

# Statement of Principles on Minority and Group Rights in Nepal

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### **1. Introduction**

Nepal is a sovereign-independent country lies in the South Asia Region. It has 5 Development Regions, 14 Zones and 75 Districts equipped with its natural beauty, mountains, hills and rivers. The Constitution of the Kingdom of Nepal (1990) has declared the country as a **multi religious, multi racial and multi lingual state**. After the grand success of people's movement – II, 2006, the parliament has proclaimed Nepal as a secular country; however, Hindus occupy the majority of population.

"Almost all states have one or more minority groups within their national territories, characterized by their own ethnic, linguistic or religious and sexual identity, which differs from that of the majority population" (*Minority Rights, fact sheet – 18, UN*).

Harmonious relation among minorities and between minorities and majorities and respect for each group's identity are a great asset to the multi ethnic and multicultural diversity of the Nepalese society.

According to a most acceptable definition "Minority groups refers to the groups of people who have their own distinct language, religion, social structure, cultural and sexual identity, tradition and civilization. Some minority groups live in well-defined area and are separated from the dominant part of the population, while others are scattered throughout the national community, and some have a strong sense of collective identity on a well recorded history".

The minority groups of people in Nepal are spread out almost in every part of the country. They have been equally spread in mountain, hill, inner terai and terai regions of the country. Many groups of people based on their own ethnic, linguistic and sexual identity fall under minority groups. There are more than 103 ethnic/caste groups in Nepal and many of their economic, social, cultural, linguistic and demographic status is in danger of extinction (*National Census 2001*). Among them, the significant minority ethnic / caste groups in Nepal are Kusunda, Bankaria, Raute, Surel, Hayu, Raji, Kisan, Lepcha, Jirel, Meche, Kusbadia, Mazi, Siyar, Lhomi, Thudam, Dhanuk, Chepang, Satar, Santhal, Jhagad, Thami, Badi, **Dalits**, Bote, Danuwar, Baramu, Tharu, Koiri, Lohar, Dhimal, Dolpo and Dura (*TOT Guidelines, 2005 National foundation for Development of Indigenous Nationalities*). They are not only economically and socially marginalized but are also in danger of extinction and some of them are still having a complete nomadic life. The census of 1991 has not included some of the above mentioned minority ethnic/caste groups.

The peoples of Nepal speak at least 70 distinct languages, whilst Nepali is the mother tongue of more than 50% of the people and large number of people speak other languages including Maithili - 11.85 % of the population, Bhojpuri - 7.46 %, Tharu - 5.37 %, Tamang - 4.89 % and Newari - 3.73 % (*Census Report, 2001*). In addition, there are more than 40 minority languages whose speakers together constitute less than 1% of the total population in Nepal and their languages are in the verge of extinction.

In terms of social structure, caste people constitute 56.2 percent of the total population, ethnic groups make up 35.5 percent and the rest are other minorities. Although it is difficult even to separate clans among Nepalese families, and although very few races have preserved their own economic life, social customs and cultural identity separate from other races in one place, there are some ethnic people who are still backward in modern economic, social and cultural terms. There are also some ethnic/caste groups of people who cannot adequately look after their own interests or are in the primary stage of human development. The minority groups of people are still having a distinct and primitive cultural identity and have not yet been able to participate in public affairs. The 1991 census suggests that at least 16 percent of the population of Nepal belongs to an underprivileged group including minorities, who are still largely illiterate, socially excluded and ultra poor, have poor access to public goods and services, and are often subjected to physical violence.

There are three types of minority people in Nepal:

- Ethnic minorities
- Religious minorities
- Linguistic minorities

The **Statement of Principles on Minority and Group Rights in Nepal** is aimed at addressing minority rights, issues and concerns existing in Nepalese society and also addresses the current weakness in national constitutional and legislative provisions regarding the protection and promotion of minority and group rights in Nepal. The statement includes each of the principles, an explanation as to its content and scope, an overview of constitutional provisions in Nepal and reference to the major regional and international human rights standards, from which the principle has been drawn.

This statement of principles can be used as a comprehensive reference tool for the government, non-state actors, human rights institutions, NGOs, human rights advocates, and policy makers to draft national legislation, promote legislative reform, undertake advocacy, and influence decisions, policies and programmes to ensure that they focus on the promotion and protection of minority and group rights in Nepal.

## **2. Preamble vis a vis Annotations and Nepalese Context**

Under the Constitution of 1990, Nepal is formally designated as a multi-ethnic and multilingual state with freedom to all people to profess their own religions and ethnic practices. It has made some provisions relating to the protection of minorities, and guarantees their cultural and social diversities in the respective polities and societies. The ways in which these polities have functioned show that the constitution not always reflected the realities of the way by which they have functioned. The mechanism to protect the rights of minority groups is very poor and the constitution has not made any legal provisions regarding the right to freedom of sexual minorities.

There still exists the extensive and decisive influence of the ideology of majoritarianism on the code and conduct and policies of state. In Nepal, the protection of minority rights

is granted in terms of the provisions of fundamental rights of individual citizens, but not specifically as rights of members of minorities and the rights of minorities are assured only in the form of non-discrimination and equality before the law, which has proved insufficient to guarantee that minorities, who are often backward and disadvantaged in society.

The state has categorized many underprivileged groups in Nepal as belonging to backward communities (it has been specifically mentioned, for example, that ethnic groups like the Raute, Praja, Jirel, Chhantel and so on will be treated as socio-economically backward castes), the 1991 census suggests that at least 16 per cent of the population of Nepal belongs to an underprivileged group. This reality means that although forbidden since 1963 and made punishable by the democratic Constitution of 1990, untouchability is still practised in many parts of society.

Despite the fact that the minorities remain excluded from decision-making processes in national political life, particularly in various levels of administration, formation and function of representative bodies including assemblies, formulation of cultural policies, and significant norms of citizenship, with the consequence that constitutionally and legally provided rights are not implemented in practice, and there is widespread violations of minority rights.

In Nepal, the all forms of minority groups of people are so much deprived of national facilities and are largely discriminated in social life. Their right to education and culture is so much ignored by the state and its local bodies. Some of the minority groups are raising their voice against the government, as it is not practically working for the development of their ethnic identity. Members of minorities, including religious minorities, have been exposed to abuses perpetrated by private persons with the connivance or acquiescence of governments, with the criminal justice system failing in many instances in providing persons belonging to minorities with adequate legal redress for abuses suffered. The operation of the justice system is such that it has not only failed to deliver speedy untainted justice, but has given rise to a pervasive climate of impunity, with perpetrators of violations not having been brought to justice, which is one of the major causing factors of discrimination over minority groups.

In spite of the constitutional and legal provisions regarding the equal rights of every citizen irrespective of religion, language, race, sex, caste, tribe or ideological conviction, the government has made very little efforts to remove the root causes of religious and other forms of discrimination, and violations perpetrated against minorities. The orthodoxies of majority religions are not always ready to extend equal rights to the "other" who may be outside the religious/sectarian fold. This situation re-emphasizes the need to elevate the national-judicial and legal norms and constitutional jurisprudence in Nepal on equal protection and group rights issues to the standards of regional and international human rights law relating to minorities, that include the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, the OSCE Framework Convention for the protection of National Minorities, the European Charter on Regional or Minority Languages, the Hague Recommendations Relating to the Educational Rights of National Minorities, the Lund Recommendations on the Effective Participation of National Minorities in Public Life, and other similar documents;

Similarly, the Maoist's civil war and political conflict that suffered Nepal for more than 10 years (1955 to 2006) have also critically violated the rights of minorities leading to increasing systematic discrimination on minority groups. During the conflict period, the disadvantaged groups have been suffered as a consequence of structural reforms and the withdrawal of social welfare programmes carried out by the NGOs and the State.

## Principle 1

### **Application of the Principles**

- (a) These principles are aimed at addressing minority issues and concerns existing in Nepalese society and also address the current weakness in national constitutional and legislative provisions regarding the protection and promotion of minority and group rights in Nepal. These principles shall be observed by Nepal's government, organisations, institutions, corporations, NGOs, groups of persons, public officials and private individuals, whether State or non-State actors and irrespective of their legal status;
- (b) These principles shall apply without distinction to all forms of minority groups of peoples.
- (c) These principles shall apply to all persons and groups, irrespective of any citizenship, disenfranchised or other status;
- (d) These principles complement international, regional and national standards, norms and principles of human rights and humanitarian law. They shall not affect more favourable provisions concerning minorities, or the legal regime that may exist in a State or is provided for by relevant bilateral or multilateral agreements, in which case the more favourable provisions shall apply.

### Annotations

These principles not only apply to Nepalese context but also within South Asian society to some extent, and extend beyond the traditional responsibility of the states to promote and protect human rights within their territory, in fulfilment of their obligations under international law. Increasingly, with the erosion of the central role of the State, the rise of nationalism, and the expanding role of non-State actors such as extremists, rebel groups and transnational corporations who have become perpetrators of human rights violations, the respect and promotion of human rights have come to concern all sectors of society.

This principle points to the existence of the diversity of different groups and peoples from a variety of religions, beliefs, and linguistic, ethnic, sexual and cultural backgrounds particularly in Nepal. The scope of the principles should not be limited to the sometimes restrictive concept of a minority, but should rather apply to all groups within South Asian

society, in particular those who are disadvantaged, excluded, marginalized or stateless, or have been disenfranchised. Finally, the principle reiterates that this statement is intended to complement and enhance the effective implementation of international human rights in full respect of individual dignity, tolerance and peaceful coexistence between individuals and groups, and that those provisions at national, regional and international levels which are most favourable to minority protection shall prevail.

### **Regional and international standards**

With reference to the responsibility of non-State actors, article 4 of the *Convention on the Prevention and Punishment of the Crime of Genocide* (hereafter referred to as the “Genocide Convention”) states that persons committing genocide shall be punished irrespective of “whether they are constitutionally responsible rulers, public officials or private individuals”. In humanitarian law, common article 3 to the *Geneva Conventions and Protocol II* provides protection in situations of non-international armed conflict and binds not only State actors but also all parties to the conflict. Similar language is used in principle 2 of the *Guiding Principles on Internal Displacement*, which stipulates, “These principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without diverse distinction”.

## **Principle 2**

### **Non-discrimination and affirmative action**

- (1) All individuals shall be protected from discrimination and shall be treated without distinction of any kind, including, but not limited to, on the basis of language, religion, culture, national or social origin, sex, caste, birth, descent, citizenship or other status;
- (2) all individuals shall be recognised as a person before the law, with full equality before the law, equal protection of the law, and equal benefit from the law;
- (3) non-discrimination and equality of treatment shall apply in all areas of economic, educational, social, religious, political and cultural life;
- (4) special protection shall be afforded to persons, particularly women, who may be subject to threats or acts of discrimination, hostility, violence and abuse as a result of their ethnic, cultural, linguistic, religious or other identity;
- (5) the enactment of laws relating to the crime of genocide and the effective application of laws on hate speech and hate crime shall be promoted;
- (6) special measures of affirmative action shall be taken in order for persons belonging to minorities to enjoy equal rights with the rest of the population. These shall, however, be discontinued after the objectives for which they were taken have been achieved.

### **Annotations**

Special attention needs to be paid to the protection and promotion of the rights of minorities who are still in a disadvantaged, marginalized and vulnerable position. The

state should create favourable conditions to enable them to express their original characteristics and to develop their culture, language, religion, traditions and customs. Thus requiring special measures to ensure that they benefit from the same rights on a basis of equality and justice with the rest of the population. If no special measures are taken in favour of minorities, the non-dominant sectors of the population may ultimately be required to conform to the dominant groups.

Discrimination has been interpreted to “imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, language, religion, national or social origin... birth or other status, and which has the purpose or effect of 0. or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms”<sup>1</sup>. Discrimination has been prohibited in a number of international instruments that deal with most, if not all, situations in which minority groups and their individual members may be denied equality of treatment. Important safeguards from which individual members of minorities stand to benefit include recognition as a person before the law, equality before the courts, equality before the law, equal protection of the law, and equal benefit from the law.

This principle, and especially the provision in favour of affirmative action, will contribute to reinforcing constitutional and legislative non-discrimination provisions in Nepal, and enhance the protection of minorities who are often disadvantaged by the State and society, with a view to ensuring that they may exercise all their rights without discrimination and on a basis of equality. Affirmative action, as provided for under principle 2(4) aims at redressing the balance in equality of treatment between minorities and the dominant majority. Provided that the measures have such an aim, and that they seek to do no more than promote this equality, they are not to be considered discriminatory. It is therefore paramount that a balance be sought between measures of affirmative action and the duration of these measures beyond the achievement of their goal on the one hand, and the fundamental right to equality and equal treatment of both minorities and majorities in society, on the other.

### **Constitutional and legislative provisions and their weaknesses**

*Article 11 of the Constitution of the Kingdom of Nepal, 1990* proclaims that all citizens shall be equal before the law. No person shall be denied the equal protection of the law. No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction of any of these.

The state shall not discriminate citizens among citizens on grounds of religion, age, sex, caste, or ideological conviction. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be

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punishable by law. No discrimination in regard to remuneration shall be made between men and women for the same work.

Under cultural and educational rights, *Article 18 of the constitution* has made the legal provision that each community residing within Nepal shall have the right to preserve promote its language, script and culture and each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children.

The *Article 26* has further proclaimed that the state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. Similarly, the state shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the nationally unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.

The state shall pursue effective policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons as well as ensure their protection and welfare and the state shall pursue a policy, which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment.

