

# Talking About Inclusion: Attitudes and Affirmative Action in Nepal

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*This article explores the history and impact of affirmative action in Nepal's civil service and political parties. Affirmative action was part of a broader social inclusion agenda introduced after the Comprehensive Peace Agreement was signed in 2006. Affirmative action will always have associated costs and trying to minimize these requires concerted effort and leadership. Affirmative action is difficult to do well in a country like Nepal because it challenges centuries of discrimination that is reinforced daily and involves confronting clientelistic practices and social norms of entitlement. Quotas alone will be insufficient in such a context. This article argues that affirmative action can have wider good governance outcomes by improving accountability and meritocracy if it is combined with other initiatives aside from quotas. Some of the positive governance gains achieved through affirmative action warrant a bigger investment from development partners in this area.*

**Key words:** affirmative action, quotas, workforce diversity, social inclusion, Nepal

## 1 Introduction

Affirmative action is associated with quotas<sup>1</sup> and preferential policies that target specific groups (especially women or minorities) (Beauchamp, 2002: 210). According to *The SAGE Handbook of International Social Work*, positive discrimination and affirmative action are the same thing, and mean that positive steps are taken to redress the effects of historical discrimination against specific groups (Lyons et al., 2012). Although initiatives can vary, affirmative action usually involves plans to safeguard equal opportunity, to protect against discrimination, to advertise positions openly and to create scholarship programmes to ensure specific groups are recruited in the future (Pojman, 1992).

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1. According to Merriam-Webster, a quota is 'a proportional part or share; *especially*: the share or proportion assigned to each in a division or to each member of a body'. The definition of preferential is 'gives an advantage to a particular person or group'.

The state is not representative of all citizens nor all of society in Nepal. The values and beliefs of the ruling Ranas and upper castes have been prioritized and institutionalized since the 1854 Civil Code was introduced. It has been argued that government is more efficient and representative when the state is embedded within society (Evans, 1995: 204). In Nepal's case, the state is embedded in society, even mirroring the hierarchical, Hindu-based social stratification system introduced when Nepal was unified by the Rana dynasty between 1740 and 1769. In Nepal, social exclusion is 'rooted in structures that reproduce inequalities of a systemic basis' (Kabeer 2005: 196). In fact, the state and society in Nepal reinforce exclusion and clientelism.

A ten-year civil war fought over exclusion, among other issues, brought the plight of Nepal's traditionally excluded groups into government policy and discourse. The Maoist's 'People's War', recruited large numbers of male and female combatants from poor areas and traditionally excluded groups because the communist ideology behind the people's movement appealed to those lobbying for inclusion (Thapa, 2012: 51–3). The strength of the Maoist movement was that it was class-based and about the economically and socially disadvantaged (*Nepali Times*, 2012). The Comprehensive Peace Agreement that ended the conflict promised to restructure the state in a more equitable manner.

Affirmative action was part of the political settlement that emerged post-conflict, and therefore was part of the bargain struck by elites to maintain peace and social control. The Comprehensive Peace Agreement states:

both sides respect the right of every citizen to take part directly or through one's nominated representative in the matters of public concern, to cast vote, to be elected and to enjoy the right to equality of entering into public service.

Although the Comprehensive Peace Agreement does not mention the phrase 'proportional representation' it references prior agreements with Janajati and Madheshi groups that do. Additionally, Article 35 (14) of the interim constitution commits the state 'to pursue a policy of making special provisions on the basis of positive discrimination'. Affirmative action is a recognition of exclusion and identity (Tillin and Shneiderman, 2015).

A range of policies and programmes can be implemented to assist in achieving greater inclusion. Understandably, representation in the civil service and political parties was a priority concern for excluded groups because upper castes had a leadership monopoly. There are many benefits to state access in a clientelist state that go beyond employment. Those who are excluded need to be able to influence the structures of decision making that affect them, and require strong institutions to protect them (Cornwall and Gaventa, 2000; Gidley et al., 2011; Gingrich, 2008). A number of in-depth studies show that better (less risky, financially sound, more sustainable) decisions are made when decision-making bodies include competent

people who come from a range of perspectives and backgrounds.<sup>2</sup> Diversity can avoid ‘group think’ and increase innovation. Although decision-making can take longer with diverse groups (because it involves more people who think differently) it will be more sustainable, as it incorporates a variety of values and beliefs from the outset.<sup>3</sup> Diversity and affirmative action are therefore good for the state, for development and for the nation as a whole.

