on the state's commitment. I will explore what the reports and studies say about Nepal's constitutional, legal, and institutional progress. Secondly, leaning on the concept of process indicator, I will focus on the reports information about the government's policies.

5.2 International and national legal and institutional commitments

By ratifying ILO 169, the Nepalese government guarantees that it will respect, uphold, and carry out the legal commitments it is associated it. The extent to which the state has fulfilled its legal obligations is reflected in the state's acceptance, intent, and commitment to act in line with its human rights responsibilities. Through the lenses of structural indicators, the “state's legal activities can be assessed” (OHCHR, 2012:34). Thus, this section will examine the state's development of domestic law to be in compliance with ILO 169 and indigenous human rights responsibilities.

5.2.1 International legal commitments

The Nepalese government has ratified and supported a number of international human rights treaties. Among the instruments are many that are legally and ethically binding on Indigenous peoples. In addition to ILO 169, the Nepalese government has supported and ratified the International Convention on the Elimination of all forms of Racial Discrimination, Indigenous and Tribal Peoples Convention No. 169, International Covenant on Civil and Political Rights of 1966, International Covenant on Economic, Social and Cultural Rights in 1966, Convention on Biological Diversity in 1992, Convention on the Rights of the Child in

1989, Convention on the Elimination of All forms of Discrimination Against Women in 1979, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, and UDHR (LAHURNIP, 2019:26). Nepal abides by and implement these international instruments by reflecting them in the constitution, laws, policies and periodic plans.

5.2.2 Constitutional commitments

5.2.2.1 End of discrimination and special provision

Nepal is governed by the 2015 Constitution, which took effect on September 20, 2015, replacing the Interim Constitution of 2007. The current constitution reflects the most recent legislative commitment that safeguard Indigenous rights in Nepal. The NHRCN report also addressed the government's legal commitment to Indigenous rights in light of the 2015 Constitution. The first commitment reflected in the constitution seek to end all forms of discrimination and oppression “created by the feudalistic, autocratic, centralized, unitary system of governance” (Nepal Law Commission, 2015:6). The provisions included in the constitution not only impose legal obligations on its residents, but also aid in the creation of a peaceful atmosphere and collaboration and cooperation among its citizens.

The constitution has also ensured special provisions for the empowerment of Indigenous peoples and other marginalized communities. Article 18 (2) (3) of the constitution state that “nothing shall be deemed to preclude the making of special provisions by law for the protection, empowerment, or development of citizens, including socially or culturally backward women, Dalits, Indigenous people, and Indigenous nationalities” (Nepal Law Commission, 2015:15-16).

Similarly, the “constitution ensured Indigenous peoples' rights to participate in government institutions based on the principles of proportionate inclusion” (NHRCN, 2019:34). This right is ensured under Article 84(2), which states: “the federal law shall provide that, in fielding candidacy by political parties for the election to the house of representatives [...] representation shall be ensured on the basis of a closed list of [...] Indigenous peoples” (Nepal Law Commission, 2015:39).

Furthermore, the constitution imposes a legal requirement on all political parties to ensure that each group from the list of Indigenous nations is represented in the election to the state assembly (NHRCN, 2019:31). The house of representatives and the state assembly are key decision-making institutions; guaranteeing Indigenous peoples' involvement in these bodies will allow them to articulate their rights more effectively.

Furthermore, the constitution protects Indigenous rights to participate in decision-making on issues that relate to them, “as well as specific arrangements to live a good life while maintaining their distinct identities” (NHRCN, 2019:27). In addition, the constitution asks for affirmative action to strengthen Indigenous peoples, including Indigenous participation on legislative bodies (NHRCN, 2019:21). Article 42 (1) of the constitution provides economically, socially, or educationally disadvantaged groups, including Indigenous people, “the right to participate in the legal system on the basis of proportionate inclusion” (Nepal Law Commission, 2015:26). Indigenous engagement in Nepal's judicial system will aid in the development of norm enforcement, laws, courts, and prisons conflict resolution that is Indigenous friendly and fosters mutual respect among all communities.

Similarly, participation in Nepal’s army by Indigenous peoples and other marginalized groups on the basis of “equity and inclusion” (Nepal Law Commission, 2015:177), is secured by the 2015 constitution. The Nepalese army is a national military institution devoted to the preservation of Nepal's national unity, independence, territorial integrity, and sovereignty. By ensuring Indigenous peoples' participation in Nepal's army, it will aid in the promotion of equal citizen status. In addition, they will be able to defend themselves and others, contribute to societal safety, and promote national unity.

5.2.2.2 Rights to language

Language rights were also given significant consideration in the 2015 constitution. The constitution designated all of Nepal's languages as national languages. Furthermore, it secured the right to add additional languages in the list of official languages of the state. Now, the concerned level, whether national, provincial, or municipal, has the right to introduce a language spoken by the majority in their concern area as an official language in addition to Nepali (NHRCN, 2019:37).

Similarly, the 2015 constitution included a special provision for the development and protection of language and culture, which is codified in Article 32. (1, 2, 3). It ensures that every individual and group have the right to “use their languages [...] shall have the right to participate in the cultural life of their communities [...] shall have the right to preserve and promote its language, script, culture, cultural civilization and heritage” (Nepal Law Commission, 2015: 22-23).

Aside from specific rights, a number of rights granted to all citizens are equally important to Indigenous peoples. The freedom from discrimination based on race, language, religion, gender, social status, physical handicap, or location was guaranteed by the Constitution. It also secured the freedom to practice, defend, and safeguard one's own faith-based religion, as well as the right to defend and control religious places and trusts (LAHURNIP, 2019). Additionally, it has protected the right to free, obligatory primary and secondary education, as well as the right to be taught in one's native language and the capacity to run educational institutions. Furthermore, the right to use one's native language as well as the right to conserve and promote one's native language is guaranteed. Despite the fact that the constitution protects some rights, they are yet to be translated into policies, acts, laws, and regulations. Other less significant provisions of the constitution and legislations concerning Indigenous peoples are being implemented in practice and must be updated (LAHURNIP, 2019:60). Similarly, the Nepalese government has not implemented any unique linguistic strategy or program to safeguard languages on the verge of extinction. The use of mother tongues in the government and non-government sectors is not yet guaranteed. As a result of a lack of programs and policies, many languages are on the verge of extinction, with particular languages and scripts becoming extinct (NHRCN, 2019:48-49).

5.2.2.3 From Hindu state to secular state

Nepalese Indigenous peoples have long asked that Nepal be designated a secular republic, arguing that proclaiming a Hindu state has created religious discrimination among the population. Indigenous peoples' religious traditions inspired by Buddhism, Shamism, or animalist beliefs were overwhelmed by Hindu practice in terms of governmental influence. Indigenous peoples demanded that the government declare Nepal a secular nation and cease religious discrimination, stem cultural prejudice, and create fair and mutual peace among the

different religious groups. In response to a protracted disagreement between religion and state position, the question of secularism was considered throughout the writing process of the constitution. Due to that, the provision of secularism is now established in Nepal's current constitution with mutual consent from all groups (NHRCN, 2019:38).

By proclaiming Nepal, a secular state, the government protected religious freedom, traditional values, and respect for each other's religious views. Not just Indigenous people, but also other religious groups, including Muslims have commended the government's efforts. It also "secured the freedom to practice, defend, and safeguard one's own faith-based religion, as well as the right to defend and control religious places and trusts" (LAHURNIP, 2019:11).

5.2.2.4 Indigenous rights not guaranteed in the 2015 constitution

Although the 2015 constitution is progressive in terms of safeguarding Indigenous rights, it does not include all of the rights and expectations assigned by international treaties on Indigenous human rights. In compliance with ILO 169, the International Covenant on Civil and Political Rights, and the United Nations Declaration on the Rights of the Child, the constitution addressed few rights while excluding others (LAHURNIP, 2019:11).

Similarly, according to the IWGIA 2021 report, the government's statutory commitments regarding Indigenous peoples' rights are not reflected in line with UNDRIP and ILO 169. Furthermore, the report indicates that the Nepalese government has demonstrated little commitment to the recommendations made in response to Indigenous peoples' demand to modify the constitution to specifically recognize the right to self-determination and the rights of Indigenous women. Because of the politically motivated Indigenous agenda, the 2015 constitution has not ensured the Indigenous peoples' collective rights and aspirations (IWGIA, 2021:279).