*The constitution of Nepal, 1990* has made the legal provisions of dealing with every Nepali citizen equally regardless of race, religion, language, caste, sex, political opinion, place of birth or any other such grounds. Regarding non-discrimination and affirmative action of minority rights the constitution of Nepal has covered all provisions of regional and international standards theoretically but the things are not properly applying into the real practice and it has overlooked some new minority issues such as the rights of sexual minority groups (i.e. homosexuals, lesbians, gays, bisexual, and transgender communities). The constitution has neglected the multi religious status of indigenous and minority groups of people and its provisions are discriminatory to the existence of their local languages and religions.

*The Constitution of Nepal* has not made any provisions to make a separate and distinct representation and participation of the minority groups in public affairs and organs of the country. It has also not made any legal provisions to encourage them participate in election process of the country.

The legislature of the state seems quiet and unresponsive to express its commitment and loyalty in the causes to enhance the welfare activities of the various issues of minorities.

After the grand success of *People's Movement II, 2006* in Nepal, the parliament has made a legal proclamation to include all disadvantaged and minority groups of people in the major stream of development through the implementation of inclusive democratic

practice in the country. It has also declared Nepal as a secular country, which can be taken as a positive step to protect and promote religions followed by minorities.

*The National Educational Policy of Nepal, 1998 (B.S.2055)* has stated that as a directive principle, the state shall launch educational policy that can remove discriminations, which exist among various groups of people by enhancing all groups of people including indigenous and minorities towards the main stream of development. It has given priority to the education of women, Dalits, disables and disadvantaged groups of people. Similarly, Nepal government has adopted *Special Education Policy, (2053 B.S.)* to enhance the educational status of disables by making national provision of free education up to secondary level to all disables around the country and it has also aimed to run non-formal education campaigns for them.

*Kamaiya Labour Prohibition Act, 2002* has made legal provisions regarding freedom from Kamaiya (Bonded labour) labor and prohibition to employ any person as Kamaiya. Actually Kamaiyas are also considered to be extremely disadvantaged group in Nepal, and were treated as slaves for many years by the elite groups of people in the western part of Nepal

However there is no any legal provision of the state to provide reservation in any national plans, programmes, opportunities and schemes to enhance the educational status of socially and economically excluded / disadvantaged groups of people.

*The Comprehensive Peace Accord (CPA) between the Nepal government and Maoists 2063 B.S. /2006* has made the following decisions regarding the protection and promotion of minority and group rights.

- It has decided to nominate 48 representatives from socially and economically minority caste groups for the interim parliament.
- It has confirmed to make candidates by all political parties through proportional representation method from all excluded groups of people for the forthcoming constituent assembly election.
- Regarding the future structure of Nepal, the (CPA) has decided to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country.
- Regarding the socio-economic transformation of the minorities and disadvantaged people, the (CPA) has decided to adopt the policy of managing land and socio-economic security of the socially and economically back warded communities.
- The (CPA) has declared to provide the citizenship to all people who are especially from socially and economically excluded communities, and who are deprived from citizenship rights before the election of constituent assembly.

***The interim constitution of Nepal, 2006*** has made the following provisions on minority rights, issues and concerns: (This constitution has been developed in accordance with the terms and conditions made in the Comprehensive Peace Accord (CPA), 2006 between the government of Nepal and Maoists, and has not been officially passed by the parliament of Nepal and it has been hoped to be passed very soon)

1. Having common aspirations and united by a bond of allegiance of national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste, tribe, collectively constitute the nation. **Article 3**
2. Nepal is a multiethnic, multilingual, independent, indivisible, sovereign, secular and inclusive democratic country. **Article 4 (1)**
3. **Right to freedom:** No person shall be deprived of his personal liberty save in accordance with law. All citizens shall have the freedoms of opinion and expression, freedom to assemble peacefully and without arms, freedom to form unions and associations, freedom to open political organizations, freedom to move throughout the country and freedom to practice any profession/occupation, industry and trade. **Article 12. 1, 2, 3 (a, b, c, d, e, f)**

**Right to equality:**

- All citizens shall be equal before the law. No person shall be denied the equal protection of the law. **Article 13 (1)**
- No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, origin, language, sex, caste, tribe or ideological conviction of any of these. **Article 13 (2)**
- The state shall not discriminate citizens among citizens on grounds of religion, age, sex, religion, race, origin, language, caste, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged, dalits, minorities, or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. **Article 13 (3)**

**Right against untouchability and racial discrimination: Article 14**

- No person shall be discriminated as untouchable on basis of caste and occupation. Any contravention of this provision shall be punishable by law. **Article 14 (1)**
- No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law. **Article 14 (2)**

**Right to education and culture Article 17**

- Based on the existing law, each community shall have the right to operate schools **in** its own mother tongue for imparting education to its children. **Article 17 (1)**
- Based on the existing law, each citizen shall have the right to receive free education up to secondary level. **Article 17 (2)**
- Each community residing within Nepal shall have the right to preserve promote its language, script and culture. **Article 17 (3)**

**Right to social justice.** All socially and economically back warded people, dalits, women, terai community and all suppressed people have the equal right to participate for the further restructuring of the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, origin, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 21**

**Right to Religion: Article 23**

- Every Person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices:

Provided that no person shall be entitled to convert another person from one religion to other. **Article 23(1)**

- Every religious shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts. **Article 23(2)**

The state is responsible for ensuring the progressive transformation of social, political and economic status of the country. **Article 33(b)**

It shall be the prime responsibility of the state to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and addressing the issues and concerns of all women, dalits, indigenous people, ethnic groups, terai people, and excluded minorities, and by ending the existing centralized and one sided ruling system of the country. **Article 33(d)**

It shall be the major responsibility of the state to ensure the right of all citizens to education, health, settlement, employment and food. **Article 33(h)**

It shall be the major responsibility of the state to ensure the socio-economic security including the provision of land to all landless people, Kamaiyas (slaves) and socially and economically back warded people. **Article 33(i)**

It shall be the responsibility of the state to remove all discriminatory laws from the practice. **Article 33(n)**

The social objective of the state shall be to establish peace and security, human rights positive environment and eradicate all existing economic and social inequalities by

increasing the public participation of all people irrespective of caste, ethnicity, region, sex, language, religion and origin to enjoy the fruit of democracy and social justice.

**Article 34 (2)**

The state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. **Article 35 (1)**

The state shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures. **Article 35 (3)**

The state shall pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons as will ensure their protection and welfare. **Article 35 (8)**

The state shall adopt a policy of making special arrangement of social security for all disadvantaged women, disables, orphans, children, elderly people and minorities.

**Article 35 (9)**

The state shall pursue a policy, which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment. **Article 35 (10)**

Regarding the future structure of Nepal, the state shall take further steps to restructure the country with inclusive and progressive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 138 (1)**

*Efforts, Policy and Declarations made by national institutions (i.e. National Human Rights Commission (NHRC), National Dalits Commission (NDC), National Women Commission (NWC) etc on Minority rights and issues*

Regarding non-discrimination and affirmative actions of the minorities, the national institutions have also made some efforts, policies and declarations. Their declarations are more or less based on the provisions made in the constitution of the country regarding the rights of minorities. *NHRC* has declared that the state should empower all minority communities by respecting their social, economic, political and cultural rights through inclusive democratic system.

Similarly, *NDC* has made its 5-year strategy and 2 - year action plan to activate the participation of all dalits communities in the main stream of national development through social, economic and political programs.

*National foundation for Development of Indigenous Nationalities* has declared its plans, policies and programs to achieve overall development of all nationalities and socially and economically excluded groups by implementing the programs relating to their social, educational, cultural and economical upliftment.

*National Women Commission* through its declaration has also raised many issues regarding the protection and promotion of the rights of minority groups of people; it has especially focused to the protection of women rights in the minority communities.

### **Regional and international standards**

Article 1 of the *Universal Declaration of Human Rights* states that “All human beings are born free and equal in dignity and rights”, and article 2 of the *International Covenant on Civil and Political Rights* requires States to ensure that the rights in the Covenant are ensured to all individuals within their territory and subject to their jurisdiction “without distinction of any kind, such as ... language, religion, ... national or social origin, ... birth or other status”. With specific reference to minorities, article 4 of the *United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (hereafter referred to as “the Declaration”) and article 4 of the *OSCE Framework Convention for the Protection of National Minorities* (hereafter referred to as the “Framework Convention”) guarantee their right of equality before the law and the equal protection of the law. The same article makes specific reference to the adoption of adequate measures “...in order to promote in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to a majority”.

With regard to special measures of affirmative action, article 1(4) of the *Convention on the Elimination of All Forms of Racial Discrimination* states that “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved”. Article 7(2) of the *European Charter for Regional or Minority Languages*, stipulates that “the adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of the languages and the rest of the population or which take account of their specific conditions is not considered to be an act of discrimination against the users of more widely used languages”.

Principle 2(4) draws upon the language of article 6 of the *Framework Convention*, which states “The Parties undertake to take appropriate measures to protect persons who may be subject to threats of acts of discrimination, hostility or violence as a result of their ethnic, cultural, linguistic or religious identity”.

## **Principle 3**

### **Right of minorities to their identity and characteristics**

The identity and characteristics of minorities shall be respected and promoted. This includes the right:

- (a) to express, maintain and develop their identity and characteristics, including their religion, language, culture, traditions, customs and heritage. To this end, measures shall be taken to create the necessary conditions for minorities to enjoy this right. Such measures do not apply in cases where practices, whether ethnic, religious, cultural, linguistic or other, are contrary to international and regional standards, norms and principles and/or in violation of national law in the field of human rights, refugee and humanitarian law;
- (b) to a nationality or equivalent citizenship status guaranteeing the same rights as those afforded to nationals;
- (c) of every person belonging to a minority to be treated or not to be treated as such and no disadvantage shall result from this choice or from the exercise of the rights, which are connected to that choice.

### ***Annotations***

Principle 3 (a, b) makes the statement that the right to identity is vital to the protection of minorities as it is from such recognition that their protection may be afforded by the State, thereby also facilitating the application of specific measures for the benefit of minorities. The recognition of the identity and characteristics of minorities is very prominent issue rose after the restoration of democracy in Nepal in 1990. Nepalese society has wide variety of multiethnic, multi religious and multi linguistic people but their issues are not sufficiently reflected in constitutional and legislative provisions, nor is the identity of minorities actively promoted. Here many of the minorities have not been granted citizenship, and have therefore not been afforded minority protection. Majoritarianism in the region still exerts extensive influence on the conduct of State affairs and dominates the relations between and among groups in society. The right to distinct identity should include community based family laws, provided they are reformed with a view to ensuring gender justice, as in some countries the uniformity of personal laws has become a tool in the hands of those who are pursuing a majoritarian cultural agenda. All minorities should enjoy full protection under the national laws, subject to their conformity with international human rights standards. Recognizing the identity and characteristics of minorities also contributes to sharpening the focus on

minorities as groups, who are distinct from the majority and dominant sections of the population in Nepal.

Principle 3 (c) provides protection to those individuals who may not wish to maintain their separate minority identity and would prefer to assimilate with the majority population, or who may be compelled to embrace membership of a minority against their free choice. This implies that no particular identity can be imposed on a given person or that persons belonging to minorities cannot force a person to belong to, or be expelled from, their group. Of particular relevance therefore is the freedom for individuals to choose whether they wish to belong or not to a minority or other group and to define their own identities.

### **Constitutional and legislative provisions, and their weaknesses**

*The Constitution of Nepal, 1990, Article 6 (2)* has said that all the local languages spoken in various parts of Nepal as mother tongue by nationalities will be called national languages of the country.

Under cultural and educational rights, *Article 18 (1 and 2) of the constitution* has made the legal provision that each community residing within Nepal shall have the right to preserve promote its language, script and culture and each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children.

Similarly, *Article 19 (1 and 2) of the constitution* has given the right to all citizens to profess and practice their own religion as handed down to them from ancient times having due regard to traditional practices.

The *Article 26 (2)* has further proclaimed that the state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. Similarly, the state shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.

But regarding citizenship rights to minorities, *the constitution of Nepal, 1990* neither has made a clear provision nor has given them the status of nationalities. And it is also quite silent to the rights of sexual minorities in spite of their frequent demand and advocacy for their separate group identity. Since Nepal being a multi-ethnic, multi-religious society, there are certain laws of specific minority groups of people which are applicable only to those specified ethnic and religious groups which differ from the general laws of the country.

Nepalese constitutional provisions regarding the rights of minorities to their identity and characteristics are found to be much more discriminatory and they are incompatible with that of regional and international standards.

*The Comprehensive Peace Accord (CPA)* between the Nepal Government and Maoists 2063 B.S. (2006) has made following decisions regarding the protection and promotion of minority and group rights.

- It has decided to nominate 48 representatives from socially and economically minority caste groups for the interim parliament.
- It has confirmed to make candidates by all political parties through proportional representation method from all excluded groups of people for the forthcoming constituent assembly election.
- Regarding the future structure of Nepal, the (CPA) has decided to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country.
- Regarding the socio-economic transformation of the minorities and disadvantaged people, the (CPA) has decided to adopt the policy of managing land and socio-economic security of the socially and economically back warded communities.
- The (CPA) has declared to provide the citizenship to all people who are especially from socially and economically excluded communities, and who are deprived from citizenship rights before the election of constituent assembly.