Affirmative action often brings mixed results because of the manner in which it is implemented. Affirmative action can increase intra-group inequality, with the most educated benefiting (Moodie, 2013). Because affirmative action is a visible policy, this may lead to resentment within groups or resentment between groups. Quotas can lead to extreme measures whereby, instead of abolishing difference or caste and ethnic subordination, they uphold it (Anderson, 2012). People who win reserve seats are not given a fair chance without institutional behaviour change because they are integrated into activities and institutions that favour elites (Shah and Shneiderman, 2013).

Implementing affirmative action effectively is immensely challenging, whether it focuses on women only or also caste, race and ethnicity, as Nepal does. Domingo et al. (2013) examined post-conflict countries and found an increase in women’s participation in politics through formal quotas. However, they identified challenges and barriers that hinder women’s substantive participation including: customary rules, negative cultural attitudes, male and elite dominated political parties and structures, lack of financial resources for women, violence and insecurity, backlash reactions, illiteracy and political inexperience and lack of support for capacity building (Domingo et al., 2013). The barriers listed here for women appear to equally affect efforts to improve caste, race and ethnic representation (See: PwC, 2013; Thorat and Senapati, 2006; 2007; Senapati, 2013).

Contemporary arrangements of power in clientelist states are capitalist in the way they involve an exchange of favours and rewards as opposed to relying upon charismatic leadership (Khan, 2010: 63). Favours and rewards come in different guises. ‘Rents’ include ‘access to natural resources, *access to public jobs* and procurement contracts, or of the conferral of privilege through restrictive economic policies’ (Levy, 2014: 23 [emphasis added]). Patrons need to maintain the loyalty of their clients through favours and rewards or risk clients offering their services to other patrons with better favours and rewards (Khan, 2010: 63). As these relationships are mutually constitutive, clients need to offer benefits that have value to patrons and demonstrate loyalty in order to maintain the relationship. ‘Power begets power’ in such a system, meaning excluded groups are unlikely to offer the

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2. See Lord Davies (2011): ‘Inclusive and diverse boards are more likely to be effective boards, better able to understand their customers and stakeholders and to benefit from fresh perspectives, new ideas, vigorous challenge and broad experience. This in turn leads to better decision making’; and McKinsey & Company (2008): ‘the companies where women are most strongly represented at board or top management level are also the companies that perform best, on both organisational and financial performance’.

3. The Lehman Brothers Centre for Women in Business found that companies need a mix of men and women to achieve the best results in most areas that drive innovation, because a diverse group is more likely to experiment, share knowledge and complete tasks (LBCWIB, 2007).

same utility to patrons even when they have greater access, because they lack the networks required to manoeuvre backroom deals. Given this situation, it can be assumed that affirmative action can be difficult to achieve, as elites will often try to undermine the intent of affirmative action with personalized appointments that favour their own networks of power.

Affirmative action necessitates replacing personalized arrangement of appointments with a structure that favours unknown members of different identity groups. Clientelism, patrimonialism and citizenship interact to create challenging problems for democratic principles such as meritocracy, accountability and transparency (Cornwall et al., 2008). Even if affirmative action is initiated for the sake of inclusion, this article argues that it can have wider-reaching consequences, such as improving governance and accountability, if carefully implemented. Affirmative action can shed light on the different meanings and interpretations of merit, and bring informal institutions to the surface for debate. Browne (2013) found that strong leadership from central government is required for successful affirmative action policies. In post-conflict and fragile states, however, strong leadership is frequently lacking on a range of issues, which is why external actors must remain engaged and involved in reform implementation over the longer term.

A phased approach was taken to data collection to enable critical reflexivity and improved reliability in terms of the grounded theory methodology. From July 2012 to February 2014, 66 key informants were interviewed (50 were Nepalese and 16 were foreigners, 41 were men, 25 were women) predominantly residing in Kathmandu. Key informants included elite decision-makers and policy influencers, political parties, journalists, academics, non-government, the private sector, trade unions and development partners (foreigners or Nepalese). The grounded theory methodology uses 'theoretical sampling' to identify respondents and code the data for emerging themes.