Moreover, Errico (2020:160) claims that the 2015 constitution does not safeguard Indigenous rights as outlined by International Indigenous human rights standards. According to Errico, the government has taken a step forward by ensuring the right to participation in decision-making, proportional representation in electoral and governmental organizations, and the right to education in one's native language. This also includes the right to build and administer educational institutions. However, by failing to ensure Indigenous peoples' rights to land,

territory, and natural resources, it has taken steps back. It ignores Indigenous peoples' historical oppression and marginalization, as well as their rights to land and natural resources. The lack of recognition for their rights to land and natural resources means that Indigenous peoples are unable to exercise their collective rights and are unable to sustain and protect their political, economic, and social institutions, as well as their lands and natural resources (Errico 2020).

According to report prepared by different organization working for Indigenous peoples rights in Nepal, “the 2015 constitution is backward and discriminatory in comparison to the Interim constitution of 2007” (LAHURNIP et al., 2018:5). In the organizations' assessments, they found that the new constitution does not protect Indigenous peoples' fundamental rights and freedoms. Rather, it perpetuates practice of racial discrimination, exclusion, and marginalization. Indigenous peoples and two political parties, the Sanghiya Samajbadi Forum and the Rastriya Janata Party Nepal, are advocating for the constitution to be rewritten/modified (LAHURNIP et al., 2018).

Scholars such as Ghale (2016:81) claims that the 2015 constitution appears to “provide nothing new”. According to Ghale, in comparison to the interim constitution, the provisions for proportional representation, electoral seats based on population, citizenship, and federal border demarcation are vague and unjust in the 2015 constitution. Proportional representation is decreased from 45 to 40% and is not guaranteed in military, embassies, constitutional wings, and courts. In addition, the number of Madhesi seats in 2015 constitution has dropped in contrast to the interim constitution of 2007. Therefore, the Interim constitution clause need to be re-introduced in order to protect Madhesi rights (Ghale, 2016).

Similarly, in terms of women's rights, both positional and periodic limits are recommended in the context of citizenship. While the constitution expressly prohibits gender discrimination, on the issue of citizenship, discriminatory legislation that treat women differently than males have been enacted. On the question of providing citizenship to their children, it offers Nepali men and women unequal rights. According to the online published newspaper article “Children born to a Nepali father and a foreign-born mother qualify for citizenship by descent; however, children born to a Nepali mother and a foreign-born father will be granted naturalized citizenship” (Pradhan, 2020), giving women less rights than males in Nepal.

5.2.3 National Acts related to Indigenous people's rights

According to the LAHURNIP (2019:12) monitoring report, the Nepal government has various laws/acts that are directly or indirectly relevant to the rights of indigenous peoples. While some acts adequately acknowledge Indigenous rights, others ignored these. According to the study, the Nepalese government must review or update around 300 acts in order to meet ILO 169 and UNDRIP commitments. Some of the acts concerning Indigenous peoples' rights are discussed below.

The National Foundation for the Development of Indigenous Nationalities Statute is Nepal's first act addressing the rights of indigenous peoples. Under this law, the NFDIN foundation was founded to explore Indigenous peoples' social, economic, cultural, educational, traditional knowledge and skills, language and script, history, and religion (LAHURNIP, 2019:15).

The Nepalese government does not acknowledge Indigenous peoples' inextricable connection to land, territory, and natural resources. The Nepal *Land Act* has rejected Indigenous rights to land as stipulated in ILO 169 and the UNDRIP. In 2018, the Land Act was changed for the seventh time to make land available to Dalits, but no provision was made to address Indigenous land rights claims (LAHURNIP, 2019). In order to protect the environment, government has introduced *the Environment Protection Act*. Environmental impact assessment is a vital component of this legislation, which makes it a legal necessity for every development agency in the country to do an obligatory study of the area before beginning any development project. The primary goal of this evaluation is to examine the development project's impact in cultural, social, and environmental terms. The Act was amended in 2018 to include the phrase "local community" and to protect the rights to engage with the local community prior to beginning any development project. Furthermore, a rule was enacted to require provincial governments and relevant local level entities to engage in consultations before engaging in projects related to the environment and have influence on the environment. This legislation extends not only to Indigenous peoples, but also to all local citizens of the country whose environment is being affected by development initiatives (LAHURNIP, 2019:12).

In order to protect and preserve the forests of Nepal the *National Forest Act* is introduced. According to this act, all forests in Nepal are categorized into various kinds. They are national forests, protected forest areas, community forests, leasehold forests, religious forests and

private forests. Except for private forests, all forests in Nepal are controlled by the Nepalese government. Indigenous people have made contributions to the forest ecosystem, which includes living components and physical components such as soil, water, and fertilizers. However, “their participation is undermined by the failure to protect their rights under this statute” (LAHURNIP, 2019:13). Similarly, the ownership of water resources inside Nepal is proclaimed to be in the custody of the Nepal government under the Water Resource Act. This legislation also deprives Indigenous people’s sovereignty over water and natural resources (LAHURNIP, 2019).

Following the introduction of the 2015 constitution, three acts are adopted to address Indigenous issues. The first is the Act on Compulsory and Free Education. This statute “guaranteed the right of diverse populations to receive education in their mother tongue” (LAHURNIP, 2019:13). Similarly, it has secured the right of educational institutions to be administered in their native language. However, this statute does not make provision for government funding for the operation of such entities (LAHURNIP, 2019).

Secondly, there is the act related to *Caste Discrimination and Untouchability*. Due to the fact that the statute has been labeled as caste-based discrimination, Indigenous people have rejected it as invalid and illogical. Before the government imposed the caste system on them, Indigenous peoples were not part of the caste system. As a result of that, they see it as a practice of racial discrimination rather than caste prejudice, and they want the government to address it as such. Thirdly, the *Social Security Act* has ensured the social security rights of economically poor, helpless individual, helpless single women, disables and children. It has also included the social security rights of endangered category of 10 Indigenous groups of Nepal. Under this act, the government has committed to giving 2,000 Nepalese rupees per month as “social security payments to Indigenous communities listed in the endangered category” (LAHURNIP (2019:14).

The Civil Service Act of Nepal is one of the most influential acts for disadvantaged groups in Nepal. This statute, which was passed in 1993, was updated for the third time in 2013 to include a reservation system for several underprivileged groups such as Indigenous peoples in government jobs. It allocated 45 percent of the seats to underprivileged groups, including Indigenous peoples. Considering 45% of 100%, seats are divided into: women 33%,

Indigenous nationalities 27%, Madhesi 22%, Dalit 9%, Disables 5% and backward area 4%. Following the adoption of the 2015 constitution, Indigenous peoples related acts at the province and local levels were established to address Indigenous issues at the local level (LAHURNIP 2019:15).

According to the IWGIA 2022 report, a range of local community activities have benefited from the devolution of government authority at the local level. Under the approach, bottom-up initiatives toward real self-determination with autonomy and self-rule have been established at the community level. For example, the Barbardiya Municipality made a historic decision by recognizing the Barghar, customary self-government system of the Tharu. A guideline for the management of the Barghar custom was published in the local gazette. This is “significant because Indigenous peoples' customary self-government systems are made visible to non-Indigenous peoples and the federal and provincial governments” (IWGIA, 2022:271).

Furthermore, based on ILO 169, the UNDRIP framework and rights ensured by constitution, local government are taking legal measure to address Indigenous issue. The Kirtipur Municipality has passed the Act for management of the Kirtipur City- a cultural protected area, and published the act in the local gazette. The act is introduced to promote and to protect Newar cultural heritage including Guthi: customary self-government system, language, ancient old settlements, lands relating to culture, and development of cultural life. This declaration of cultural autonomy by the municipality is significant initiative towards cultural protection of Indigenous nationalities (IWGIA, 2022:270-271).