*The interim constitution of Nepal, 2006* has proposed / made the following provisions on minority rights, issues and concerns: (This constitution has been developed in accordance with the terms and conditions made in the Comprehensive Peace Accord (CPA), 2006 between the government of Nepal and Maoists, and has not been officially passed by the parliament of Nepal and it is hoped to be passed very soon)

Having common aspirations and united by a bond of allegiance of national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste, tribe, collectively constitute the nation. **Article 3**

Nepal is a multiethnic, multilingual, independent, indivisible, sovereign, secular and inclusive democratic country. **Article 4 (1)**

**Right to freedom:** No person shall be deprived of his personal liberty save in accordance with law. All citizens shall have the freedoms of opinion and expression, freedom to assemble peacefully and without arms, freedom to form unions and associations, freedom to open political organizations, freedom to move throughout the country and freedom to practice any profession/occupation, industry and trade. **Article 12. 1, 2, 3 (a, b, c, d, e, f)**

**Right to equality:**

- All citizens shall be equal before the law. No person shall be denied the equal protection of the law. **Article 13 (1)**
- No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, origin, language, sex, caste, tribe or ideological conviction of any of these. **Article 13 (2)**
- The state shall not discriminate citizens among citizens on grounds of religion, age, sex, religion, race, origin, language, caste, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged, dalits, minorities, or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. **Article 13 (3)**

**Right against untouchability and racial discrimination: Article 14**

- No person shall be discriminated as untouchable on basis of caste and occupation. Any contravention of this provision shall be punishable by law. **Article 14 (1)**
- No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law. **Article 14 (2)**

**Right to education and culture Article 17**

- Based on the existing law, each community shall have the right to operate schools **in** its own mother tongue for imparting education to its children. **Article 17 (1)**
- Based on the existing law, each citizen shall have the right to receive free education up to secondary level. **Article 17 (2)**
- Each community residing within Nepal shall have the right to preserve promote its language, script and culture. **Article 17 (3)**

**Right to social justice:** All socially and economically backward people, dalits, women, terai community and all suppressed people have the equal right to participate for the further restructuring of the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, origin, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 21**

**Right to Religion: Article 23**

- Every Person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices:

Provided that no person shall be entitled to convert another person from one religion to other. **Article 23(1)**

- Every religions shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts.

**Article 23(2)**

The state is responsible for ensuring the progressive transformation of social, political and economic status of the country. **Article 33(b)**

It shall be the prime responsibility of the state to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and addressing the issues and concerns of all women, dalits, indigenous people, ethnic groups, terai people, and excluded minorities, and by ending the existing centralized and one sided ruling system of the country. **Article 33(d)**

It shall be the major responsibility of the state to ensure the right of all citizens to education, health, settlement, employment and food. **Article 33(h)**

It shall be the major responsibility of the state to ensure the socio-economic security including the provision of land to all landless people, kamaiyas (slaves) and socially and economically back warded people. **Article 33(i)**

It shall be the responsibility of the state to remove all discriminatory laws from the practice. **Article 33(n)**

The social objective of the state shall be to establish peace and security, human rights positive environment and eradicate all existing economic and social inequalities by increasing the public participation of all people irrespective of caste, ethnicity, region, sex, language, religion and origin to enjoy the fruit of democracy and social justice. **Article 34 (2)**

The state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. **Article 35 (1)**

The state shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the nationally unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures. **Article 35 (3)**

The state shall pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons as will ensure their protection and welfare. **Article 35 (8)**

\ The state shall adopt a policy of making special arrangement of social security for all disadvantaged women, disables, orphans, children, elderly people and minorities.

**Article 35 (9)**

The state shall pursue a policy, which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment. **Article 35 (10)**

Regarding the future structure of Nepal, the state shall take further steps to restructure the country with inclusive and progressive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 138 (1)**

*The constitution of Nepal, 1990* has defined Nepal as Hindu State, which [was felt to be /](#) can be taken as a major discriminatory step towards the existence of minority religious groups. It has said that every person shall have the freedom to profess and practice his own religion as handed down to him from ancient times having due regard to traditional practices. But it has not given freedom to people to promote and flow their particular religion.

It has given less important status to all the languages as the mother tongue by different ethnic groups of people around the country.

Despite the constitutional provision that each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children, there is no any clear provision about the state's role and responsibility to impart education to people in their mother tongue.

The constitutional and legislative provisions of the country are / were all [guided by the norms and values of Hindu religion, therefore the legal provisions have not properly addressed](#) the ideals of minority religions.

The constitutional and legislative provisions have not properly differentiated the notion of indiscrimination and equality regarding the protection and promotion of various concerns of minorities.

The legislature of the state seems quiet and unresponsive to express its commitment and loyalty in the causes to enhance the welfare activities of the various issues of minorities.

The state has not made a particular legal definition of minorities and their issues, and the legal provisions have not properly addressed towards the protection and promotion of rights of minorities.

The state has not still implemented inclusive democratic practice while constituting legislative and constitutional organs of the country. There is a decisive domination of majority groups of people in terms of caste, class, sex, culture and ethnicity.

### **Regional and international standards**

The issue of the recognition of the identity and characteristics of minorities is firmly rooted in international law. The recognition of national, ethnical, racial or religious groups and their right to existence is referred to at article II of the *Genocide Convention*. In many instruments, the protection of the existence and identity of minorities goes beyond mere physical protection to the protection of their religious, cultural and linguistic heritage essential to group identity. Article 1 of the *Declaration* provides for the protection of the "... existence and the national or ethnic, cultural, religious and linguistic identity of minorities", the encouragement of "... conditions for the promotion of that identity", and calls for "...appropriate legislative and other measures to achieve those ends".

With regard to the respect and promotion of the characteristics of minorities, article 4 (2) of the *Declaration* stipulates that "States shall take measures to create favorable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards". At article 2 (1) as well as article 27 of the *International Covenant on Civil and Political Rights*, persons belonging to minorities have the right to "... enjoy their own culture, to profess and practice their own religion, and to use their own language in private and in public, freely and without interference or any form of discrimination". Article 5 of the *Framework Convention* calls on "... Parties to undertake to promote the conditions necessary for persons belonging to national minorities to maintain and develop their culture, and to preserve the essential elements of their identity, namely their religion, language, traditions and cultural heritage".

With reference to principle 3 (c) regarding the choice of whether to belong to a minority or not, article 3 (2) of the *Declaration* states that "No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration". Similar language is to be found at article 3 of the *Framework Convention* which mentions that individuals should have the right to choose whether to be treated as a member of a minority or not.

## **Principle 4**

### **The promotion of diversity and intercultural education**

1. Effective measures shall be taken, particularly in the fields of education, culture and the media, with a view to combating prejudices and discrimination, and to promoting tolerance, intercultural dialogue, mutual respect, understanding and cooperation among all groups.

2. Intercultural education shall enable all persons and groups within society to participate in a democratic and pluralistic society. To this end;
  - (a) Compulsory curricula should include the study of history, culture, traditions, customs, languages and practices of minorities and majorities, with a view to encouraging mutual appreciation of differences and similarities between them, and as a means of promoting intercultural understanding;
  - (b) intercultural education should be included in compulsory education and should be developed with the active participation of the minorities concerned, and, where appropriate, bodies representing the relevant minorities, so that they can share knowledge and perspectives about their history, culture, traditions, customs, languages and practices.

### Annotations

Nepal is a multi cultural, multi religious, multi ethnic and multi linguistic society and it is rich in diversity of languages, religions, cultures and traditions that are practised in minority societies. The identity and characteristics of minorities, groups and communities need to be recognised, and the linguistic, religious, ethnic and cultural diversity, as well as the diversity of opinion and the shared value systems should be celebrated. Such diversity is not static as the pattern of the mosaic of societies changes as identities shift and new identities develop. Respect for diversity, tolerance and understanding among all groups in society is an essential infrastructure of a democratic society. There is a need to emphasise the right of all social groups and communities to have their due share ensured by developing policies and promoting the principle of diversity. The aim of this principle is to strengthen social cohesion, to promote tolerance and intercultural dialogue by eliminating barriers between persons belonging to religious, ethnic, cultural and linguistic groups through mutual respect and understanding, thereby enabling the integration of minorities into society while preserving their distinct identity and characteristics through education.

It is obvious that, intercultural education shall enable all persons and groups within society to participate in a democratic and pluralistic society and to explore intercultural education, compulsory curricula should include the study of history, culture, traditions, customs, languages and practices of minorities and majorities, with a view to encouraging mutual appreciation of differences and similarities between them, and as a means of promoting intercultural understanding and it and should be developed with the active participation of the minorities concerned, and, where appropriate, bodies representing the relevant minorities, so that they can share knowledge and perspectives about their history, culture, traditions, customs, languages and practices.

Intercultural education allows both minorities and majorities to learn about and appreciate each other in ways that make it possible for them to appreciate each other's cultures as an enrichment of society as a whole. The importance of intercultural education as a means to promote greater tolerance, understanding and respect between minority-majority relations is crucial. Intercultural education aims at highlighting the preservation

of the identity of each group in society, accompanied by the acceptance of diversity leading to understanding and tolerance. To this end, intercultural education requires that both the minority and majority learn about each other, about their specific characteristics, their respective histories, as well as about the values of tolerance and pluralism so that they can share knowledge and perspectives about their history, culture, traditions, customs, languages and indigenous practices.

**Constitutional and legislative provisions, and their weaknesses:**

Under cultural and educational rights, *Article 18 of the constitution of Nepal, 1990* has made the legal provision that each community residing within Nepal shall have the right to preserve and promote its language, script and culture and each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children.

*The Article 26 (9 and 10) of the constitution* has stated that state shall pursue effective policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons as well as ensure their protection and welfare and the state shall pursue a policy, which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment.

*The National Educational Policy of Nepal, 1998 (B.S.2055)* has stated that as a directive principle, the state shall launch educational policy that can remove discriminations, which exist among various groups of people by enhancing all groups of people including indigenous and minorities towards the main stream of development. It has given priority to the education of women, dalits, disables and disadvantaged groups of people. Similarly, Nepal government has also adopted *Special Education Policy, (2053 B.S.)* to enhance the educational status of disables by making national provision of free education up to secondary level to all disables around the country and it has also aimed to run non-formal education campaigns for them.

*The Comprehension Peace Accord (CPA)* between the Nepal's government and Maoists 2063 B.S. /2006 has made the following decisions regarding the protection and promotion of minority and group rights.

- It has decided to nominate 48 representatives from socially and economically minority caste groups for the interim parliament.
- It has confirmed to make candidates by all political parties through proportional representation method from all excluded groups of people for the forthcoming constituent assembly election.
- Regarding the future structure of Nepal, the (CPA) has decided to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country.

- Regarding the socio-economic transformation of the minorities and disadvantaged people, the (CPA) has decided to adopt the policy of managing land and socio-economic security of the socially and economically back warded communities.
- The (CPA) has declared to provide the citizenship to all people who are especially from socially and economically excluded communities, and who are deprived from citizenship rights before the election of constituent assembly.

***The interim constitution of Nepal, 2006*** has made the following provisions on minority rights, issues and concerns: (This constitution has been developed in accordance with the terms and conditions made in the Comprehensive Peace Accord (CPA), 2006 between the government of Nepal and Maoists, and has not been officially passed by the parliament of Nepal and it has been hoped to be passed very soon) [Why repeated?](#)

Having common aspirations and united by a bond of allegiance of national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste, tribe, collectively constitute the nation. **Article 3**

Nepal is a multiethnic, multilingual, independent, indivisible, sovereign, secular and inclusive democratic country. **Article 4 (1)**

**Right to freedom:** No person shall be deprived of his personal liberty save in accordance with law. All citizens shall have the freedoms of opinion and expression, freedom to assemble peacefully and without arms, freedom to form unions and associations, freedom to open political organizations, freedom to move throughout the country and freedom to practice any profession/occupation, industry and trade. **Article 12. 1, 2, 3 (a, b, c, d, e, f)**

**Right to equality:**

- All citizens shall be equal before the law. No person shall be denied the equal protection of the law. **Article 13 (1)**
- No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, origin, language, sex, caste, tribe or ideological conviction of any of these. **Article 13 (2)**
- The state shall not discriminate citizens among citizens on grounds of religion, age, sex, religion, race, origin, language, caste, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged, dalits, minorities, or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. **Article 13 (3)**

**Right against untouchability and racial discrimination: Article 14**

- No person shall be discriminated as untouchable on basis of caste and occupation. Any contravention of this provision shall be punishable by law. **Article 14 (1)**
- No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law. **Article 14 (2)**

**Right to education and culture Article 17**

- Based on the existing law, each community shall have the right to operate schools **in** its own mother tongue for imparting education to its children. **Article 17 (1)**
- Based on the existing law, each citizen shall have the right to receive free education up to secondary level. **Article 17 (2)**
- Each community residing within Nepal shall have the right to preserve promote its language, script and culture. **Article 17 (3)**

**Right to social justice.** All socially and economically back warded people, dalits, women, terai community and all suppressed people have the equal right to participate for the further restructuring of the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, origin, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 21**

**Right to Religion: Article 23**

- Every Person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices:

Provided that no person shall be entitled to convert another person from one religion to other. **Article 23(1)**

- Every religious shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts. **Article 23(2)**

The state is responsible for ensuring the progressive transformation of social, political and economic status of the country. **Article 33(b)**

It shall be the prime responsibility of the state to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and addressing the issues and concerns of all women, dalits, indigenous people, ethnic groups, terai people, and excluded minorities, and by ending the existing centralized and one sided ruling system of the country. **Article 33(d)**

It shall be the major responsibility of the state to ensure the right of all citizens to education, health, settlement, employment and food. **Article 33(h)**

It shall be the major responsibility of the state to ensure the socio-economic security including the provision of land to all landless people, [Kamaiyas \(slaves\)](#) and socially and economically back warded people. **Article 33(i)**

It shall be the responsibility of the state to remove all discriminatory laws from the practice. **Article 33(n)**

The social objective of the state shall be to establish peace and security, human rights positive environment and eradicate all existing economic and social inequalities by increasing the public participation of all people irrespective of caste, ethnicity, region, sex, language, religion and origin to enjoy the fruit of democracy and social justice. **Article 34 (2)**

The state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. **Article 35 (1)**

The state shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the nationally unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures. **Article 35 (3)**

The state shall pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons as will ensure their protection and welfare. **Article 35 (8)**

The state shall adopt a policy of making special arrangement of social security for all disadvantaged women, disables, orphans, children, elderly people and minorities. **Article 35 (9)**

The state shall pursue a policy, which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment. **Article 35 (10)**

Regarding the future structure of Nepal, the state shall take further steps to restructure the country with inclusive and progressive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 138 (1)**

Besides these, there exist almost no references about the right to intercultural education of minorities groups of people in the constitutional, legislative, and national policies of Nepal.