The article is structured with a review of affirmative action literature, followed by a situation analysis of Nepal to contextualise the setting. Then, affirmative action in the civil service is discussed. The last section looks at political party quotas, with a discussion on some of the barriers to successfully implementing affirmative action in a state like Nepal. It is followed by the conclusion.

### **1.1 Literature review**

An assessment of the effectiveness of affirmative action should include sustained changes in the number of excluded groups gaining employment across levels. The view and opinion of excluded groups themselves should also be a primary consideration in assessing the effectiveness of affirmative action. As such institutional culture plays a large role in how accepted excluded groups will feel. The literature also suggests the following factors can be used to assess the effectiveness of affirmative action policies: an increase in the numbers of excluded groups employed; the proportion of the number of excluded groups employed relative to other more advantaged groups; promotion and retention of excluded groups; the degree of resistance and criticism heard; ability to meet the quota targets set; the

perspectives and feelings of quota seat holders; and whether the participation achieved from quotas is substantial or tokenistic. A number of indicators can be used to assess the effectiveness of affirmative action.

Affirmative action policies, especially quotas for women in politics, have been implemented in many countries with mixed results. An Indian randomized control trial found that reserving local leadership positions for women increased their participation in local meetings and ensured outcomes that were favourable to women (Chattopadhyay and Duflo, 2004; Beaman et al., 2011). Meanwhile, Ban and Rao (2008) report a less positive impact of local political participation by women in India. Nazneen and Mahmud (2012: 33) found that gender quotas have increased the representation of women in many Latin American, sub-Saharan and South Asian political structures, but the women who enter political office were often prevented from accessing resources and influential posts. The literature on women tends to focus more on political representation than public sector employment.

The literature on India is highly relevant to Nepal, both because the countries share a border and because India incorporates caste, ethnicity and gender into its affirmative action policies. Borooah et al. (2007) performed a statistical analysis of Indian employment data for 1999–2000 and found a five percentage point increase in scheduled caste and scheduled tribe people in regular salaried and wage employment. Senapati (2013) reviewed central government employment data from 1960 to 2010 and found that the figures fluctuate from year to year, but that overall the share of jobs has increased for scheduled tribes since 1990, and has remained about the same for scheduled castes. Both groups remain under-represented in senior roles. Even in India, where affirmative action has been implemented since 1947, there have been mixed results.

Affirmative action policies can do harm. Shah (2010) warns from ethnographic research in India that affirmative action can serve to reinforce difference, misrepresent, stereotype and hurt the very groups it is meant to help as well as mask or inflame class inequalities within identity groups. In highlighting the magnitude of the backlash that affirmative action can generate, Still (2013) explains how the hostility generated by India's reservation policies is out of proportion to the benefits that accrue to Dalits from these policies. Elsewhere, affirmative action has also been linked to escalating conflict and entrenching, rather than overcoming differences (DFID, 2010: 73, 95; Kabeer, 2010). Minimizing the harmful side effects of affirmative action requires careful planning.

Affirmative action policies are repeatedly linked to anti-merit arguments. In Nigeria, where affirmative action has been less successful, the World Bank (n.d.) found a negative discourse surrounded affirmative action policies (the federal character principle) being anti-merit. Similarly, Edigheji (2001) shows that many of South Africa's problems are wrongly attributed to affirmative action policies because of a strong discourse that these policies can constrain state capacity by the appointment of unfit or unskilled (black) employees. He makes the point that poor state capacity is attributed to a weak education system and high turnover and not affirmative action policies because the white population is over-represented in managerial categories and there were absolute increases in the number of public

sector black and white staff between 1995 and 2000. When subalterns try to escape their subordinate status they are frequently met with resistance.

Discrimination and anti-merit arguments create an unsupportive environment for reserved seat holders upon entry but so does nepotism. Rao (2013: 21) found in Ethiopia that women remain disproportionately represented in lower-level lower-paid jobs because of informal or exclusionary norms. Nazneen and Mahmud (2012: 36) found in Bangladesh that affirmative action measures can overcome initial entry barriers, but are not as successful at achieving senior roles and promotions for excluded groups or women. The problem of discrimination and a negative response to affirmative action does not mean affirmative action is unsuccessful, but rather that the way it is implemented is often problematic. Quotas are often seen to be about counting numbers of excluded groups. However, they should be seen as an input that needs to be accompanied by a broad range of other initiatives to deliver the successful long-term outcome of competing fairly without quotas.