Similarly, the government of Nepal has acknowledged the Santhals' community-based judicial practice. The Santhal customary justice system, is customized to local conditions and customary practices around natural resource use. Their customary laws are known as Atu Majhi Baisi, Digor Baisi, and La Bir Baisi. These are oral rules with a local focus. They look into “minor disputes, family/domestic disputes, illicit marriage, divorce, and even the most sensitive issues in their community” (LAHURNIP, 2017:133). If any party is not satisfied with the verdict of Atu Majhi Baisi, that party can escalate to the upper level - Digor Baisi for appeal. If case is not resolved by the Digor Baisi, then it is forwarded to La Bir Baisi, for redress. The La Bir Baisi functions as the highest-level justice by dealing with serious offences such as murder. The judgement takes place in the forest, far away from the villages and communities.

In regard to these, Santhals' customary judicial system is fully functional in the margins of the state's formal laws. Santhal's traditional judicial practice addresses local conflicts among Santhals and between Santhals and their neighbors, avoiding confrontations or costly litigation outside of Santahls' knowledge and economic means (LAHURNIP, 2017).

Likewise, the Nepalese government introduced a mandatory provision for local bodies, district development committees, village development committees and municipalities under "the Ministry of Local Development to allocate at least 35% percent of their budget for the economic and social development of the targeted groups" (NHRCN, 2019:52).

5.2.4 Institutional commitment

To incorporate international legal obligations in the national setting, the government has established a number of institutions to address Indigenous peoples' issues. The National Foundation for the Development of Indigenous Nationalities (NFDIN) was formed prior to the ratification of ILO 169. It is the first national organization formed to address Indigenous peoples' concerns. Indigenous peoples' problems have received special attention since the creation of the NFDIN. NFDIN initiated a variety of initiatives targeted at strengthening Indigenous people. A program that comprised research, publication, seminar and debate series, and sponsorship of Indigenous groups was developed. The "NFDIN also contributed to the legalization of ethnopolitics, with the state considering ethnic issues as legitimate problems, and an official definition of the Indigenous people group" (Ghale, 2016:68).

Similarly, the Nepalese government has established other of the institutions to meet the obligations of the ratified international human rights accords. One of such is the formation of the NHRCN. The NHRCN was founded as a statutory entity under the Human Rights Commission Act of 1997, and is responsible for promoting, safeguarding, and defending human rights, including the rights of Indigenous people. It investigates human rights abuses and suggest legal or departmental action against human rights violations. In Nepal, the NHRCN is in charge of monitoring the status of ILO 169 implementation (Source: www.nhrcnepal.org).

Similarly, the Indigenous Nationalities Commission (INC) was founded in 2018 in response to a 2015 constitutional requirement. The commission is in charge of developing national policies, plans, and programs to empower Indigenous people throughout the country. Furthermore, it

also monitors the progress of government legislation, policies, and programs and gives appropriate feedback, recommendations, and proposals to the Nepalese government in areas where legislative, legal, and institutional reforms are required. INC is also in charge of monitoring the state of ILO 169 implementation in Nepal. In addition to INC, a separate Tharu commission is established according to the 2015 constitution provision. During the constitution-writing process, Tharu groups organized a nation-wide movement to demand acknowledgment of their rights as well as a separate Tharu state. In response, a separately Tharu Commission is formed. This is the special committee formed to investigate exclusively the concerns of Nepal's Indigenous Tharu people. The task of the commission includes empowering the Tharu nationals, conducting studies and research, and making a recommendation to the government on the necessary measures to address Tharu people's concerns (LAHURNIP et al., 2018:5).

In addition, the National Language Commission (NLC) is established in response to the 2015 constitutional provision. The NLC is responsible for the promotion and preservation of Nepalese languages. The main goal of establishing the NLC is to enhance language policy variety by having additional languages for official communication. Additionally, NLC is responsible for developing policies and plans to promote and protect all languages in Nepal (Source: www.languagecommission.gov.np).

5.2.4.1 Challenges of institutional commitment

The Nepalese government's institutional changes are constructive and progressive, according to the NHRCN report review, however they do not cover all of the legal duties stated by UNDRIP and ILO 169. Though the government has established various institutions to address Indigenous concerns, due to a lack of financial and legal authority, they are unable to function as per the demand of Indigenous peoples (NHRCN, 2019:71).

The Nepalese government's funding allocation to numerous Indigenous organizations working for protection, development, and promotion of Indigenous cultures through NFDIN has changed since the 2015 constitution promulgation. From fiscal year 2017-18, the responsibility for financial allocation was granted to the provincial and local governments. Furthermore, the district level budget allotment for Indigenous peoples was also withdrawn. Prior to 2017, Indigenous organizations had direct access to half of the allocated budget, while the other half

was spent on NFDIN's administration. In present times, the Ministry of Local and Federal Affairs is allocating half of the funding to local bodies without any instruction for ensuring access to Indigenous peoples. Thus, “Indigenous people access to the budget is uncertain, and there is no record of budget distribution” (LAHURNIP et al., 2018:14).

Similarly, while the NFDIN has been in operation since 2002 to meet the needs of Indigenous people, it has not been without criticism. The primary problems that Indigenous people faced while approaching NFDIN were its discriminatory attitudes toward Indigenous women. Similarly, NFDIN developed plans and programs were not in accordance with the NFDIN statute. The Asian Indigenous Peoples and Tribals Network noted six issues with NFDIN employment policies (Ghale, 2016), which they criticized:

failure to include excluded Indigenous peoples; failure to address violations of Indigenous peoples' rights; government recruitment of a large governing council; lack of autonomy over finance and resources; lack of devolution of power to regional and local offices; and Indigenous peoples' lack of awareness of the NFDIN (Ghale, 2016:85).

Another factor for the NFDIN criticism was unstable government and government intervention. Since 2006, the executives of the organization have been selected by the head of government. Government interference in NFDIN operations, as well as corruption in NFDIN budget allocation, are hindering Indigenous People from obtaining consistent support. Since the adoption of ILO 169, Indigenous peoples have experienced a number of problems in implementing ILO 169 at the local level. Though certain financial provisions for Indigenous people have existed at the district and local levels since 2007, corruption, including budget misuse, is still prevalent in the country (Ghale, 2016:69).

The authority to execute full legal obligation was limited in the founding of the National Indigenous Commission and the Tharu Commission. The two legally established Indigenous peoples' institutions have no quasi-judicial authority to take action against human rights breaches. Meanwhile, these commissions lack the authority to receive complaints, investigate human rights abuses, including discrimination, or make recommendations for future action. Furthermore, “these commissions lack the ability to offer recommendations to the government,

as well as the capacity to condemn institutions that disregard their recommendations and also lack budgetary and administrative autonomy” (LAHURNIP et al., 2018:5).

Because the government has not clearly stated the formation of a separate Tharu commission, scholars and many Indigenous groups have criticized it by arguing that the government is dividing Indigenous Peoples, creating resentment and disparate agendas, and essentially implementing a divide and conquer strategy. According to the report published by LAHURNIP (2019:11), the foundation of the INC was sufficient to address the concerns of Nepal's Indigenous peoples. The formation of a separate Tharu commission is unnecessary since it would have an impact on the financial situation. Similarly, as the Tharu are recognized as an Indigenous group, a separate commission gives them extra attention over others who appear to be insignificant. Considering that there is already an Indigenous commission to handle Tharu matters, the development of a separate Tharu commission seems impractical to Ghale (2016:81). Ghale states that the special attention on Tharu will deprive the rest of the Indigenous people. Furthermore, it will have an impact on other Indigenous peoples, who need urgent attention than Tharu in terms of promoting socio-cultural, economic, and political development.

5.3 The Nepalese government policies, plans and programs

Once the state has committed itself to international human rights, such obligations are further transformed into intended policies. To achieve the intended objective, the state must implement further activities to satisfy the commitment. How the state convert commitments into policies and plans can be highlighted through the lens of process indicators.

5.3.1 National policies and its challenges

A national policy statement is a mechanism of transforming a state legal commitment into an actionable strategy. According to LAHURNIP (2019) monitoring report, there are approximately 90 policies in Nepal that are directly or indirectly relevant to Indigenous peoples' rights. Only a handful of the 90 policies comply with principles of ILO 169 and the UNDRIP, while the majority are out of date in the light of current situations (LAHURNIP, 2019:16). Some of the policies concerning Indigenous peoples' rights are examined below.