*The constitution of Nepal, 1990* has given less important status to all the local languages and religions of different ethnic groups of people around the country.

Despite the constitutional provision that each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children, there is no any clear provision about the state's responsibility to impart education to people in their mother tongue.

The constitutional and legislative provisions of the country are all guided by the norms and values of Hindu religion, therefore the legal provisions have not properly addressed the ideals of minority religions.

The constitutional and legislative provisions have not properly differentiated the notion of indiscrimination and equality regarding the protection and promotion of various concerns of minorities.

The legislature of the state seems quiet and unresponsive to express its commitment and loyalty in the causes to enhance the welfare activities of the various regional and local issues of minorities.

The state has not made a particular legal definition of minorities and their issues, and the legal provisions have not properly addressed towards the protection and promotion of their intercultural identity.

### **Regional and international standards**

Article 6 of the *Framework Convention* states that “Parties shall encourage a spirit of tolerance and intercultural dialogue and take effective measures to promote mutual respect and understanding and cooperation among all persons living on their territory, irrespective of those persons’ ethnic, cultural, linguistic or religious identity, in particular in the fields of education, culture and the media”. Article 7 of the *International Convention on the Elimination of All Forms of Racial Discrimination* stipulates that “States parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among national and racial or ethnical groups ...”.

With regard to intercultural education, article 4 (4) of the *Declaration* stipulates that “States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole”. Article 12 of the *Framework*

*Convention* states that Parties shall, where appropriate, take measures in the field of education and research to foster knowledge of the culture, history, language and religion of their national minorities and of the majority. In this context, the Parties shall, *inter alia*, provide adequate opportunities for teacher training and access to textbooks, and facilitate contacts among students and teachers of different communities. The *Hague Recommendations Regarding the Education Rights of National Minorities* (hereafter referred to as “The Hague Recommendations”) at recommendation 19 provides that “State educational authorities should ensure that the general compulsory curriculum includes the teaching of the histories, cultures and traditions of their respective national minorities”.

## **Principle 5**

### **Right of minorities to freedom of religion**

Minorities shall enjoy the right to profess, practice, manifest or to adopt their own religion or belief and to establish their own religious institutions, organisations and associations for this purpose. This includes the freedom to:

- a) Worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- b) receive or impart instruction in their own religion or belief;
- c) change one’s religion or belief;  
establish training schools for the faithful;
- d) teach a religion or belief in places suitable for these purposes;
- e) publish and disseminate their own religious materials, in any language or format, including in the minority language;
- f) train, appoint, elect or designate by succession appropriate religious leaders called for by their religion or belief;
- g) solicit and receive financial and other contributions to finance their own religious activities;
- h) establish, manage and maintain their own religious institutions and
- i) observe days of rest and celebrate holidays and ceremonies in accordance with the precepts of their own religion or belief.

### ***Annotations***

The right of minorities to profess, practice and manifest their own religion is of particular importance in Nepal, which is composed of a whole range of religious minorities and groups, and where religious issues and factionalism have come to dominate much of the political discourse, and have sharpened the expression of identity. Some religious minorities may identify themselves solely by their religious identity and its preservation. Others may perceive themselves as an ethnic or linguistic minority where religion is but one distinguishing feature. Furthermore, the nature of most religions is that the believers acknowledge some supernatural being, a revered teacher or Gods, to guide their lives and communities. As such, compromise can be difficult to achieve in balancing competing interests between religious minorities themselves, between minorities and majorities, and

between religious minorities and the State. This situation may be exacerbated in countries where the dominant State religion pervades constitutional and legislative provisions, with little regard for the interests of religious minorities, potentially leading to widespread discrimination, tensions and conflict. Nepal is having State religions that has made citizens professing other religions suffer from some disadvantages. More specifically, here, the majority may disapprove of any individual or group converting from the majority to a minority religion, with anti-conversion sentiments reflected in the constitutional and legislative documents and bills.

**Constitutional plus legislative provisions and their weaknesses:** *Constitution of Nepal, 1990 Article 11 (2)* states that no discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction.

*Constitution of Nepal, Article 19 (1,2)* states, "Every citizen has the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices and every religious domination shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts." But it has further stated that no person shall be entitled to convert person from one religion to another.

*Article 26 (2)* stipulates that the state shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the nationally unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.

*Nepal government's Civil Rights Act, 2012 B.S. (5,7)* state that every citizen has the freedom to profess and practise his own religion as handed down to him and every religious domination shall have the right to maintain its independent existence and social contact and for this purpose to manage and protect its religious places and trusts.

*Nepal government's Forest Act, 2049 B.S. 35 (1,2)* states that having due permission with the concerned authority, any religious group or community or trust may use the forest existing in the surroundings of the religious places for their religious purpose.

*Nepal government's National Broadcasting Act 2049,15* stipulates that no advertisements shall be made and put on air that creates and fosters restriction, discrimination and imposition on any caste, religion, culture and group of people.

*Nepal Government's Press and Publication Act, 2048 B.S. 14 (d)* has made the legal provision to prioritize the broadcasting of those plans and programs, which enhance cooperation, harmony and the sense of equality among all caste, language and class of people by protecting and promoting the status of each religion, language and culture.

*Nepal Government's Civil Service Act 2049,7(1)* has stated that no civil servants of the country shall undertake decision and initiative that causes offence and jeopardize the harmonious relation subsisting among the people of different religious, caste, culture and linguistic groups or communities.

*The Comprehension Peace Accord (CPA)* between the Nepal's government and Maoists 2063 B.S. /2006 has made the following decisions regarding the protection and promotion of minority and group rights.

- It has confirmed to make candidates by all political parties through proportional representation method from all excluded groups of people for the forthcoming constituent assembly election.
- Regarding the future structure of Nepal, the (CPA) has decided to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country.
- Regarding the socio-economic transformation of the minorities and disadvantaged people, the (CPA) has decided to adopt the policy of managing land and socio-economic security of the socially and economically back warded communities.
- The (CPA) has declared to provide the citizenship to all people who are especially from socially and economically excluded communities, and who are deprived from citizenship rights before the election of constituent assembly.

*The constitution of Nepal, 1990* has defined Nepal as Hindu State, which can be taken as a major discriminatory step towards the existence of minority religious groups. It has said that every person shall have the freedom to profess and practice his own religion as handed down to him from ancient times having due regard to traditional practices. But it has not given freedom to people to promote and flow their particular religion.

It has given less important status to all the religions and languages (mother tongue) of different ethnic groups of people around the country.

Despite the constitutional provision that each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children, there is no any clear provision about the state's role and responsibility to impart education to people in their mother tongue.

The constitutional and legislative provisions of the country are [all guided by the norms and values of Hindu religion, therefore the legal provisions have not properly addressed the ideals of minority religions.](#)

The constitutional and legislative provisions have not properly differentiated the notion of indiscrimination and equality regarding the protection and promotion of various concerns of minorities.

The legislature of the state seems quiet and unresponsive to express its commitment and loyalty in the causes to enhance the welfare activities of the various issues of minorities.

The state has not made a particular legal definition of minorities and their issues, and the legal provisions have not properly addressed towards the protection and promotion of rights of minorities.

The state has not still implemented inclusive democratic practice while constituting legislative and constitutional organs of the country. There is a decisive domination of majority groups of people in terms of caste, class, gender, and ethnicity.

***The interim constitution of Nepal, 2006*** has made the following provisions on minority rights, issues and concerns: (This constitution has been developed in accordance with the terms and conditions made in the Comprehensive Peace Accord (CPA), 2006 between the government of Nepal and Maoists, and has not been officially passed by the parliament of Nepal and it has been hoped to be passed very soon) [why repeated?](#)

Having common aspirations and united by a bond of allegiance of national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste, tribe, collectively constitute the nation. **Article 3**

Nepal is a multiethnic, multilingual, independent, indivisible, sovereign, secular and inclusive democratic country. **Article 4 (1)**

**Right to freedom:** No person shall be deprived of his personal liberty save in accordance with law. All citizens shall have the freedoms of opinion and expression, freedom to assemble peacefully and without arms, freedom to form unions and associations, freedom to open political organizations, freedom to move throughout the country and freedom to practice any profession/occupation, industry and trade. **Article 12. 1, 2, 3 (a, b, c, d, e, f)**

**Right to equality:**

- All citizens shall be equal before the law. No person shall be denied the equal protection of the law. **Article 13 (1)**
- No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, origin, language, sex, caste, tribe or ideological conviction of any of these. **Article 13 (2)**
- The state shall not discriminate citizens among citizens on grounds of religion, age, sex, religion, race, origin, language, caste, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged, dalits, minorities, or those who are physically and

mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. **Article 13 (3)**

**Right against untouchability and racial discrimination: Article 14**

- No person shall be discriminated as untouchable on basis of caste and occupation. Any contravention of this provision shall be punishable by law. **Article 14 (1)**
- No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law. **Article 14 (2)**

**Right to education and culture Article 17**

- Based on the existing law, each community shall have the right to operate schools **in** its own mother tongue for imparting education to its children. **Article 17 (1)**
- Based on the existing law, each citizen shall have the right to receive free education up to secondary level. **Article 17 (2)**
- Each community residing within Nepal shall have the right to preserve promote its language, script and culture. **Article 17 (3)**

**Right to social justice.** All socially and economically back warded people, dalits, women, terai community and all suppressed people have the equal right to participate for the further restructuring of the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, origin, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 21**

**Right to Religion: Article 23**

- Every Person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices:  
Provided that no person shall be entitled to convert another person from one religion to other. **Article 23(1)**
- Every religious shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts. **Article 23(2)**

The state is responsible for ensuring the progressive transformation of social, political and economic status of the country. **Article 33(b)**

It shall be the prime responsibility of the state to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and addressing the issues and concerns of all women, dalits, indigenous people, ethnic groups, terai people, and excluded minorities, and by ending the existing centralized and one sided ruling system of the country. **Article 33(d)**

It shall be the major responsibility of the state to ensure the right of all citizens to education, health, settlement, employment and food. **Article 33(h)**

It shall be the major responsibility of the state to ensure the socio-economic security including the provision of land to all landless people, Kamaiyas (slaves) and socially and economically back warded people. **Article 33(i)**

It shall be the responsibility of the state to remove all discriminatory laws from the practice. **Article 33(n)**

The social objective of the state shall be to establish peace and security, human rights positive environment and eradicate all existing economic and social inequalities by increasing the public participation of all people irrespective of caste, ethnicity, region, sex, language, religion and origin to enjoy the fruit of democracy and social justice. **Article 34 (2)**

The state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. **Article 35 (1)**

### **Regional and international standards**

Article 18 of the *Universal Declaration of Human Rights* provides that “everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance”. Article 27 of the *International Covenant on Civil and Political Rights* grants persons belonging to religious minorities the right “... to profess and practise their own religion ...”. Article 2 of the *Declaration* stipulates that “Persons belonging to national or ethnic, religious and linguistic minorities have the right to ... profess and practice their own religion”. Article 8 of the *Framework Convention* states that “Parties undertake to recognise that every person belonging to a national minority has the right to manifest his or her religion or belief and to establish religious institutions, organisations and associations”.

Article 1 of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* and article 18 of the *International Covenant*

*on Civil and Political Rights* provide greater detail as to the content and scope of this right. They stipulate that "...this right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching". Furthermore, "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice".

## **Principle 6**

### **Right of minorities to use their own language in private and in public**

1. Minorities have the right to use their own language (including their own script) freely, without interference or any form of discrimination, in private and in public, orally, in writing or in any other form. This includes the freedom for minorities to:
  - (a) Freely express opinions and beliefs and receive and impart information in the minority language across localities, regions and frontiers;
  - (b) use their language in social, political and cultural gatherings, including in private or public conferences, meetings and assemblies;
  - (c) use their language for the production and airing of private and public radio and television programmes, and have access to broadcast time in their own language on publicly funded media;
  - (d) use their language in the creation, development and use of written materials, printed documents, newspapers, magazines, and other materials;
  - (e) use their own surnames and first names in the minority language, and enjoy official recognition thereof;
  - (f) post signs, inscriptions, commercial and other information in their own language, which can be displayed visibly to the public, and use traditional local names, street names and other topographical information intended for the public.
2. In regions and localities where minorities are present in significant numbers, or if those minorities so request and where such a request corresponds to a real need:
  - (a) Minorities shall have the right to use their language in relations with administrative authorities at local, regional and national level, as well as contact with public services. Administrative authorities shall take the necessary measures to ensure that public services are provided also in the minority language;
  - b) Minorities shall have the right to acquire civil documents and certificates both in the official and minority language, and regional and/or local public institutions shall keep the appropriate civil registers also in the minority language.
3. This principle does not in any way affect the status of the official language or languages of the State concerned, nor does it call into question the need for minorities to know or learn the official language.