When done well, affirmative action can actually protect against nepotism (World Bank n.d.: 63). For this to be realized, stronger accountability in recruitment is required. Tiemo and Arubayi (2012) found during a basic survey of 42 public and private human resources practitioners in Nigeria that although the federal character principle was considered during recruitment, nepotism and favouritism prevailed. The challenges involved in effectively implementing affirmative action policies are huge.

Class, caste and race are important considerations during the implementation of affirmative action. South Africa's post-apartheid constitution made provisions for women to comprise 30% of all new civil servants. However, without paying attention to race, affirmative action policies resulted in increased numbers of white women, while black women continued to be marginalized (Budlender, 1997). Class also plays a role in affirmative action, because education and skills are barriers to entry level employment for many poor people. Borooah et al. (2007) note that when affirmative action does not improve educational standards or job-related attributes, it will benefit those that least need the assistance. Whether affirmative action should be about welfare or identity remains unanswered in the literature as it is context specific. Moodie (2013) writes that there is an unhealthy correlation between 'creamy layer'<sup>4</sup> arguments and a lack of affirmative action success. Instead, Moodie (2013) argues that the presence of a creamy layer shows that affirmative action policies are working. To be more pro-poor or more inclusive, affirmative action should be complemented by initiatives and other long-term policies to improve the education levels of poorer social segments.

The key to successful affirmative action is the combination of policies and initiatives, a progressive approach and the appropriate allocation of time and money. Haider (2011: 3) suggests a time lag before positive impacts are seen from quotas as women have to develop skills and confidence, and citizens have to become more accepting of women in political leadership. Similarly, Browne (2013) argues from drawing on the literature on affirmative action in Malaysia and South Africa that affirmative action policies are successful if they are implemented over the long-term (30

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4. The 'creamy layer' refers to the better off in a group who rise to the top with the help of quotas (Béteille, 1991; Parry, 1999).

years or more) and in combination with other special measures. In Malaysia, the affirmative action policy was implemented in tandem with quotas and scholarships for university and professional education, subsidised loans from the banking system, and preferential access to business opportunities (Di John and Putzel 2009: 22-24).

In Australia many lessons have been learnt about what works to increase indigenous employment generally. Lessons of relevance include: increasing skill levels via formal education and training; pre-employment assessment and customized training; setting targets and non-standard recruitment strategies; cross-cultural training for employers and all employees; support mechanisms to improve retention, including ongoing mentoring; flexible work arrangements; and family support (Gray et al., 2012). Of these, wage subsidy and structured training programmes were found to be the most effective measures (Gray et al., 2012). Meanwhile, Purdie et al. (2006) add the following as keys to success: consultation and partnerships with indigenous communities; the use of indigenous employment brokers who are well-informed about the public sector, and based in regional areas; having a clear strategy with energetic marketing, and developing connections with schools; adequate resourcing in terms of dollars and committed people at all levels, including strong leadership; monitoring and evaluation; the provision of scholarships, cadetships, traineeships, apprenticeships, in-service professional development and training, and a time allowance for further study. This posits that affirmative action must involve more than quotas to be successful.

Affirmative action policies are deeply meaningful for traditionally excluded groups seeking recognition from the state (Moodie, 2013; Middleton, 2013). In such cases the criteria for success are about ensuring proportional representation,<sup>5</sup> and this may later turn to issues of retention and promotion. However, as we shall see from the Nepal case study, not having a comprehensive long-term approach to affirmative action from the beginning that includes a focus on behaviour change, retention and promotion may undermine the success of affirmative action. Shah and Shneiderman (2013: 10) conclude the editorial introduction of *Toward an Anthropology of Affirmative Action* by suggesting ‘the need for empirical rigor, sustained debate informed by historical and comparative data and frank discussion as new policies that attempt to ameliorate vast inequalities are framed’. A clear evidence-based approach is needed if affirmative action is to be successful.