The government has implemented the Climate Change Policy to address the direct and indirect effects of climate change, and to offer requisite coping measures. Though these regulations do not specifically include Indigenous peoples, Indigenous communities are adversely affected by climate change than other groups. They live in the high mountains and remote areas of Nepal, where climate change is causing havoc. Some of the major difficulties confronting Indigenous groups as a result of climate change include flooding, landslides, avalanches, barren terrain, and low food and fruit production. Despite the implementation of programs and initiatives in various locations to mitigate the difficulties during periods of climate change crisis, very few Indigenous peoples benefited from these (LAHURNIP, 2019:16).

Indigenous communities' control and ownership over land, territories and natural resources was brought under state control with the introduction of various law and policies. Among these laws and policies is *The Forest Policy*. After taking full control of all of Nepal's forests, they were nationalized and subsequently handed over to others as community forests. (LAHURNIP, 2019:17). More than 17000 community forests in Nepal are under the ownership of non-Indigenous people. The forest policy does not adhere to or include the aims of ILO 169 and UNDRIP. Similarly, Indigenous communities' rights to land is also not protected under government *Land Use Policy*. Nepal's land policy classifies the land into eleven categories such as agricultural zone, residential zone, commercial zone, industrial zone, mines and minerals zone, excavation zone and other zones as specified as per necessity. Because of the various development projects undertaken by the government and private sector, many Indigenous communities have been displaced. Furthermore, development activities contribute to soil erosion, deforestation, and a decrease in the quality of land resources and future agricultural output. It has divided communities, caused land loss, and has affected livelihoods (LAHURNIP, 2019).

Despite Indigenous peoples' dissatisfaction, state development projects are carried out or planned without FPIC and without their meaningful input in decision-making. Twelve national parks, one animal conservation area, one hunting reserve, six protected areas, and thirteen buffer zones are located on Indigenous peoples' areas. Indigenous peoples who had lived in these locations for millennia were uprooted, losing their livelihoods and experiencing food insecurity. Despite the concerns and protests from the affected Magar and other Indigenous

peoples, the government deployed the army in several places in order to limit Indigenous people mobilization. Every year, the hunting reserve generates millions of rupees in revenue, out of which Indigenous peoples receive a disproportionate share (LAHURNIP et al., 2018:12).

The Gender Equality and Social Inclusion Policy aims “to promote gender equality and social inclusion by addressing existing disparities and gaps in access and control over resources, services, information, opportunities, and the distribution of the power in decision making” (LAHURNIP, 2019:17). The policy is target at women, children, Dalit, Indigenous people, Madhesi, Muslim, economically disadvantaged groups, and the ‘backward’ class. This policy has not been changed in response to contemporary calls to address gender diversity. Likewise, this policy does not have special focus for Indigenous women and Indigenous women with disabilities (LAHURNIP, 2019).

The policies that were introduced before the ratification of ILO 169 have not been amended to fit the present context. One of such policies is the *Hydro-electricity Development Policy*. This policy ignores Indigenous people’s and local communities' right to free, prior, and informed consent and consultation in carrying out, hydropower development projects (LAHURNIP, 2019). A second policy the *Local Infrastructure Development Policy*. This policy focuses on local development through infrastructure investment and employment creation. The infrastructure and employment strategy encourages the use of local materials and tools to a high degree that is feasible. The goal of this policy is to support the local economy and provide indirect work opportunities for local businesses. Longer-term policy consequences include greater access to transportation, markets, health, education, and other socioeconomic goods and services that contribute to the local growth of a community. This policy, however, makes no mention of Indigenous peoples' rights in particular, needs re-writing to reflect the changed circumstances (LAHURNIP, 2019:18).

The *National Cultural Policy* was introduced after the promulgation of the interim constitution of 2007. Hence, the policy has incorporated the spirit of Indigenous people. It has acknowledged the diversity of culture in Nepal and assures the protection and promotion of diversity. The policy is progressive in nature and has committed to improve the laws according to the provision of ILO 169. It is also committed to introducing new laws as per changes over

time. This strategy has emphasized the importance of strengthening state organizations in charge of conserving and maintaining cultural resources. Similarly, the policy has committed to conducting ethnicity-based (nation-based) research and data collection on all cultures (LAHURNIP, 2019). Furthermore, the *National Intellectual Property Policy* was introduced after promulgation of the 2015 constitution. The notion of intellectual property was introduced to aid in economic, social, and cultural progress. The policy's goal is to clarify and govern the intellectual property rights guaranteed by the Constitution as a basic right. Nepal became a member of several international organizations over the course of “60-70 years, including the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO). All international legal and moral commitments were considered in the policy” (LAHURNIP, 2019:18).

The *Rangeland Policy* was created following the ratification of ILO 169 for the scientific management and conservation of rangeland, as well as its use in sustainable development. The state took control over rangelands including pasturelands, and declared the land as protected areas. Later concerted it into conservation areas and wildlife reserves and handed over to community forest groups or in control of national security. The grazing land and medicinal plant harvesting from rangeland are under the supervision of community forest groups and protected area authorities. As a result, “animal husbandry declined, putting the livelihoods of Indigenous people and locals in jeopardy and forcing them to flee from their territories” (LAHURNIP, 2019:19).

5.3.2 National development plan and its challenges

In Nepal, the National Planning Commission (NPC) is in charge of developing development strategy, periodic plans, and sectoral policies for the country's overall development. The NPC evaluates resource requirements, raises funding, and distributes cash for socioeconomic development. It functions as a central monitoring and evaluation institution for development policies, plans, and programs. The NPC also serves as a forum for development ideas and initiatives from scholars, corporations, civil society, and development partners. Since 1956, the NPC has proposed a five-year national development plan (Source: www.npc.gov.np).

Only since the 'Eight National Plan' (1992-1997) has Indigenous peoples' development been a fundamental aspect of national development. The Eight Plan included programs aimed towards Indigenous peoples. Likewise, the 'Ninth National Plan' (1997-2002) included an initiative called 'Adivasi and Janajatis in Development Programs.' The plan's focus was on Indigenous people's social, economic, and cultural development. Furthermore, "it emphasized the need for a council to coordinate government initiatives for Indigenous peoples, as well as the need for district-level committees to carry out such programs" (Ghale, 2016:68).

The 'Tenth National Plan' (2002-2007) was more progressive than the eighth and ninth National Plans. It included far reaching projects for addressing Indigenous concerns. The tenth plan also served as the government's 'Poverty Reduction Strategy Paper.' It implemented a social inclusion agenda for Indigenous peoples. However, due to poor plan execution and insufficient provisions, the government was unable to meet the anticipated goals. Similarly, Indigenous peoples were not involved or consulted in the development of the plan. The exclusion of people has been a major factor for the plan's failure (Bhattachan, 2012:16).

Due to state reforms and government instability, the five-year development plan was reduced to three years between the 'Eleventh, Twelfth, Thirteenth and Fourteenth National Plans'. Meanwhile, the government's efforts to address the concerns of Indigenous peoples during the period remained insufficient. Financial resources were allocated in each period of the plan but "due to lack of proper policy monitoring measures, political influence and intervention, the plans did not achieve the targeted result. Due limited access to productive resources and power politics, Indigenous peoples hardly benefit from new program and policies" (LAHURNIP, 2021:1).

The 'Fifteenth National Plan' (2019/20–2023/24) is now in effect. According to the LAHURNIP report (2021), about 9,230 billion (Nepalese currency) budget is estimated for this plan to proceed. Out of the total budget, "39% is allocated to the public sector, 55.6 % to the private sector, and 5.4 % to the cooperative sector" (LAHURNIP, 2021:2). Following extensive internal discussions, Indigenous peoples' representative and professional groups engaged in the Fifteenth National Plan formation process and stated their challenges, demands, and goals. They completed a plan document for the development of Indigenous peoples that is based on the ideas and objectives expressed in the 2015 Constitution, as well as Nepal's adherence to

international treaties. The Fifteenth National Plan included some ideas and activities recommended by Indigenous peoples' representative, but several are omitted in the final project of the plan (LAHURNIP, 2021).