### Annotations

In South Asia, as elsewhere, language is both a very personal matter closely connected with identity, and an essential tool of social organisation which, in many situations, becomes a matter of public interest. The use of minority language represents one of the principal means by which minorities can assert and preserve their identity, and the use of language bears on numerous aspects of the functioning of South Asian States. Linguistic diversity in South Asia contributes to the richness of society, and its preservation and promotion is testimony to political sensitivity, openness, diversity and pluralism. In some countries, the local authorities do not provide public services in the minority language, nor may minorities have access to civil documents and registers, as well as certificates in their own language. The mere prohibition of discrimination against minorities in the use of their language in private and in public is necessary but insufficient. Special measures need to be taken, and support needs to be provided, to safeguard the rights of linguistic minorities and to preserve and develop minority languages. Furthermore, the right of minorities to use their own language in private and in public involves an obligation on the part of the State to create conditions favourable for the preservation and promotion of the distinct linguistic identity of minorities. This, however, entails a commitment to provide the resources and make the necessary administrative arrangements required to effectively apply this right.

There are many situations in daily life in which it is important for minorities to be able to use their own language, freely and without interference. These may include being able to speak in a minority language at home, as well as with family and friends in public places, use a minority language in social, political or cultural gatherings, and for the production and airing of radio and television programmes. It also includes producing and disseminating materials and documents in the minority language and the posting of commercial and other signs in public places.

Principle 2 ensures that minorities can exercise their right to use their language before administrative authorities, and in their contacts with public services. This allows them to exercise their rights and fulfill their civic duties in conditions that respect their own modes of expression, improves communication between public authorities and minorities, promotes the minority language in the public domain, and thereby contributes to the richness and cultural wealth of multilingual societies. Specific reference is made to the concentration of a minority group in a region and the expressed wish of minorities to use their language in their relations with the authorities, as this principle calls for special measures to be taken which may entail the allocation of resources, other than those provided by the minorities themselves. With regard to the implementation of this right in the South Asian region, it is important to focus on more adequate constitutional protection of minority languages which implies not only the guarantee of freedom to users of these languages but also involving an obligation of the State to create favorable conditions for the preservation and promotion of the distinct identity of minorities. In this respect, some of the lesser-used languages cannot survive without the official support from the State, including measures to maintain and promote such languages.

### *Constitutional and legislative provisions, and their weaknesses*

With reference to the right of minorities to use their own language in private and public, the *Constitution of Nepal, 1990 Article 6 (1)* has recognized that while Nepali is the official language, "All the languages spoken as the mother tongue in the various parts of Nepal are the national languages". Nevertheless, in accordance to *the Article 18 (1)* of the constitution, "each community has the right to preserve and promote its language, script and culture and it shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its children."

*Article 26 (2,9,10)* stipulates that the state shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures. It has further stated that the state shall pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons as will ensure their protection and welfare and shall pursue a policy, which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment.

*The Comprehension Peace Accord (CPA), between the Nepal's government and Maoists 2063 B.S. /2006* has made the following decisions regarding the protection and promotion of minority and group rights.

- Regarding the future structure of Nepal, the (CPA) has decided to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country.
- Regarding the socio-economic transformation of the minorities and disadvantaged people, the (CPA) has decided to adopt the policy of managing land and socio-economic security of the socially and economically back warded communities.
- The (CPA) has declared to provide the citizenship to all people who are especially from socially and economically excluded communities, and who are deprived from citizenship rights before the election of constituent assembly.

*The constitution of Nepal* has adopted only the majoritarian Nepali language as the official language of the nation and has given less important status to all the minority languages, which are spoken as the mother tongue by different ethnic groups of people around the country and there is no constitutional and legal provisions to ensure the minorities the right to acquire civil documents and certificates both in the official and minority language, and keep the appropriate civil registers also in the minority language

Despite the constitutional provision that each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its

children, there is no any clear provision in the constitution about the state's role and responsibility to impart education to people in their mother tongue.

The constitutional and legislative provisions of the country are all guided by the norms and values of Hindu religion, therefore the legal provisions have not properly addressed the ideals of minority religions and languages.

The constitutional and legislative provisions have not properly differentiated the notion of indiscrimination and equality regarding the protection and promotion of various concerns of minorities.

The legislature of the state seems quiet and unresponsive to express its commitment and loyalty in the causes to enhance the welfare activities of the various issues of minorities.

***The interim constitution of Nepal, 2006*** has made the following provisions on minority rights, issues and concerns: (This constitution has been developed in accordance with the terms and conditions made in the Comprehensive Peace Accord (CPA), 2006 between the government of Nepal and Maoists, and has not been officially passed by the parliament of Nepal and it has been hoped to be passed very soon)

Having common aspirations and united by a bond of allegiance of national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste, tribe, collectively constitute the nation. **Article 3**

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**Right to freedom:** No person shall be deprived of his personal liberty save in accordance with law. All citizens shall have the freedoms of opinion and expression, freedom to assemble peacefully and without arms, freedom to form unions and associations, freedom to open political organizations, freedom to move throughout the country and freedom to practice any profession/occupation, industry and trade.

**Article 12. 1, 2, 3 (a, b, c, d, e, f)**

**Right to equality:**

- All citizens shall be equal before the law. No person shall be denied the equal protection of the law. **Article 13 (1)**
- No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, origin, language, sex, caste, tribe or ideological conviction of any of these. **Article 13 (2)**
- The state shall not discriminate citizens among citizens on grounds of religion, age, sex, religion, race, origin, language, caste, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged, dalits, minorities, or those who are physically and

mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. *Article 13 (3)*

**Right against untouchability and racial discrimination: Article 14**

- No person shall be discriminated as untouchable on basis of caste and occupation. Any contravention of this provision shall be punishable by law. *Article 14 (1)*
- No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law. *Article 14 (2)*

**Right to education and culture Article 17**

- Based on the existing law, each community shall have the right to operate schools **in** its own mother tongue for imparting education to its children. *Article 17 (1)*
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**Right to social justice.** All socially and economically back warded people, dalits, women, terai community and all suppressed people have the equal right to participate for the further restructuring of the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, origin, culture and religion, and by ending the existing centralized and one sided ruling system of the country. *Article 21*

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- Every Person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices:  
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- Every religious shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts. *Article 23(2)*

The state is responsible for ensuring the progressive transformation of social, political and economic status of the country. *Article 33(b)*

It shall be the prime responsibility of the state to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and addressing the issues and

concerns of all women, dalits, indigenous people, ethnic groups, terai people, and excluded minorities, and by ending the existing centralized and one sided ruling system of the country. **Article 33(d)**

It shall be the major responsibility of the state to ensure the right of all citizens to education, health, settlement, employment and food. **Article 33(h)**

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The state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. **Article 35 (1)**

### **Regional and international standards**

In accordance to regional and international standards, Article 19 of the *International Covenant on Civil and Political Rights* and article 9 of the *Framework Convention* provides that every person belonging to a national minority is granted the freedom to hold opinions and to receive and impart information and ideas in the minority language, or the language of one's choice, without interference by public authorities and regardless of frontiers. Article 2 (1) of the *Declaration* proclaims the right of persons belonging to national minorities to "use their own language, in private and in public, freely and without interference or any form of discrimination", and article 10 of the *Framework Convention* uses similar wording but adds that minorities can do so "...orally and in writing". More specifically, article 11 of the Convention provides for the right to use surnames and first names in the minority language and the right of official recognition thereof, and stipulates that "...minority language signs, inscriptions and other information of a private nature can be displayed visibly to the public". In addition, the right to use one's surname and first names in the minority language and to "...display traditional local names, street names and other topographical indications intended for the public also in the minority language when there is sufficient demand for such indications" should be respected.

As far as the right of minorities to use their own language in relations with the administrative authorities is concerned, article 10 of the *Framework Convention*, and the *Oslo Recommendations Regarding the Linguistic Rights of National Minorities* (hereafter referred to as the “Oslo Recommendations”) grant minorities the freedom to use their language in relations and communications with the administrative authorities. More specifically, the *Oslo Recommendations* at recommendation 13 stipulate that the administrative authorities shall, wherever possible, ensure that public services are provided also in the language of the national minority, and that regional and/or local public institutions shall keep the appropriate civil registers also in the language of the national minority. They further grant persons belonging to a national minority the right to acquire civil documents and certificates both in the official language or languages of the State and in the language of the national minority in question from regional and/or local public institutions, and ensure that elected members of regional and local governmental bodies can also use the language of the national minority during activities relating to these bodies.

With reference to the media, article 9 of the *Framework Convention*, prohibits States from discriminating against minorities in their access to the media, and stipulates that “... the creation and the use of printed media ...” shall not be hindered and that the possibility be granted “... of creating and using their own media” with regard to sound radio and television broadcasting. Additional details are provided in the *Oslo Recommendations*, which state at recommendations 8, 9 and 10 that “Persons belonging to national minorities have the right to establish and maintain their own minority language media”. They should also “... have access to broadcast time in their own language on publicly funded media, and the independent nature of the programming of public and private media in the language(s) of national minorities shall be safeguarded. Public media editorial boards overseeing the content and orientation of programming should be independent and include persons belonging to national minorities serving in their independent capacity”.

## **Principle 7**

### **The right of minorities to be taught their language and have instruction in their language**

1. Minorities have the right to be taught their language and to receive instruction in their language. To this end, the following measures may be taken:
  - (a) to make available kindergarten, pre-school, primary, secondary, university, higher and vocational education in the minority language;
  - (b) to make available a substantial part of primary, secondary and vocational education in the minority language;
  - (c) to teach the minority language as part of the curriculum of primary, secondary, university, higher and vocational education.
2. This principle shall not prejudice the learning of the official language or the teaching of this language.

### Annotations

The right of every person belonging to a minority to learn his or her mother tongue represents one of the principal means by which minority culture identity can be emphasized, preserved and promoted. Although this principle refers to measures to be taken for minorities to be taught their language and have instruction in their language, the nature of these measures will depend on the context of the particular situation, including whether the number of students in part of a territory warrant such measures, there is a demand for such measures, and the State is able to commit the necessary resources to respond to such demands. In cases where the language of the minority is a territorial language traditionally spoken and used by many in the region of the country, pre-school and primary school education should, ideally, be in the child's own language. In regard to non-territorial languages spoken traditionally by a minority within a country, minorities should, as a minimum, have an opportunity to learn their mother tongue. In this regard, minorities have a right, like others, to establish their private institutions, where the minority language is the main language of instruction.

### Constitutional and Legislative provisions, and their weaknesses

*Articles 18 (1 and 2) of the constitution of Nepal 1990, Nepal Government's Education Act, (2018 B.S.) and Local Autonomy Rule Act 2055 B.S. (28)* have stated that each community residing within Nepal shall have the right to preserve and promote its language, script and culture, and have the right to operate the schools up to the primary level in its own mother tongue for imparting education to its children

*Articles 26 (2,9,10) of the constitution* stipulate that the state shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the nationally unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures. It has further confirmed that the state shall pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons as will ensure their protection and welfare and shall pursue a policy, which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment.

*Nepal Government's Press and Publication Act, 2048 B.S. 14 (d)* has made the legal provision to prioritize the broadcasting of those plans and programs, which enhance cooperation, harmony and the sense of equality among all caste, lingual and class of people by protecting and promoting the status of each language and culture.

*Local Autonomy Rule Act 2055 B.S. 28 (1) (d), (3), 96 (1) (d) (3)* has made the legal provisions that village and municipality development committees shall cooperate people to establish schools up to the primary level in their own mother tongue for imparting education to their children.

*Education Act, (2018 B.S.)* has confirmed that all ethnic and minority groups of people have the right to operate the schools up to the primary level in their own mother tongue for imparting education to their children

*Nepal Government's existing 10th five - year plan* has made its plan and policies to protect and promote the languages, literatures, scripts, arts and cultures of all indigenous and nationalities. It has further confirmed that the state shall pursue such policies in matters of promoting education, health and social security of all minorities.

*The Comprehensive Peace Accord (CPA) between the Nepal's government and Maoists 2063 B.S. /2006* has made the following decisions regarding the protection and promotion of minority and group rights.

- It has decided to nominate 48 representatives from socially and economically minority caste groups for the interim parliament.
- It has confirmed to make candidates by all political parties through proportional representation method from all excluded groups of people for the forthcoming constituent assembly election.
- Regarding the future structure of Nepal, the (CPA) has decided to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country.
- Regarding the socio-economic transformation of the minorities and disadvantaged people, the (CPA) has decided to adopt the policy of managing land and socio-economic security of the socially and economically back warded communities.
- The (CPA) has declared to provide the citizenship to all people who are especially from socially and economically excluded communities, and who are deprived from citizenship rights before the election of constituent assembly.