## 2 Situational analysis

For a long time, the state of Nepal held a limited view of the citizenry. The caste system (Figure 1) created a hierarchy whereby those at the top of the caste pyramid were favoured by the Rana monarchy. ‘Upper castes’ usually from the hills of Nepal were considered ‘pure’ Nepalese and those lower down, originating from non-

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5. While the term ‘proportional representation’ is associated with an electoral system that represents each political group or party in proportion to its actual voting strength in the electorate, in Nepal it is used to mean that all state structures have the same demographics, or representation of different groups as per their population in the country. So if Dalits represent 13% of Nepal’s population then they should hold 13% of political seats and comprise 13% of the civil service.

Brahmanical cultures and non-Hindu religions, were made loyal subjects of the state and considered ‘polluted’<sup>6</sup> (Leve, 2007). To apply James Scott (1998), the state ‘sees’ the country framed by the ruling elite who dominate the state apparatus.

Prior to the civil service being formalised in 1956, it consisted of monarchic nepotistic and clientelist appointees (Awasthi and Adhikary, 2012: 5). Colonial

**Figure 1: Nepal’s Traditional Caste Pyramid**



Source: Bennett and Sharma, 2006: 6.

strategies used for political stabilization involved the promotion of administrative groups and an ‘intermediate class’ (Khan, 2010: 56). In Nepal’s case, the intermediate class consisted largely of Brahman and Chhetri groups and some Newars. The proximity of Newars, who are the indigenous inhabitants of Kathmandu, to the state machinery has seen them better represented in state structures than other indigenous groups. In 2006, Brahman, Chhetri and Newars held 95% of total civil service positions; 91% of the judiciary; 72% of cabinet positions; and 68% of parliament – yet represented only 36.37% of the population (Neupane, 2005, cited in Lawoti, 2010).

The armed forces, political parties, academic leadership and civil society leadership reflected this demographic dominance, indicating a monopoly over all forms of leadership (Lawoti, 2010). Men were also disproportionately represented. Prior to 2007, women made up only 7% of the civil service; under 1% were senior first class officers (Bennett and Sharma, 2006). The Rana dynasty’s strategy of promoting an ‘intermediate class’ of Brahmans and Chhetris has had a significant and long-lasting effect on the state structure of Nepal. According to Laws (2012: 28)

6. Leve (2007) describes the stratification system as a ‘rituo-political system’. To achieve *Mokshaya*, or eternal peace, in Hinduism, one must perform certain rituals and participate in festivals and other activities depending on one’s place within Hinduism (Bhatta, 2016). Many rituals concern purification and pollution and are used by the caste system to maintain social and gender relationships. *Chaupadi* practices relegate ‘polluted’ women to sleep in cowsheds during menstruation. Dalits can never be clean, cannot touch the food of other castes or use the same water tap as them for fear of polluting the water, and are known as the ‘untouchables’.

such ‘exclusive pacts can lead to political instability as disempowered groups struggle for resources and representation’.

The state of Nepal has been blind to the needs (and even existence) of certain caste and ethnic groups. Caste and ethnicity were first recorded in the 1991 census, which recorded 59 ethnic/caste groups and 31 languages (Niroula, 1998). This recognition improved gradually: the 2001 census recorded 103 ethnic/caste groups and 92 mother tongues, and the 2011 census recorded 123 mother tongues and 125 caste/ethnic groups.<sup>7</sup> In applying Scott’s (1998) theory of *Seeing Like a State* it can be inferred that the state of Nepal chose to only ‘see’ [count in the census] people within its borders that it recognised as citizens.

Affirmative action is only one of the changes required for the Nepal state to become more inclusive. Table 1 outlines a number of provisions made after the signing of the Comprehensive Peace Agreement to promote greater inclusion. Achieving affirmative action in such a highly exclusive state undergoing significant structural change and legislative reform is a challenging undertaking. There is a high likelihood that the appetite for reforms like affirmative action may be deprioritized when a range of broader reforms is taking place simultaneously.

Many excluded groups considered affirmative action essential for building an inclusive state. Chatterjee (2004: 40) stresses that when states have not shown the ability to reach the entire population then claims made of the government may come in the form of exceptions or preferential treatments for specific target groups rather than rights. One Madheshi Muslim interviewee outlined:

We need to take steps one by one. If we have political power, then we can change things around us. Brahmans and Chhetris have occupied almost 90% of the civil service. The decision-making capacity is in their hands. If there needs to be any change in our system, it needs to come through the state level or the government level. If there is more representation from minority groups, then they can take care of the issues that concern them.<sup>8</sup>

The assumption usually underpinning the claim for affirmative action is that, with more representation in state and political structures and with more excluded groups involved in legislation and policy-making, the more the concerns of excluded groups will be addressed. Consequently, implementing affirmative action was prioritized by excluded groups in Nepal so that they would be able to influence the new state structure and constitution.