5.3.3 Affirmative action: practice of reservation/quota system and its challenges

Prior to the ratification of ILO 169, the Nepalese government introduced the 'Governance Reform Program' of 2001-2005 to assess the rate of marginalization and implement remedial measures and legal action to empower disadvantaged communities. As part of the remedies under the program, the government introduced the affirmative action policy. Under the affirmative action policy, the government implemented quota reservations for underprivileged populations, including Indigenous peoples, to minimize the injustices experienced by ethnically, geographically, culturally, and religiously defined groups (Subedi, 2016:8). Since 2006, the government has used the reservation system in different social and political contexts. The Civil Service Act of 1991 "was amended in 2007 to implement quota reservation in civil service" (Dong, 2016:125). The civil service is one of the main government sector employers in Nepal. Employment in the civil service is one of the indicators of social status in Nepal. The "goal of reservation system is to bring underprivileged groups on an equal footing with the privileged communities" (Subedi, 2016:11).

The quota system has helped in the reduction of inequities between different castes and disadvantaged groups, as well as developing a culture of mutual respect. The allocation of quota in government job, educational institution and national securities, according to Dong (2016:138), has provided an opportunity for historically disadvantaged and marginalized groups. He believes that this will help to bridge the gap between Indigenous and non-Indigenous peoples while also reflecting greater diversity in government structures. However, he is displeased with the quota policy because he perceives it to be a restricted and non genuine involvement (Dong, 2016).

The quota system, however, does not apply to higher-level posts and special classes in the civil service. This has according to Dong (2016), limited Indigenous people's access to higher positions and prevented them from playing a vital role in making decisions, implementing, and devising government programs and policies. Indigenous peoples' equitable participation at all

levels protects their right to voice out their concerns to influence national policy. It will also encourage mutual understanding and respect among community members, which will aid in the elimination of discriminatory social and cultural attitudes, promote national unity and peace in both the private and public sphere. In order to establish a just society and bridge the gap between the state and various groups, inclusive provision in all government posts is important (Dong, 2016:139).

However, Dong (2016), suggests that the quota system be updated and implemented based on the context rather than caste and race. Reserved seats should be made available to disadvantaged groups with a House Development Index (HDI) lower than the national average. Those with HDIs higher than the national average should thus compete in open competitions. At the very least, a district-wide examination of HDI for various castes and ethnic groups should be conducted, and reservations should be imposed at the district level depending on the results. Furthermore, affirmative action should be implemented only when Nepal's numerous groups are proportionally represented in the country's civil service. This is because “the ultimate objective of affirmative action is a focus on every individual's right to participate in the public service” (Dong, 2016:136).

Madhusudan Subedi (2016) emphasizes the need of a quota system and suggests that it be shifted from caste and ethnicity to marginalized and underprivileged persons. Subedi argues that the government's quota system is unsuccessful in practice. It has benefited the wealthy disadvantaged instead of the excluded groups that are in urgent need of the quota policy. Those who benefit from the policy are the children of parents who are previous beneficiaries of education and employment quotas. The beneficiaries of these inclusive policies are mainly Dalit and Indigenous elites rather than the marginalized Dalit and Indigenous populations. For Subedi, a caste/ethnic identifier is insufficient to assure the inclusion of underrepresented and disadvantaged groups. So, the quota system or any special program should be based on class, not caste or race to ensure equal participation. To implement policies of equity and social justice in Nepal, “state policy must focus on disadvantaged households that lack access to economic opportunities, education, and health facilities, regardless of caste or ethnicity” (Subedi, 2016:13).

Though the quota system has aided indigenous people in a variety of ways, it has not resulted in a sufficient number of job opportunities for them. It has only attracted a small number of individuals, and “those lacking qualifications and technical abilities have been unable to take advantage of the reservation arrangements” (NHRCN, 2019;57-58). In search of a higher education and better opportunities many Indigenous people are migrating to regional, national, and international destinations. The effect of this situation is that their traditional skills, knowledge system, and traditions are dwindling.

The report prepared by Indigenous Peoples' Network for SDGs, Nepal (2017:3), “shows that the poverty level among indigenous peoples is higher than that of the ruling caste groups”. The livelihood of the disadvantaged Indigenous community is most affected. Due to socioeconomic factors such as population size, language literacy rate, housing style, landownership, employment, and access to higher education, the Chepangs in central Nepal are the most marginalized Indigenous communities. The Chepangs have been unable to profit from the government's quota system and other targeted initiatives. Despite the government's monthly stipend, the Chepangs are on the verge of cultural extinction owing to a lack of financial support and adequate policy initiatives. Similarly, Indigenous women and individuals with disabilities confront survival issues as well as many forms of prejudice. They are unable to participate in the state's initiatives, and there is no specific provision for them which ensures their participation (Indigenous Peoples' Network for SDG, Nepal 2017).

5.3.4 Sustainable Development Goals 2016-2030

All member states of the United Nations have adopted the Sustainable Development Goals (SDGs), commonly known as the SDGs in 2015. It is a global call to action to eradicate all forms of poverty, safeguard the environment, and ensure that all people live in peace and prosperity by 2030. The objective is to create peaceful and inclusive societies for long-term development, ensuring equal access to justice and the creation of effective, responsible, and inclusive institutions at all levels. The SDG's core tagline is 'leave no one behind' highlights the need for common concerns and solutions without referring to any specific community (Nepal Planning Commission, 2021:iii).

Nepal has developed the SDGs status and roadmap 2016-2030, while the institutional frameworks required for effective implementation are also put in place. The SDGs are being

mainstreamed and localized by the Nepalese government at all three levels of government-federal, provincial and local. The SDGs have been successfully incorporated into Nepal's national development frameworks. In addition to that, “periodic plans, medium-term spending frameworks, yearly budgets and programs, and sectoral strategies are linked with the SDGs and supported by a national monitoring and evaluation guideline” (Nepal Planning Commission, 2021:10).

The “private sector, cooperatives, and civil society have also stepped up to promote and ensure that the SDGs are integrated into all development efforts” (Nepal Planning Commission, 2021:30). However, there are certain challenges, particularly in terms of sub-national level mainstreaming, resource mobilization, data management, coordination, and monitoring and evaluation for successful SDGs implementation. Furthermore, the effects of the COVID-19 pandemic are viewed as a significant barrier to speeding up efforts towards meeting the SDGs. Nepal is looking into measures to ‘mitigate the worst effects by establishing a recovery strategy with the aid of the SDGs’ (Nepal Planning Commission, 2021).

According to the report prepared by LAHURNIP (2019), the SDGs have set 17 sustainable development objectives with 169 targets. One-third of the 169 targets are in some forms linked to UNDRIP. Similarly, many programs aimed at all citizens in general will benefit Indigenous people. For example, under SDGs, Nepal intends to decrease extreme poverty to 5% and multidimensional poverty index to 7% by 2030. In addition, the Nepalese government has also included the SDGs aim in its five-year national plan in order to reach the SDGs target. But for effective results to eradicate poverty, the government “need to address the specific issues affecting the elimination of poverty of Indigenous people which is not outlined in the SDGs strategy” (LAHURNIP, 2019:53).

5.3.5 Participation of Indigenous peoples in constitution writing process 2008-2015 and its challenges

The proportional election method was used for constitutional assembly (CA) elections from 2008 to 2015. According to the IDEA report (2015), with the introduction of the proportional election system, all political parties were legally obliged to select their election candidates in such a way that the total makeup of the country's population is reflected proportionally. In terms of representation, the first CA became the country's most representative assembly in

Nepal history. However, the first CA failed to deliver a new constitution and was later dissolved in 2012. The Constitution was ratified in September 2015 under a second CA, which ruled from 2014 to 2017 despite the April 2015 earthquake and subsequent political and Indigenous peoples protests (IDEA, 2015:22).