*The interim constitution of Nepal, 2006* has made the following provisions on minority rights, issues and concerns: (This constitution has been developed in accordance with the terms and conditions made in the Comprehensive Peace Accord (CPA), 2006 between the government of Nepal and Maoists, and has not been officially passed by the parliament of Nepal and it has been hoped to be passed very soon)

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*Article 12. 1, 2, 3 (a, b, c, d, e, f)*

**Right to equality:**

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- The state shall not discriminate citizens among citizens on grounds of religion, age, sex, religion, race, origin, language, caste, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged, dalits, minorities, or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. *Article 13 (3)*

**Right against untouchability and racial discrimination:** *Article 14*

- No person shall be discriminated as untouchable on basis of caste and occupation. Any contravention of this provision shall be punishable by law. *Article 14 (1)*
- No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law. *Article 14 (2)*

**Right to education and culture** *Article 17*

- Based on the existing law, each community shall have the right to operate schools **in** its own mother tongue for imparting education to its children. *Article 17 (1)*
- Based on the existing law, each citizen shall have the right to receive free education up to secondary level. *Article 17 (2)*
- Each community residing within Nepal shall have the right to preserve promote its language, script and culture. *Article 17 (3)*

**Right to social justice.** All socially and economically back warded people, dalits, women, terai community and all suppressed people have the equal right to participate for the further restructuring of the country through inclusive democratic practice by eradicating all existing discrimination based on caste,

class, language, sex, origin, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 21**

**Right to Religion: Article 23**

- Every Person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices:

Provided that no person shall be entitled to convert another person from one religion to other. **Article 23(1)**

- Every religious shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts. **Article 23(2)**

The state is responsible for ensuring the progressive transformation of social, political and economic status of the country. **Article 33(b)**

It shall be the prime responsibility of the state to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and addressing the issues and concerns of all women, dalits, indigenous people, ethnic groups, terai people, and excluded minorities, and by ending the existing centralized and one sided ruling system of the country. **Article 33(d)**

It shall be the major responsibility of the state to ensure the right of all citizens to education, health, settlement, employment and food. **Article 33(h)**

It shall be the major responsibility of the state to ensure the socio-economic security including the provision of land to all landless people, kamaiyas (slaves) and socially and economically back warded people. **Article 33(i)**

It shall be the responsibility of the state to remove all discriminatory laws from the practice. **Article 33(n)**

The social objective of the state shall be to establish peace and security, human rights positive environment and eradicate all existing economic and social inequalities by increasing the public participation of all people irrespective of caste, ethnicity, region, sex, language, religion and origin to enjoy the fruit of democracy and social justice. **Article 34 (2)**

The state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. **Article 35 (1)**

Despite the constitutional provision that each community shall have the right to operate schools up to the primary level in its own mother tongue for imparting education to its

children, there is no any clear provision about the state's role and responsibility to impart education to people in their mother tongue and neither the state has sanctioned its national budget to establish any formal/informal/vocational schools/colleges/universities with the aims of teaching minority languages nor has encouraged non governmental and private organizations to do so.

### **Regional and international standards**

Article 4 (3) of the *Declaration* stipulates that “States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue”. At article 14 of the *Framework Convention*, “The Parties undertake to recognise that every person belonging to a minority has the right to learn his or her minority language”. In the same article, minorities are granted the right to have adequate opportunities for being taught the minority language or for receiving instruction in this language. Specific mention is made that this right shall be implemented without prejudice to the learning of the official language or the teaching in this language. At recommendations 11 to 13 of the *Hague Recommendations* suggestions are made that pre-school, kindergarten and primary school should ideally be taught in the minority language. “In secondary school a substantial part of the curriculum should be taught through the medium of the minority language”. At recommendation 15, “Vocational training in the minority language should be made accessible in specific subjects...” and recommendation 17 suggests that minorities “... should have access to tertiary education in their own language...”.

The most detailed treaty in this respect is the *European Charter for Regional or Minority Languages* which provides, at article 8, a sliding scale regarding the extent to which minorities may be taught their own language and have instruction in their own language. The scale ranges from pre-school education to be made available in minority languages to ensuring that a substantial part of pre-school education is available in the relevant language. It also ranges from making primary, secondary, university education, continuing education and technical and vocational training available in the minority language to teaching the minority language as part of the curriculum.

## **Principle 8**

### **Right of minorities to establish and manage their own unions, associations and institutions**

Minorities shall have the right to establish and manage their own unions, non-governmental organisations, associations and institutions, in all fields including education, religion, culture, language, politics and labour, and to associate with any of these at local, national, regional and international levels. To this end:

- a) any form of discrimination or interference in the establishment and maintenance of such institutions is prohibited;

- b. minorities shall have the freedom to seek funding for such institutions from the State, local, regional and international sources and from the private sector.

### Annotations

This principle allows freedom to persons belonging to minorities to set up any union, non-governmental organization, association and institution they may want, and associate with any of these at local, national, regional and international levels. Granting minorities the right to freedom to form unions and associations and maintain their own institutions contributing to their effective participation in public and political life, and to the maintenance and development of their own identity and characteristics. Such institutions should be established and maintained freely, without interference or discrimination. Minority schools run by minorities themselves are expected to conform to basic national standards applicable to all schools, including rules regarding compulsory schooling, compulsory curricula requirements, and teaching standards, and shall be subjected to normal supervisory standards. Minorities should also have the right to seek sources of funding for these institutions from the budget of the State, local, regional or international sources or the private sector.

### Constitutional and legislative provisions, and their weaknesses

The *Article 12 (c) of the constitution of Nepal, 1990* has made the provision of freedom to form unions and associations to all citizens of the country but it has restricted the freedom to the citizens to form any political parties based on the social, cultural and economic background of a particular community or group.

The *Article 12 (e)* guarantees to all citizens the right to freedom to practice any profession or to carry on any occupation, industry and trade.

*Articles 18 (1 and 2) of the constitution, Education Act, (2018 B.S.) and Local Autonomy Rule Act 2055 B.S. (28)* have stated that each community residing within Nepal shall have the right to preserve and promote its language, script and culture, and have the right to operate the schools up to the primary level in its own mother tongue for imparting education to its children

*Article 19 (2)* stipulates that every religious domination shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places trusts.

The *Article 11 (2)* guarantees that no discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction of any of these and the *Article 11 (4)* has said that no person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.

Nepal Government's political party Act, 2058 (5,8,14) has restricted everyone to constitute political parties on the ground of religion, community, region, caste and ethnicity of certain group of people.

*Nepal Government's Education Act 2059 B.S.* has made the provision that the community schools should provide free education to the students from the socially and economically excluded communities and private schools to provide at least 5% scholarship to the students from minority communities and groups.

*The Comprehensive Peace Accord (CPA) between the Nepal's government and Maoists 2063 B.S. /2006* has made the following decisions regarding the protection and promotion of minority and group rights.

- It has decided to nominate 48 representatives from socially and economically minority caste groups for the interim parliament.
- It has confirmed to make candidates by all political parties through proportional representation method from all excluded groups of people for the forthcoming constituent assembly election.
- Regarding the future structure of Nepal, the (CPA) has decided to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country.
- Regarding the socio-economic transformation of the minorities and disadvantaged people, the (CPA) has decided to adopt the policy of managing land and socio-economic security of the socially and economically back warded communities.
- The (CPA) has declared to [provide the citizenship to all people who are especially from socially and economically excluded communities, and who are deprived from citizenship rights before the election of constituent assembly.](#)

*The interim constitution of Nepal, 2006* has made the following provisions on minority rights, issues and concerns: [\(This constitution has been developed in accordance with the terms and conditions made in the Comprehensive Peace Accord \(CPA\), 2006 between the government of Nepal and Maoists, and has not been officially passed by the parliament of Nepal and it has been hoped to be passed very soon\)](#)

Having common aspirations and united by a bond of allegiance of national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste, tribe, collectively constitute the nation. **Article 3**

Nepal is a multiethnic, multilingual, independent, indivisible, sovereign, secular and inclusive democratic country. **Article 4 (1)**

**Right to freedom:** No person shall be deprived of his personal liberty save in accordance with law. All citizens shall have the freedoms of opinion and expression, freedom to assemble peacefully and without arms, freedom to form unions and associations, freedom to open political organizations, freedom to move throughout the country and freedom to practice any profession/occupation, industry and trade.

*Article 12. 1, 2, 3 (a, b, c, d, e, f)*

**Right to equality:**

- All citizens shall be equal before the law. No person shall be denied the equal protection of the law. *Article 13 (1)*
- No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, origin, language, sex, caste, tribe or ideological conviction of any of these. *Article 13 (2)*
- The state shall not discriminate citizens among citizens on grounds of religion, age, sex, religion, race, origin, language, caste, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged, dalits, minorities, or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. *Article 13 (3)*

**Right against untouchability and racial discrimination:** *Article 14*

- No person shall be discriminated as untouchable on basis of caste and occupation. Any contravention of this provision shall be punishable by law. *Article 14 (1)*
- No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law. *Article 14 (2)*

**Right to education and culture** *Article 17*

- Based on the existing law, each community shall have the right to operate schools **in** its own mother tongue for imparting education to its children. *Article 17 (1)*
- Based on the existing law, each citizen shall have the right to receive free education up to secondary level. *Article 17 (2)*
- Each community residing within Nepal shall have the right to preserve promote its language, script and culture. *Article 17 (3)*

**Right to social justice.** All socially and economically back warded people, dalits, women, terai community and all suppressed people have the equal right to participate for the further restructuring of the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, origin, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 21**

**Right to Religion: Article 23**

- Every Person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices:

Provided that no person shall be entitled to convert another person from one religion to other. **Article 23(1)**

- Every religious shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts. **Article 23(2)**

The state is responsible for ensuring the progressive transformation of social, political and economic status of the country. **Article 33(b)**

It shall be the prime responsibility of the state to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and addressing the issues and concerns of all women, dalits, indigenous people, ethnic groups, terai people, and excluded minorities, and by ending the existing centralized and one sided ruling system of the country. **Article 33(d)**

It shall be the major responsibility of the state to ensure the right of all citizens to education, health, settlement, employment and food. **Article 33(h)**

It shall be the major responsibility of the state to ensure the socio-economic security including the provision of land to all landless people, kamaiyas (slaves) and socially and economically back warded people. **Article 33(i)**

It shall be the responsibility of the state to remove all discriminatory laws from the practice. **Article 33(n)**

The social objective of the state shall be to establish peace and security, human rights positive environment and eradicate all existing economic and social inequalities by increasing the public participation of all people irrespective of caste, ethnicity, region, sex, language, religion and origin to enjoy the fruit of democracy and social justice. **Article 34 (2)**

The state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. **Article 35 (1)**

*Nepal Government* has not made any constitutional and legislative provisions to safeguard the rights of sexual minorities and to establish and manage their own unions, associations and institutions

The constitutional and legislative provisions have not properly differentiated the notion of indiscrimination and equality regarding the protection and promotion of various concerns of minorities.

The legislature of the state seems quiet and unresponsive to express its commitment and loyalty in the causes to enhance the welfare activities of the various issues of minorities.

The state has not made a particular legal definition of minorities and their issues, and the legal provisions have not properly addressed towards the protection and promotion of rights of minorities.

### **Regional and international standards**

Article 13.4 of the *International Covenant on Economic, Social and Cultural Rights* refers to the liberty "... of individuals and bodies to establish and direct educational institutions" and article 6 (b) of the *Declaration on Religious Intolerance* specifies that freedom of religion or belief includes the freedom to "establish and maintain appropriate charitable or humanitarian institutions". Article 2 (4) of the *Declaration* stipulates that "Persons belonging to minorities have the right to establish and maintain their own associations". At article 13 of the *Framework Convention*, "Within the framework of their education systems, the Parties shall recognise that persons belonging to a national minority have the right to set up and to manage their own private educational and training establishments". Recommendation 6 of the *Oslo Recommendations* grants minorities the right "... to establish and manage their own non-governmental organisations, associations and institutions".

## **Principle 9**

### **Effective participation of minorities in public and political life**

1. Minorities have the right, irrespective of citizenship or other status, to effectively participate in cultural, social, economic and political life, and in public affairs, in particular in those that affect them directly. This includes the right of minorities:
  - (a) to be consulted by means of appropriate procedures and through their representative institutions when legislation or administrative measures are being considered which affect them directly;

- (b) to be involved in the preparation, implementation and assessment of national and regional programmes and plans which are likely to affect them directly;
  - (c) to effectively participate in decision-making processes and elected bodies at local, national and regional levels;
  - (d) to vote and be elected at genuine periodic elections;
  - (e) to be effectively represented;
  - (f) to have access to, and hold, public office.
2. Minorities have the right to participate in the conduct of public and political affairs, directly or through freely chosen representatives. To this end, the following measures may be taken:
- (a) reduced requirement for the registration of political parties;
  - (b) lowered threshold for entering parliament;
  - (c) special representation through reserved seats in parliament, and other elected bodies of the national society;
  - (d) proportional representation;
  - (e) favourable delimitation of constituencies;
  - (f) creation of minority administrative and advisory bodies in particular with regard to education, culture and religion, such as minority parliaments, advisory councils and round tables.
3. The imposition of requirements on minorities to freely exercise their right to effective participation shall be prohibited, except for linguistic requirements necessary to hold public office;
4. Measures, which alter the proportions of the population in areas inhabited by minorities with the aim of influencing minority representation in elections or for other political purposes, and/or restrict the rights and freedoms flowing from these principles, are prohibited. Examples of such measures include expropriation, evictions, expulsions or redrawing of electoral boundaries.

### **Annotations**

Effective participation of minorities in cultural, religious, social, economic, public and political life, as well as in decisions that affect them, including in the legislative and administrative sectors, aims at encouraging real equality within society. It represents a shift from mere protection of minorities to practically guaranteeing representation by all groups. Special measures are often required to facilitate the effective participation, through considerable contribution, of minorities in decision-making. Effective

participation is necessary to ensure that minorities are respected, recognised and heard. The most fundamental requirements of this right is to ensure that minorities enjoy the right to non-discrimination, including on the basis of citizenship or other status, as well as to vote and to be elected. However, this is often insufficient to enable minorities to effectively participate, and special measures are required.

One of the key issues of participation of minorities in Nepal is their representation in public and political life. While it is essential that minorities and groups be given opportunities for effective participation, no single formula exists that is more appropriate to all minority situations in Nepal. Forms of participation may therefore require adaptation to the variety of needs and aspirations of different minorities as well as to their size and distribution, and may involve the creation of ethnic, cultural and religious associations and societies, political parties, advisory and decision-making bodies, and minority representation in parliament and other elected bodies within national society.

In Nepal, minorities do not have the same access to holding public office as the majority or dominant population. Here, minorities are persistently under-represented in public and political bodies. In addition, electoral boundaries may be manipulated so that, even when a minority represents a fairly large percentage of the population in a given region, its members are divided between a numbers of districts restricting their ability to elect even a minimal number of representatives who belong to minorities.

Measures to ensure effective participation of minorities in public and political life may include for example: a minimum number of seats for representatives of minorities in parliament and other elected bodies; proportional representation elections in which seats are allocated according to the vote cast; the lowering of thresholds for minority party representation, thereby allowing minorities to participate in the legislature and other elected bodies; reduced requirements for the registration of a minority party in elections; favorable delimitations of constituencies along minority lines, especially in countries where such minorities may be scattered across the territory, granting adequate opportunities for minority seats; and, the creation of administrative and advisory bodies which may serve advisory functions regarding matters, including policies and programmes, which concern minorities or decisions which affect them.

### **Constitutional plus legislative provisions and their weaknesses**

*Articles 11 (1,2,3) of the Constitution of Nepal, 1990* has made the provision of right to equality, in which it has stated that all citizens shall be equal before the law and no person shall be denied the equal protection of the law. No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex,

caste, tribe or ideological conviction of any of these and state shall not discriminate citizens among citizens on grounds of religion, age, sex, caste, or ideological conviction.

*Article 12 (a, b, c, e) of the Constitution of Nepal, 1990* guarantees freedom of opinion and expression, to form unions and associations and to practice any profession or to carry out any occupation, industry or trade”. *Article 26 (10) of the Constitution* stipulates “the State shall pursue such a policy which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their ... employment”. *Article 25 (3 and 4)* stipulates that the state shall establish and develop the foundation of justice, morality and a healthy social life by eliminating all types of economic and social disparities and by establishing harmony amongst the various castes, tribes, religions, races and communities. It shall be the prime responsibility of the state to maintain conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralization, and to promote general welfare by making provisions for the protection and promotion of human rights by maintaining tranquility and order in the society.

*Section 4 of the Civil Liberties Act* prohibits any restrictions against any citizen on the basis of religion, race, sex, caste or any of these, in appointing to civil posts.

*Local Autonomous Rule Act (2055 B. S.) 8(2)(c)* has made a very nominal provision of nominating (at least 1 woman and 3 others) from socially and economically excluded groups (i.e. dalits and minority people) of people for the representatives of village council, municipality council and district council.

*Nepal Government's Press and Publication Act, 2048 B.S. 14 (d)* has made the legal provision to prioritize the broadcasting of those plans and programs, which enhance cooperation, harmony and the sense of equality among all caste, language and class of people by protecting and promoting the status of each language and culture.

*Local Autonomous Rule Act 2055 B.S. 28 (1) (d), (3), 96 (1) (d) (3)* has made the legal provisions that village and municipality development committees shall cooperate people to establish schools up to the primary level in their own mother tongue for imparting education to their children.

*Education Act, (2018 B.S.)* has confirmed that all ethnic and minority groups of people have the right to operate the schools up to the primary level in their own mother tongue for imparting education to their children

*Nepal Government's existing 10th five - year plan* has made its plan and policies to protect and promote the languages, literatures, scripts, arts and cultures of all indigenous and nationalities. It has further confirmed that the state shall pursue such policies in matters of promoting education, health and social security of all minorities.

*The Comprehensive Peace Accord (CPA) between the Nepal's government and Maoists 2063 B.S. /2006* has made the following decisions regarding the protection and promotion of minority and group rights.

- It has decided to nominate 48 representatives from socially and economically minority castes / groups for the interim parliament.
- It has confirmed to make candidates from all political parties through proportional representation method from all excluded groups of people for the forthcoming constituent assembly election.
- Regarding the future structure of Nepal, the (CPA) has decided to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and majoritarian ruling system of the country.
- Regarding the socio-economic transformation of the minorities and disadvantaged people, the (CPA) has decided to adopt the policy of managing land and socio-economic security for the socially and economically back warded communities.
- The (CPA) has declared to provide the citizenship to all people who are especially from socially and economically excluded communities, and who are deprived from citizenship rights before the election of constituent assembly.

*The interim constitution of Nepal, 2006* has made the following provisions on minority rights, issues and concerns: (This constitution has been developed in accordance with the terms and conditions made in the Comprehensive Peace Accord (CPA), 2006 between the government of Nepal and Maoists, and has not been officially passed by the parliament of Nepal and it has been hoped to be passed very soon)

Having common aspirations and united by a bond of allegiance of national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste, tribe, collectively constitute the nation. **Article 3**

Nepal is a multiethnic, multilingual, independent, indivisible, sovereign, secular and inclusive democratic country. **Article 4 (1)**

**Right to freedom:** No person shall be deprived of his personal liberty save in accordance with law. All citizens shall have the freedoms of opinion and expression, freedom to assemble peacefully and without arms, freedom to form unions and associations, freedom to open political organizations, freedom to move throughout the country and freedom to practice any profession/occupation, industry and trade.

**Article 12. 1, 2, 3 (a, b, c, d, e, f)**

**Right to equality:**

- All citizens shall be equal before the law. No person shall be denied the equal protection of the law. **Article 13 (1)**

- No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, origin, language, sex, caste, tribe or ideological conviction of any of these. **Article 13 (2)**
- The state shall not discriminate citizens among citizens on grounds of religion, age, sex, religion, race, origin, language, caste, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged, dalits, minorities, or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. **Article 13 (3)**

**Right against untouchability and racial discrimination: Article 14**

- No person shall be discriminated as untouchable on basis of caste and occupation. Any contravention of this provision shall be punishable by law. **Article 14 (1)**
- No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law. **Article 14 (2)**

**Right to education and culture Article 17**

- Based on the existing law, each community shall have the right to operate schools **in** its own mother tongue for imparting education to its children. **Article 17 (1)**
- Based on the existing law, each citizen shall have the right to receive free education up to secondary level. **Article 17 (2)**
- Each community residing within Nepal shall have the right to preserve promote its language, script and culture. **Article 17 (3)**

**Right to social justice.** All socially and economically back warded people, dalits, women, terai community and all suppressed people have the equal right to participate for the further restructuring of the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, origin, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 21**

**Right to Religion: Article 23**

- Every Person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices:

Provided that no person shall be entitled to convert another person from one religion to other. **Article 23(1)**

- Every religious shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts.

**Article 23(2)**

The state is responsible for ensuring the progressive transformation of social, political and economic status of the country. **Article 33(b)**

It shall be the prime responsibility of the state to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and addressing the issues and concerns of all women, dalits, indigenous people, ethnic groups, terai people, and excluded minorities, and by ending the existing centralized and one sided ruling system of the country. **Article 33(d)**

It shall be the major responsibility of the state to ensure the right of all citizens to education, health, settlement, employment and food. **Article 33(h)**

It shall be the major responsibility of the state to ensure the socio-economic security including the provision of land to all landless people, Kamaiyas (slaves) and socially and economically back warded people. **Article 33(i)**

It shall be the responsibility of the state to remove all discriminatory laws from the practice. **Article 33(n)**

The social objective of the state shall be to establish peace and security, human rights positive environment and eradicate all existing economic and social inequalities by increasing the public participation of all people irrespective of caste, ethnicity, region, sex, language, religion and origin to enjoy the fruit of democracy and social justice. **Article 34 (2)**

The state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. **Article 35 (1)**

*Nepal Government's political party Act, 2058 B. S. (5,8,14)* has restricted everyone to constitute political parties on the ground of religion, community, region, caste and ethnicity of certain group of people.

The constitutional and legislative provisions have not properly differentiated the notion of indiscrimination and equality regarding the protection and promotion of various concerns of minorities.

The legislature of the state seems quiet and unresponsive to express its commitment and loyalty in the causes to enhance the welfare activities of the various issues of minorities.

The state has not made a particular legal definition of minorities and their issues, and the legal provisions have not properly addressed towards the protection and promotion of rights of minorities.

*Nepal Government* has not made any constitutional and a legal provision to create special representation of minorities through reserved seats in parliament and it has restricted the sexual minorities even to establish and manage their own unions, associations and institutions.

### **Regional and international standards**

Article 25 of the *International Covenant on Civil and Political Rights* stipulates that every citizen shall have the right and the opportunity without distinctions and without unreasonable restrictions “(a) to take part in the conduct of public affairs, directly or through freely chosen representatives”, (b) “to vote and be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors”, (c) “to have access, on general terms of equality, to public service in his country”. Article 2 (2) and (3) of the *Declaration* states that “Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life” and they have “... the right to participate effectively in decisions on the national and, where appropriate, regional level, concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation”. At article 4 (5), States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development of their country”. Article 5 (1) and (2) states that national policies and programmes as well as programmes of cooperation and assistance among States should be planned with “due regard for the legitimate interests of persons belonging to minorities”. Recommendation 9 of the *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (hereafter referred to as the “Lund Recommendations”), states that the electoral system should facilitate minority representation and influence, and recommendation 6 stipulates that minorities should have an effective voice at central government which may include special representation through a reserved number of seats in parliament, on the courts, and allocated positions on advisory bodies and cabinet, mechanisms to ensure that minority interests are considered within relevant ministries, and that minorities participate in civil service.

Article 15 of the *Framework Convention* provides that “The Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”. At article 16 of the Convention, “The Parties shall refrain from measures which alter the proportions of the population in areas inhabited by persons belonging to national minorities and are aimed at restricting the rights and freedoms flowing from the

principles enshrined in the present Convention”. According to the explanatory report to the Convention, examples of such measures might include expropriation, evictions and expulsions or redrawing administrative borders with a view to restricting the enjoyment of such rights and freedoms (i.e. gerrymandering).

## **Principle 10**

### **Devolution of power, autonomy and federalism**

1. Consideration shall be given to arrangements, which enhance the capacity of minorities to regulate their affairs and take their decisions, in their own interests and in accordance to local conditions.
2. Where minorities are scattered throughout the territory or part thereof, such arrangements may include self-administration on a non-territorial basis by a minority, of matters, which are essential to its particular identity.
3. In geographic areas where minorities are concentrated and where they constitute a majority, such arrangements may include:
  - a) decentralised or local forms of self-government or autonomous arrangements on a territorial and democratic basis, including consultative, legislative and executive bodies chosen through free and periodic elections without discrimination;
  - b) a federal system of government.

### **Annotations**

The devolution of power, autonomy and federalism is necessary to enhance and ensure effective participation of minorities in decision-making processes at their local level. These arrangements, which affect the political organization of multicultural Nepalese societies, allow for the space of minorities and a degree of independence of minority communities in managing an extensive share of public affairs under their own responsibility and in their own interests, in accordance to their local circumstances. Different arrangements may be applied to allow for a different degree of independence of minorities in managing their own affairs, and may range from decentralisation in administrative matters, to self-government with certain legislative powers to a virtually independent administrative, legislative and judicial system. A federal system is somewhat different as it is integral to the State structure and in the functioning of the State, in particular as representation is constitutionally guaranteed at all levels of the structure, with the allocation of powers shared between the Centre and the federal entities which all work towards common aims through compromise.

Such arrangements imply the decentralization of power between the Center and its parts, while preserving the unity of States, with the sub-unit granted a certain degree of authority, which cannot be overruled or restricted by the Center. These arrangements

should therefore be established by legislation or preferably by the national Constitution. Furthermore, a prerequisite for an efficient functioning of any of such arrangements is the provision of sufficient resources, either through financial support from central government or from the income of the minority groups themselves.

Special attention needs to be paid to the fact that territorial arrangements may only benefit the minority group concerned, and not those persons living in the same territory but who do not belong to the said minority. This situation of a minority within a minority may lead to added disparities between groups as well as to widespread discrimination and even repression in some cases. Arrangements therefore need to ensure that the autonomous entities respect and promote human rights, including minority rights.

### **Constitutional and Legislative provisions, and their Weaknesses**

*Article 2 of the Nepal Constitution, 1990* stipulates that having common aspirations and united by a bond of allegiance to national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste or tribe, collectively constitute the nation.

Similarly, the *Article 12 (c)* has made the provision of freedom to form unions and associations to all citizens of the country but it has not given any freedom to the citizens to form any political parties based on the background and ideal of a particular community and group.

*Article 18 (2)* has cleared that each community shall have the equal right to operate the schools up to the primary level in its own mother tongue for imparting education to its children.

*Article 25 (3 and 4)* stipulates that the state shall establish and develop the foundation of justice, morality and a healthy social life by eliminating all types of economic and social disparities and by establishing harmony amongst the various castes, tribes, religions, races and communities. It shall be the prime responsibility of the state to maintain conditions suitable to the enjoyment of the fruits of democracy through wider participation of the people in the governance of the country and by way of decentralization, and to promote general welfare by making provisions for the protection and promotion of human rights by maintaining tranquility and order in the society.

*Article 26 (2)* has declared that the state shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the nationally unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures.

The authority of the state has been decentralized to district, municipalities and local development committees respectively, but the decentralization is not particularly addressed to uphold the minorities' communities, it is in general form instead.

*Local Autonomous Rule Act (2055 B. S.)* has made a very nominal provision of nominating (at least 1 woman and 3 others) from socially and economically excluded groups of people for the representatives of village council, municipality council and district council.

However, so far as the rights to devolution of power, autonomy and federalism of particular minority groups of people, the state has not made any constitutional and legislative provisions to decentralize its economic and administrative powers for the regional and local level.

*The Comprehensive Peace Accord (CPA) between the Nepal's government and Maoists 2063 B.S. /2006* has made the following decisions regarding the protection and promotion of minority and group rights.