Table II: Population groups and party representation in the first CA (2008–2012)

Population group	Proportion of Nepal's population, 2001	Representation in CA	Political parties*	Share of seats
Hill Chhetri, Brahman, Thakuri, Sanyasi	30.9%	33.2%	UCPN (Maoist)	238 (39.6%) ^ψ
Hill Dalit	7.1%	5.6%	NC	114 (18.9%)
Hill janajati	28.5%	26.9%	CPN (UML)	109 (18.1%)
Madhesi janajati	8.7%	8.1%	MJFN	53 (8.8%)
Madhesi castes	14.8%	20.8%	TMDP	21 (3.4%)
Madhesi Dalit	4.7%	2.3%		
Muslim	4.3%	2.8%	Other minor parties including independent members	66 (10.9%)
Women	50.04%	32.7%	Total	601

Source: UNDP & SPCBN, 2014

As seen in the table above, in the first CA Indigenous people representation from Hill janajati (Indigenous people living in mountainous areas) made up 28.5 percent of the overall population (26.9 percent). Similarly, 8.7 percent of Madhesi janajati (Indigenous people living in plain regions) made up of overall population (8.1 percent). In addition, relatively equal representation from other groups such as women, Muslims, Madhesi Dalit, and Madhesi was ensured. In terms of representation, this makes the first CA more inclusive.

According to Nilsson and Stidsen (2014), Nepal's drafting of a new constitution was an opportunity for the Nepalese government to correct historical injustice. Indigenous peoples and representatives of other marginalized groups actively participated in the constitution-writing process to articulate their demands. Since the commencement of the constitution-writing process, the IWGIA, with the help of LAHURNIP, was constantly monitoring Indigenous people's efforts to ensure their right in the constitution. Similarly, IWGIA provided "constant guidance and assist Indigenous people in securing and defending their rights under the new constitution" (Nilsson & Stidsen, 2014:3).

During the first CA, Indigenous activists and representatives concluded that the proportional representation system, implemented through the political parties, was insufficient for securing Indigenous people's legitimate and meaningful participation. This is because limits were imposed on Indigenous CA members by the political parties they represented. They were not allowed to freely engage in the discussion process, while their suggestions on Indigenous agendas was repeatedly ignored. Indigenous attorneys brought this issue to the attention of both the national court system and international bodies. In regard to this, a complaint was forwarded to Nepal's Supreme Court, the CERD Committee, and the UN Special Rapporteur on the Rights of Indigenous Peoples, alleging that the CA method violated international human rights law (Nilsson and Stidsen, 2014:6).

The Nepalese government aims to preserve and protect Indigenous peoples' rights through the adoption of inclusive policies and a proportional representation model. However, genuine participation and consultation rights for Indigenous people are still not guaranteed. In regard to Indigenous people participation in CA, Cats- Baril (2014) writes that the first CA is most inclusive and representational in political assembly in Nepal's history. Out of 601 elected representatives, 191 were women representatives, 196 Madhesi representatives, and 192 (37 %) Indigenous representatives. For the first time, Indigenous people were fairly represented in numerical terms at the core of state's authority. According to Baril, though the process of participation was inclusive in representation and proportional in ratio, the agenda it carried was highly political. Bound by political parties, Indigenous people's core agenda was overshadowed. The Indigenous representatives were required to follow political party orders

and adhere to the political party agenda. This demonstrates that the Nepalese government's commitment to the implementation of ILO 169 'remains a failure' (Cats-Baril, 2014:55).

Though the Nepalese government aims to achieve the international Indigenous human rights criteria through inclusive and proportionate representation of Indigenous people, they are unable to do so owing to a lack of effective planning, strategy, and initiatives. Despite the fact that Indigenous representatives were represented in an equal proportion to the overall population in CA from 2008 to 2015, "no direct and meaningful representation was ensured." Similarly, the "principle of FPIC was not duly respected throughout the legislative process" (LAHURNIP et al., 2018:3).

According to research provided by the International Institute for Democracy and Electoral Assistance (IDEA) (2015), the first CA ensured more equitable representation of all groups in terms of total population than the second CA. In the second CA, women were represented by around 30% (of 33%), Indigenous people at 31% (of 37%), Madhesi at 26% (of 35%), and Dalits at 7%. (of 8 %) of the total population. The "reduction in representation calls into question the government's inclusiveness objective" (IDEA, 2015:19). Furthermore, earthquakes and political conflicts over province demarcations by Madhes-based and Tharu political organizations created challenges in the process of second CA. However, the new constitution was introduced without addressing the requests of several protesting organizations, "prompting many groups to express their unhappiness with the new constitution" (IDEA, 2015:19).

According to Errico (2020), though the CA ensured proportionate participation from all groups, their representation through political parties limits their specific agenda. In terms of Indigenous peoples' participation, Indigenous members in the CA were "represented and selected via political parties and were thus bound by the political agendas of these parties" (Errico, 2020;160). Although Indigenous participation was achieved, the agendas they presented in the making of the constitution were more of political agendas and less representative of Indigenous people's agenda. The lack of intentional participation of Indigenous peoples in the constitution-making process remains a missed opportunity that will bring long-term consequences on Indigenous peoples' situation.

On the contrary, tight restriction was imposed on the formation of an Indigenous Peoples Caucus⁵ in the CA. The political parties often impose restriction against the constitutional and legal initiatives proposed by Indigenous members. Though the constitution was promulgated in 2015, government deploying troops in Tharu, and Madhesi communities to repress their movements and demands. The notion of inclusion and proportionate representation in the political structure is recognized in the constitution as a basic right of Indigenous people. In practice, however, it is a restricted right. Indigenous representation is more political and strictly adheres to party lines. Furthermore, the constitution makes no mention of Indigenous inclusion in the legislative, executive, municipal and state administrations, in which Indigenous people representation is 'exceedingly low' (LAHURNIP et al., 2018:2).

According to Ghale (2019), the 2015 constitution does not provide any new guarantees for Indigenous rights. Thus, the constitution, promulgated by exclusive procedure and content, invalidated the presence of Indigenous representative in CA and Indigenous peoples' rights. It rather pushed Indigenous people, "further into isolation, thereby treating them as second-class citizens" (Ghale, 2019:82). Due to political party interference and restrictions, the Indigenous delegates for the CA was unable to voice their aspirations. The Indigenous delegates were divided by political parties, and instead of forwarding an Indigenous agenda, they were forced to align with their respective party agenda. Despite their interest in Indigenous issues, prominent political leaders ignored the requests and agendas of Indigenous people. The major political parties often exercised their veto power throughout the voting process. Whenever Indigenous leaders refused to vote in line with the veto, they are expelled from their respective political parties (Ghale, 2019: 76).

5.3.6 NHRCN Regional Offices

According to the NHRCN's report (2019), prior to ratification of ILO 169, the NHRCN established several regional offices and sub-regional offices in districts of Nepal to address the Indigenous peoples Formed during insurgency⁶ period to look into the situation of Indigenous people and provide easy and effective service, these offices are now established as provincial

⁵ an informal venue in Constitution Assembly to address the Indigenous People agenda

⁶ Nepal endured a civil war from 1996 to 2006 launched by the Communist Party of Nepal (Maoist).

and sub-provisional offices. These offices have been working to protect and promote human rights of Indigenous nationalities through co-operation and coordination with the human rights defenders, journalists and various organizations. In addition to that, a provision of focal officers has been assigned to look into the matter of the Indigenous nationalities (NHRCN, 2019: 61).

Similarly, as stipulated in the peace agreement document, the government established the Indigenous Nationalities District Coordination Committee. The government has also appointed district coordinators in 77 districts of Nepal. The main objective of the district coordinator is to ensure the participation of Indigenous nationalities in the formulation of local-level plans and development, as well as in decision-making. Furthermore, upon the ratification of ILO 169, the government designated a focal point in each ministry. The focal person is in charge of gathering Indigenous concerns and assisting the government in developing plans and policies in accordance with ILO 169 requirements (NHRCN, 2019:iii).

5.3.7 Language program

To promote and protect languages, the Nepalese government adopted various language inclusion measures in state owned national media institutions. Radio Nepal, the state-owned radio broadcasting organization, broadcast most of its programs in Nepali. It also carries its news bulletin and several programs in English language and in 18 different languages spoken by the various Indigenous groups (Source: www.radionepal.gov.np). Similarly, the state-owned television station (Nepal Television) broadcasts its program in Nepali, English language and Indigenous languages such as Maithali, and Nepal Bhasa (Source: www.nepalonline.com). In addition, the Gorkhapatra- the state-owned newspaper, has been publishing in 38 languages since 2007 (Setopati, 2019).

The Nepalese government recognizes language as an important component of a people's identities. In line with that, the government has issued a 'Multilingual Education Implementation Directives' (NHRCN, 2019:50), for the implementation of multilingual education based on mother tongues. This directive aims to ensure the incorporation of community's native language into the school system rather than as a distinct educational system. This effort is supposed to be helpful to promotes the use of local languages and provides an opportunity for students to practice speaking their native language in school.

Moreover, the government is pursuing its commitment to providing “equitable access to educational services to girls, linguistic minorities, Dalits, and Indigenous peoples through the *Nepal Education for All* program” (Subedi, 2016:13). Various government programs are currently in force to preserve and promote the language, culture, literature and arts of Indigenous nationalities and the endangered communities. A scientific study of the ethnic languages was organized in Kathmandu district, Lalitpur district, Bhaktapur district and Kavrepalanchowk districts. Mother tongue literacy and training programs have been completed for 19 different communities and 1000 participants have been trained on this subject. Financial subsidy is being provided to the organizations and institutions working with various culture promotion programs for the preservation of cultures of various Indigenous communities. The cultural promotion programs are establishing a program to safeguard the languages, scripts, art, culture, cinema, and legacy of many castes and ethnic communities (NHRCN:2019:18).

The joint submission report developed by six organizations⁷ working to advocate for Indigenous peoples' rights in Nepal addresses several concerns related to language rights in education and media (Cultural Survival et al., 2020). The joint report also highlighted Nepalese government initiatives to safeguard Indigenous peoples' languages. To preserve and protect languages, the department of education has implemented about 69 local languages as mediums of instruction in basic classroom teaching and learning activities. Similarly, the curriculum development center has created 24 curricula in several languages, while the national center for educational development has also created teacher training packages. However, due to insufficient planning and implementation strategy, the desired results have not been accomplished. In education, students are intended to be the primary rights holders. Parents and Indigenous communities have the right to participate in decisions regarding their children. Yet their opinions and choices are rarely heard. As a result of “the Nepalese government's inadequate measures and limited information dissemination regarding the government's language promotion initiative, targeted communities have not profited as intended” (Cultural Survival et al., 2020:7).

Similarly, in media setting the state initiatives is insufficient according to the report prepared by organization working for Indigenous people's rights in Nepal (Cultural Survival et al.,

⁷ Sunuwar Sewa Samaj, Indigenous Women's League, Newa Misa Daboo, Nepal Tamang Women Ghedung, Indigenous Media Foundation, Cultural Survival

2020). According to the report, Nepali has been the dominant language, and it is in control of the members of the dominant social groups, not just in terms of ownership but also of content production. According to the report information, there are presently 116 licensed television stations, 793 FM radio stations, and 7743 registered newspapers and publications, including 735 daily newspapers. Non-Indigenous languages account for 93 percent of all newspapers published in Nepal. Among the 93 percent, 69 percent is broadcast in Nepali, with the remainder in English, Hindi, and other languages. Despite accounting for 36 percent of the national population, Indigenous language media account for less than 6.6 percent. The government's public broadcasting television and newspaper only broadcast translated Nepali news into Indigenous languages with large number of speakers. In spite of that, the content does not reflect Indigenous peoples' cultures, issues, or viewpoints (Cultural Survival et al., 2020:8).

According to the report (Cultural Survival et al., 2020), approximately 400 out of the FM radio licenses issued in Nepal are classified as community radio stations. These radio stations are mostly administered by NGOs and cooperatives, while some commercially owned by private firms. Even though community radio stations have the potential to be a lifeline for many Indigenous communities, they are based in district offices and focus on regional content and concerns. This has prevented a great number of Indigenous Peoples from participating in the media and voicing their concerns. In terms of ownership, decision making, and content creation, community radio stations are also controlled by the dominant groups. “To properly serve as a community radio station, the communities must have meaningful participation in the radio station’s leadership board, and the program contents must reflect the cultural and linguistic diversity of the communities” (Cultural Survival et al., 2020:8). The absence of ownership of Indigenous people’s forms of media in Indigenous languages has restricted their right to access, participate in, and have a voice in Nepali society. It has also denied them the right to knowledge, the ability to express themselves in ways that represent their cultural and linguistic variety, and the right to communicate in their Indigenous language (Cultural Survival et al, 2020).

5.3.8 Action plan to address Indigenous rights

According to the NHRCN's (2019) report, after the ratification of ILO 169, the government formed an expert committee⁸ to offer guidance in the development of policies and program for implementing ILO 169 legal obligations. The expert committee, in consultation with various human rights experts, national and international Indigenous organizations, Indigenous activists, government officials and authorities prepared a report titled *National Action Plan*. This report is still under cabinet review. Although, concerned parties are consistently making demands on the government to adopt the *National Action Plan*, the government is yet to heed their demands. Furthermore, "various plan targeted to address Indigenous people right in accordance with the ILO 169 was incorporated in NHRCN's Fourth Human Rights National Action Strategy 2014-2018" (NHRCN, 2019:17).

After defining the key areas for improvement and attention to satisfy the legal responsibilities, Indigenous nationalities concerns are integrated into the NHRCN strategic plan of 2015-2020 (NHRCN, 2019). The strategic plan prioritizes the rights of the Indigenous peoples, as well as expanding access, strengthening effectiveness, and ensuring institutional growth. Similarly, it has established a strategic program to evaluate existing laws and develop drafts for new laws to achieve progress in safeguarding the rights of targeted groups. The NHRCN has also developed a program to write the appropriate policies and legislation to safeguard and promote the language and culture of Indigenous peoples. "Efforts are underway to develop permanent structures of the NHRCN in order to expand its reach" (NHRCN: 2019:5).

5.4 Conclusion

The Nepalese government is committed to meeting a number of international legal obligations. The ratification of human rights treaties can be seen as a structural indicator revealing the actual performance of the government. Similarly, a variety of constitutional, legislative, and

⁸ comprising of joint-secretary of the then Ministry of Local Development as coordinator, member-secretary of Nepal Federation of Indigenous Nationalities (NEFIN) as deputy-coordinator, and representatives of all ministries as members for the purpose of implementation of the Convention. There was provision for representative of International Labor Organization (ILO) to remain as observer member in the committee.

institutional measures have been enacted in response to international Indigenous human rights obligations. Though there have been some developments in addressing Indigenous rights, much remains to be done to meet the requirements of ILO 169. With the objective of ending all forms of discrimination and proclaiming Nepal a secular state, the 2015 constitution guaranteed the rights of all Nepali citizens and respected all religious practices. Still, government commitment towards Indigenous rights to participation and consultation is not ensured in a meaningful way. Indigenous peoples' inclusive involvement in the constitution-making process was secured, however their rights to consultation and FPIC procedures were not implemented. In terms of language rights, many language rights projects have been implemented, but they have yet to reach and address the concerns of Indigenous peoples. Indigenous peoples are not consulted while developing language programs, hence the government program is unable to provide the desired effects.

Government's strategies, plans, and programs can be seen as process indicators evaluating enabling aspects of participation (de Beco, 2008:43-44). But as shown through my review, these policies pertaining to land, forest, and local infrastructure development do not guarantee Indigenous rights. Large scale development and conservation initiatives are being carried out without FPIC nor consultation with Indigenous peoples. Apart from that, such projects affect Indigenous peoples' cultural heritages and historical places, with no efforts done by the government to mitigate the effects and safeguard such sites.

6 Conclusion

6.1 Discussion of the main findings

The ratification of ILO 169 by Nepal is significant. Nevertheless, the incorporation of ILO 169 responsibilities into national laws and policies to allow their practical applications of its provisions remains to be accomplished. In order to address Indigenous peoples' rights the government has emphasized governmental reforms and the accommodation of Indigenous rights. Furthermore, the government has used ILO 169 as a guideline for developing national laws and policies to address Indigenous peoples' right, and to promote inclusive development. Similarly, the government has implemented several initiatives to address Indigenous peoples' rights, ranging from constitutional, legal, and institutional commitment to the implementation of national policies and initiatives.

This study was divided into two sections. The first section provided insights into the government's legal obligations and challenges, how they have committed themselves to these obligations. The second section provided insights into the government's national policies, programs, and initiatives for fulfilling legal obligations towards Indigenous peoples. This section also identified some challenges.