- It has decided to nominate 48 representatives from socially and economically minority caste groups for the interim parliament.
- It has confirmed to make candidates by all political parties through proportional representation method from all castes and socially and economically excluded groups of people for the forthcoming constituent assembly election.
- Regarding the future structure of Nepal, the (CPA) has decided to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country.
- Regarding the socio-economic transformation of the minorities and disadvantaged people, the (CPA) has decided to adopt the policy of managing land and socio-economic security of the socially and economically back warded communities.
- The (CPA) has declared to provide the citizenship to all people who are especially from socially and economically excluded communities, and who are deprived from citizenship rights before the election of constituent assembly.

***The interim constitution of Nepal, 2006*** has made the following provisions on minority rights, issues and concerns: (This constitution has been developed in accordance with the terms and conditions made in the Comprehensive Peace Accord (CPA), 2006 between the government of Nepal and Maoists, and has not been officially passed by the parliament of Nepal and it has been hoped to be passed very soon)

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Nepal is a multiethnic, multilingual, independent, indivisible, sovereign, secular and inclusive democratic country. **Article 4 (1)**

**Right to freedom:** No person shall be deprived of his personal liberty save in accordance with law. All citizens shall have the freedoms of opinion and expression, freedom to assemble peacefully and without arms, freedom to form unions and associations, freedom to open political organizations, freedom to move throughout the country and freedom to practice any profession/occupation, industry and trade.

*Article 12. 1, 2, 3 (a, b, c, d, e, f)*

**Right to equality:**

- All citizens shall be equal before the law. No person shall be denied the equal protection of the law. *Article 13 (1)*
- No discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, origin, language, sex, caste, tribe or ideological conviction of any of these. *Article 13 (2)*
- The state shall not discriminate citizens among citizens on grounds of religion, age, sex, religion, race, origin, language, caste, or ideological conviction or any of these. Provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged, dalits, minorities, or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially or educationally backward. *Article 13 (3)*

**Right against untouchability and racial discrimination:** *Article 14*

- No person shall be discriminated as untouchable on basis of caste and occupation. Any contravention of this provision shall be punishable by law. *Article 14 (1)*
- No person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law. *Article 14 (2)*

**Right to education and culture** *Article 17*

- Based on the existing law, each community shall have the right to operate schools **in** its own mother tongue for imparting education to its children. *Article 17 (1)*
- Based on the existing law, each citizen shall have the right to receive free education up to secondary level. *Article 17 (2)*
- Each community residing within Nepal shall have the right to preserve promote its language, script and culture. *Article 17 (3)*

**Right to social justice.** All socially and economically back warded people, dalits, women, terai community and all suppressed people have the equal right to participate for the further restructuring of the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, origin, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 21**

**Right to Religion: Article 23**

- Every Person shall have the freedom to profess and practise his own religion as handed down to him from ancient times having due regard to traditional practices:

Provided that no person shall be entitled to convert another person from one religion to other. **Article 23(1)**

- Every religious shall have the right to maintain its independent existence and for this purpose to manage and protect its religious places and trusts. **Article 23(2)**

The state is responsible for ensuring the progressive transformation of social, political and economic status of the country. **Article 33(b)**

It shall be the prime responsibility of the state to restructure the country through inclusive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and addressing the issues and concerns of all women, dalits, indigenous people, ethnic groups, terai people, and excluded minorities, and by ending the existing centralized and one sided ruling system of the country. **Article 33(d)**

It shall be the major responsibility of the state to ensure the right of all citizens to education, health, settlement, employment and food. **Article 33(h)**

It shall be the major responsibility of the state to ensure the socio-economic security including the provision of land to all landless people, kamaiyas (slaves) and socially and economically back warded people. **Article 33(i)**

It shall be the responsibility of the state to remove all discriminatory laws from the practice. **Article 33(n)**

The social objective of the state shall be to establish peace and security, human rights positive environment and eradicate all existing economic and social inequalities by increasing the public participation of all people irrespective of caste, ethnicity, region, sex, language, religion and origin to enjoy the fruit of democracy and social justice. **Article 34 (2)**

The state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. **Article 35 (1)**

### **Regional and international standards**

As for regional and international standards, the *Lund Recommendations*, at recommendation 14 states that “effective participation of minorities in public life may call for non-territorial or territorial arrangements of self-governance or a combination thereof”. At recommendation 24, reference is made to “additional dispute resolution mechanisms, such as negotiation, fact finding, mediation, arbitration, an ombudsman for national minorities, and special commissions, which can serve as focal points and mechanisms for the resolution of grievances about governance issues”. Paragraph 35 of the *Document of the Copenhagen Meeting of the CSCE* makes reference to the possibility of creating an environment that would be conducive to the participation of national minorities in public affairs, in their own language, by establishing “appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of minorities in accordance with the policies of the State concerned”. Article 3 of the *European Charter of Local Self-Government*, states that “Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population”. Article 9 of the Charter provides that “Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers”.

### **Principle 11**

#### **Effective implementation and redress**

1. Institutions shall be established, and where they exist, strengthened, with the mandate to effectively implement these principles and other rights relevant to minorities, address violations of minority rights and provide the necessary redress. These may include national institutions such as human rights commissions, commissioners, and ombudspersons. In particular, these institutions shall:
  - (a) be accessible to all and their procedures shall be facilitated to provide easy access for minorities;
  - (b) be independent and autonomous and dedicated to upholding democracy, human rights, the rule of law, and diversity;
  - (c) provide redress including effective remedies that allow for the implementation of minority rights, sanctioning of perpetrators of violations, and compensation for the victims.

2. Minorities have the right to effective remedy and compensation for violations of their rights, and, to this end, shall have easy access to all courts and tribunals, as well as to conciliation, mediation and dispute resolution mechanisms, including through legal assistance;
4. Minorities shall have easy access to regional and international tribunals, as well as to the United Nations treaty bodies and complaints procedures.

### *Annotations*

Human rights acquire real meaning for minorities when the public authorities of the State establish mechanisms to ensure that the rights guaranteed in international conventions and declarations or in domestic legislation, are effectively implemented and protected. In many States, normal procedures are complex, costly and slow and may therefore not be easily accessible to minorities. When confronted with violations of their rights, minorities must often overcome significant obstacles in order to access the judicial system and other domestic human rights protection mechanisms. Furthermore, in some cases, the judicial process may be ineffective in addressing violations of minority rights and granting redress and compensation. One of the challenges is to effectively enforce legal and other provisions relating to minorities and ensure that the rights of minorities are translated into reality at the national level. It may therefore be useful to consider, as a complement to judicial procedures, the establishment and strengthening of independent national institutions, which are usually able to provide quicker and less expensive recourses and are as such more accessible to minorities. When domestic remedies for violations have been exhausted, concerns can be brought to the attention of United Nations mechanisms and procedures.

In Nepal, the constitutional and legal guarantees to protect the rights of minorities remain all too often unfulfilled. The constitutional and legislative provisions of the country are all guided by the norms and values of Hindu religion; therefore the legal provisions have not properly addressed the ideals of minority groups.

The constitutional and legislative provisions have also not properly differentiated the notion of indiscriminate and equality regarding the protection and promotion of various concerns of minorities and the legislature of the state seems quiet and unresponsive to express its commitment and loyalty in the causes to enhance the welfare activities of the various issues of minorities. Here, Violations of the rights of minorities are a common feature, with widespread discrimination based on caste, race, religion and ethnic origin. Some of the institutions, which have been established to safeguard the rights of minorities, have limited powers and functions, and have proved ineffective in protecting minorities. The electoral system is systematically undermined and the judiciary and legal profession inspire little confidence, resulting in few cases involving minorities being brought before the courts, and the few cases that are prosecuted are being delayed for years. Many violations fail to be investigated; perpetrators have not been brought to justice, and redress and compensation remains beyond the reach of minorities.

### Constitutional and legislative provisions and their Weaknesses

*Article 11 of the Constitution of Nepal, 1990* specifies that all citizens shall be equal before the law. No person shall be denied the equal protection of the law and no discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe or ideological conviction of any of these. The state shall not discriminate citizens among citizens on grounds of religion, age, sex, caste, or ideological conviction or any of these: provided that special provisions may be made by law for the protection and advancement of the interests of women, children, the aged or those who are physically and mentally incapacitated or those who belong to a class which is economically, socially or educationally backward.

It has further declared that no person shall, on the basis of caste, be discriminated against as untouchable, be denied access to any public place, or be deprived of the use of public utilities. Any contravention of this provision shall be punishable by law.

The *Article 12 of the constitution* has further made some provisions of right to freedom of opinion and expression, freedom to assemble peacefully and freedom to form unions and associations to all people in the country. And the *Article 26 (10)* has declared that the state shall pursue a policy, which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment.

But the *Constitution of Nepal* has not made any separate constitutional and legal provisions regarding the establishment of national institutions to implement and monitor the principles and other rights relevant to minorities, address violations of minority rights and provide the necessary redress. However, the government of Nepal has established *National Human Rights Commission (NHRC)*, *National Dalits Commission (NDA)* and *National foundation for Development of Indigenous Nationalities (NFDIN)* to work for the above-mentioned causes but still they have not been given autonomous mandate to work for the rights of nationalities and socially and economically excluded groups including sexual minorities.

In Nepal, the constitutional and legal guarantees to protect the rights of minorities remain all too often unfulfilled. The constitutional and legislative provisions of the country are all guided by the [norms and values of Hindu religion and majoritarian groups; therefore the legal provisions](#) have not properly addressed the ideals of minorities.

The constitutional and legislative provisions have also not properly differentiated the notion of indiscriminate and equality regarding the protection and promotion of various concerns of minorities and the legislature of the state seems quiet and unresponsive to express its commitment and loyalty to effective remedy and compensation for violations of their rights. Here, Violations of the rights of minorities are a common feature, with widespread discrimination based on caste, race, religion and ethnic origin.

The above mentioned institutions such as (*NHRC and NFDIN*), which have been established to safeguard the rights of minorities, have limited powers and functions, and

have proved ineffective in protecting minority rights. Their mandates and responsibilities vary, but generally they are responsible for conciliating, monitoring, investigating and advising the Government on human rights, including minority rights, and usually have the power to recommend and mediate.

And finally, since Nepal Government has not ratified the *Rome Statute of International Criminal Court*, there is no legal access to international tribunal to file the cases against the severe violators of human rights.

***The interim constitution of Nepal, 2006*** has made the following provisions on minority rights, issues and concerns: (This constitution has been developed in accordance with the terms and conditions made in the Comprehensive Peace Accord (CPA), 2006 between the government of Nepal and Maoists, and has not been officially passed by the parliament of Nepal and it has been hoped to be passed very soon)

Having common aspirations and united by a bond of allegiance of national independence and integrity of Nepal, the Nepalese people irrespective of religion, race, caste, tribe, collectively constitute the nation. **Article 3**

Nepal is a multiethnic, multilingual, independent, indivisible, sovereign, secular and inclusive democratic country. **Article 4 (1)**

**Right to freedom:** No person shall be deprived of his personal liberty save in accordance with law. All citizens shall have the freedoms of opinion and expression, freedom to assemble peacefully and without arms, freedom to form unions and associations, freedom to open political organizations, freedom to move throughout the country and freedom to practice any profession/occupation, industry and trade.

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The state shall pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions, by equitably distributing investment of economic resources for balanced development in the various geographical regions of the country. **Article 35 (1)**

The state shall, while maintaining the cultural diversity of the country, pursue a policy of strengthening the national unity by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities and linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures. **Article 35 (3)**

The state shall pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons as will ensure their protection and welfare. **Article 35 (8)**

The state shall adopt a policy of making special arrangement of social security for all disadvantaged women, disabled, orphans, children, elderly people and minorities. . **Article 35 (9)**

The state shall pursue a policy, which will help promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment. **Article 35 (10)**

Regarding the future structure of Nepal, the state shall take further steps to restructure the country with inclusive and progressive democratic practice by eradicating all existing discrimination based on caste, class, language, sex, culture and religion, and by ending the existing centralized and one sided ruling system of the country. **Article 138 (1)**

### **Regional and international standards**

Article 6 of the *Convention on the Elimination of All Forms of Racial Discrimination* declares “States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention ...”. According to the *Oslo Recommendations*, at recommendation 16, “States in which persons belonging to national minorities live should ensure that these persons have, in addition to appropriate judicial recourses, access to independent national institutions such as ombudspersons or human rights commissions, in cases where they feel that their linguistic rights have been violated”.

## ANNEX A

### REFERENCES TO INTERNATIONAL AND REGIONAL HUMAN RIGHTS INSTRUMENTS

(In order of appearance in the document)

**Convention on the Prevention and Punishment of the Crime of Genocide (UN)**

**Guiding Principles on Internal Displacement (UN)**

**Geneva Conventions and Additional Protocol II (UN)**

**Universal Declaration of Human Rights (UN)**

**International Covenant on Civil and Political Rights (UN)**

**Declaration on the Rights Of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN)**

**Framework Convention for the Protection of National Minorities (OSCE)**

**Convention on the Elimination of All Forms of Racial Discrimination (UN)**

**European Charter for Regional or Minority Languages (Council of Europe)**

**Hague Recommendations Regarding the Education Rights of National Minorities (Foundation on Inter-Ethnic Relations)**

**Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (UN)**

**Oslo Recommendations Regarding the Linguistic Rights of National Minorities (Foundation on Inter-Ethnic Relations)**

**Lund Recommendations on the Effective Participation of National Minorities in Public Life (Foundation on Inter-Ethnic Relations)**

**Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE (now OSCE)**

**European Charter of Local Self-Government (Council of Europe)**