In the first section, the study highlights some of the statutory framework that the Nepalese government has put in place to protect Indigenous peoples' rights. Aside the different international mechanisms being adopted to address Indigenous peoples' rights including ILO 169 and UNDRIP, the Nepalese government has incorporated such legal commitments into national legislation. The principal law discussed in this study is the rights guaranteed by Nepal's 2015 constitution, which ensured Indigenous peoples' rights to participate in different governmental spheres. It protects Indigenous rights to participate in federal and provincial government institutions on the principle of inclusion. It also protects their rights to be represented proportionally in the house of representatives through political parties. These rights will have a substantial positive impact on the progress of Indigenous Peoples' rights. Because of the introduced participation rights, Indigenous representatives will have direct engagement in creating and defining the rights connected to them by participating in various state organs.

Furthermore, the constitution guarantees Indigenous people quotas in Nepal's judicial and security forces. This will aid in the development of a more inclusive justice and security system.

Apart from the abovementioned rights, the constitution declared an end to all forms of discrimination, while guarantee Indigenous people's rights to live dignified lives in line with their distinct identities. Similarly, the constitution guaranteed Indigenous peoples' rights to participate in decision-making processes that impact them, as well as the rights to protect and maintain Indigenous communities' traditional knowledge, skill, experience, culture, and social practices. However, Indigenous peoples rights to consultation, rights to land, territory, and natural resources, are not guaranteed under the constitution. This is a significant omission from the 2015 constitution.

Under the provisions of the 2015 constitution, the Indigenous peoples commission, the Tharu commission, and the Language commission have been established. The Indigenous Peoples commission is in charge of promoting and protecting Indigenous rights in general, but the Tharu commission is solely concerned with Tharus issues. The creation of a distinct Tharu commission has been a source of debate among other Indigenous communities. The formation of the Language commission reflects the government's commitment to the preservation and promotion of all Nepalese languages. However, implementing plans and initiatives that target more than 100 languages is a difficulty for the government.

Indigenous peoples' land territories and natural resources are inextricably linked. They have spiritual, cultural, social, and economic attachment to their lands, territories, and resources, which are vital to their identity and survival. However, their collective rights to lands, territories, and natural resources are not guaranteed in the constitution nor in national statutes, thereby creating significant difficulties to Indigenous peoples' subsistence livelihoods. The government has designated lands, forest, environment, and water resources as government property. The government is also the only decision-maker on the use of land and natural resources.

The second section of this study focuses on the Nepalese government's policies, strategies, and initiatives to address Indigenous peoples' rights and concerns. The section explored the national policies, national development plans, action plans, and Nepal's 2016-2030 plan for the

sustainable goal. In addition, the government implementation of quota reservation system, proportionate participation of Indigenous peoples in the 2008-2015 constitution-making process, role of NHRCN regional offices and language programs were explored.

The focus areas of the government national policies are climate change, forests managements, land use, hydropower development, local infrastructure development, national cultural heritage, and rangeland policies. In addition, policies related to gender equality and social inclusion, national cultural, and national intellectual property were also discussed.

National policies are created to comply with national legislation. Indigenous rights to lands, territories, and natural resources were not guaranteed in national legislation, and hence are not reflected in policy decisions. Nepal's land, forest, environment, and natural resources are placed under government control in the same way as national acts are. Though certain policies protect local communities' rights, there is no mention of Indigenous peoples' rights.

Indigenous people's rights have been acknowledged in the five-years national plan of Nepal. The national planning commission responsible for formulating national plans begun including plan centered within Indigenous peoples since its eight national plans. Prior to that, there were not specific plans for addressing Indigenous concerns. In recent times, however, the Nepalese government has implemented fifteenth national plan s2019/20-2023/24 that regard Indigenous issues. During the discussion period of plan formulation, Indigenous representatives were included to help develop and formulate plans regarding Indigenous people's development.

Similarly, the Nepalese government has introduced the Sustainable Development Goals (SDGs) Plan for year 2016-2030. The SDGs plan aims to eliminate all forms of poverty and inequality, safeguard the environment, and ensure that all peoples live in peace and prosperity by 2030. The SDGs have set 17 sustainable development objectives with 169 targets. One third of the 169 target are linked to UNDRIP. Even though the SDGs plan does not specifically address Indigenous concerns, all the broad goals will benefit Indigenous people. Nepal, for example, aspires to decrease extreme poverty to 5% by 2030 and the Multidimensional Poverty Index to 7% for all citizens.

Similarly, to investigate Indigenous issues, multiple NHRCN offices are open in various regions and sub-regions in Nepal. These offices have been working at the local level to

safeguard and promote human rights, and to advocate the rights of Indigenous nationalities. Apart from that, the government has appointed district coordinators in all 77 districts of Nepal. The district coordinator is in charge of guaranteeing Indigenous nationals' participation in the creation and formulation of local-level plans.

Affirmative action was implemented by the Nepalese government to integrate Indigenous peoples into the mainstream of development. Since 2006, the government has implemented the quota reservation system in civil service, which is still running. The civil service is the government's largest employment provider. The position of government official is held in high respect in society. In Nepal's civil service, 45 percent of total seats are distributed to marginalized communities including Indigenous peoples.

In line with Nepalese government's policy of inclusion, the proportional representation of Indigenous people was guaranteed in the Nepal's 2008-2015 constitutional assembly. The proportional election system was implemented to ensure that all political parties choose their candidates for elections. This approach ensured that the overall composition of the country's population was represented proportionally. Indigenous peoples actively involved in the constitution-writing process since the start, through their representatives in constitution assembly. The representation of Indigenous members secured a historically high number in the political body during constitutional assembly. However, their engagement through political parties sparked debates, with some claiming that the political agenda trumped the core Indigenous objective.

To promote and to protect Indigenous languages, the Nepalese government adopted various language inclusion measure in the state's media architecture. The state-owned radio station is broadcasting several programs in Nepali, English and other 18 different languages spoken by Indigenous groups. Likewise, Nepal Television, the state-owned television broadcasts its program in Nepali, English and including two Indigenous languages: Maithali, and Nepal Bhasa. Similarly, the state-owned newspaper the Gorkhapatra has been publishing in 38 Indigenous languages since 2007. In addition to this, after the promulgation of 2015 constitution, the department of education has implemented about 69 local languages as mediums of instruction in basic classroom teaching and learning activities. Similarly, the curriculum development center, which is responsible for developing curriculum for

government school has introduced 24 curricula in several languages. Furthermore, the national center for educational development has also created teacher training packages for schoolteachers.

Nepal has designated many Indigenous nationalities through national legislation by adopting a new demographic paradigm, granting Indigenous people legal status. To combat discrimination, the Nepalese government has implemented social inclusion and affirmative action programs. In addition, the government has undertaken a reservation policy to incorporate impoverished and disadvantaged communities, especially Indigenous peoples, into the mainstream of development. In Nepal, there have been considerable changes in numerous socioeconomic variables, including income sources, education, health condition, transportation and communication, and rights-based activities. More national initiative is required to advance Indigenous peoples' rights at the regional and national levels. Most importantly, Indigenous peoples' rights to consult and participate, as well as their rights to land and natural resources, must be respected. However, due to the country's diversified and large Indigenous population, full implementation of ILO 169 remains a challenge. As a result, in order for Indigenous peoples to enjoy their full rights, the government must implement policies and programs that reflect the aspirations of all Indigenous communities.

6.2 Limitation of the research

This thesis has not included a focus on implementation, among others due to me being unable to do field research. Nor have I gathered implementation statistics, which could have illuminated the outcomes of the government programs. As a result, I am unable to evaluate concrete government activities intended to meet Indigenous human rights obligations. Therefore, this study exclusively focuses on the government's legal obligations, policies, goals, and initiatives.

6.3 Recommendation for further study

On May 13, 2022, Nepalese local elections were conducted in six metropolitan cities, eleven sub-metropolitan cities, 276 municipalities, and 460 rural communities. Further research on Indigenous issues can undertake a survey-based study to measure Indigenous peoples' involvement in the elections. Through the inclusive approach, the 2015 constitution provision

protects Indigenous peoples' rights to participate in federal and provincial government institutions. One interesting study could therefore have been to investigate how these rights are implemented, among other local elections like the May 13, 2022.

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