Correcting historical inequality is needed in the heterogeneous society of Nepal, where a long history of social stratification and exclusion has left lower caste (Dalits) and indigenous (Janajati) groups and religious minorities socioeconomically disadvantaged and without representation in the state apparatus. Exclusion is also experienced geographically, with hill people having more influence over state decision-

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7. The 2001 census established proportional representation quotas. The 2011 census shows that the 2001 census still held a limited view of the citizenry. Therefore, the quota figures missed certain sub-population groups, which fuels sub-group identity claims.

8. Female Madheshi NGO director interviewed 8 August 2013.

making than Madheshi/Terai people from the plains. Language and gender are other exclusion vectors that distort statistics and life chances in Nepal. Table 2 shows the different poverty levels of the main social groups and poverty reduction over time, clearly highlighting how advantaged status allows for further capitalization of opportunities, and thus certain social groups have faster poverty reduction.

**Table 1: Historical Inclusive Provisions Made after the CPA**

Initiative	Date	Rationale
Amendment to the Citizenship Act	November 2006	Provision of citizenship by descent from both the father and the mother. Easy access to citizenship for Madheshi/Terai people with one parent born in India.
Interim Constitution	2007	Recognition of traditionally marginalized groups. Rights to non-discrimination and equal social recognition to Dalits.
Interim Constitution Amendment	March 2007	Provision of proportional representation in state affairs to all marginalized and excluded groups and regions.
Constituent Assembly member Election Act	2007	Adoption of mixed electoral system with both First Past the Post (FPTP) and proportional representation system.
Amendment in Civil Service Act	2007	Provision of reservation quota in civil service.
Ratification of ILO169	2007	Ensured the rights of Janajati with regard to culture, land, natural resources, education, traditional justice, recruitment and employment conditions, etc.
Amendment in Nepal Police Regulations	2007	Reserved quotas for women and marginalized groups. Provision of reservation quota in Nepal Police and Armed Police Force.
Ordinance on social inclusion	2009	Made public services more inclusive.
Proposed ordinance on Public service Reservation	2012	Allocated reservation quota in branches of the public service. Initiated a multi-layer reservation system. Included a proposal to amend 19 relevant Acts.

Source: Awasthi and Adhikary, 2012.

In Nepal, exclusion from representation translates as a lack of access to the economic advantages that pertain to government offices (Gore, 1995). Access to the state provides a level of security hard to find elsewhere for Nepal's excluded groups. Holding a government office delivers the opportunity to align with a powerful

patron, as well as a secure income, health insurance and a pension. Additionally, in a largely unaccountable state, bureaucrats and politicians can help themselves to additional state revenue and resources that allow them to maintain their own *aafno manchhe* (one's own people) network. This includes the ability to form clientelist networks and factions (Gore, 1995). In Nepal, access to the state shapes the opportunities of all groups. In a country with high unemployment and limited opportunities, civil service employment is a good option that offers a level of security and power unseen by other industries.

**Table 2: Comparison of poverty levels during the period 1995–2010 categorized by ethnic group**

Ethnic group	Poverty 1995 (%)	Poverty 2003 (%)	Poverty 2010 (%)	% change 1995–2003	% change 2003–2010
Hill Brahman/Chhetri	35	18.8	17.7	–46.3	–5.9
Hill Janajati	42.2	35	23.7	–17.1	–32.3
Hill Dalit	58.2	44.9	42.4	–22.8	–5.6
Terai Hill/ Middle caste	28.3	24.5	29.2	–13.4	–19.2
Terai Janajati	53.4	35.2	26.6	–34.1	–24.4
Terai Dalit	–	49.2	40.2	–	–18.3
Muslim	44.3	41.3	22.1	–6.7	–46.5
Other	43.2	49.8	11.1	15.5	–77.7
All Nepal	41.8	30.8	25.2	–26.1	–18.2

Source: CDSA 2014

Many informal systems and practices govern behaviour in Nepal. Nepal's *aafno manchhe* social system of organization is one such example that operates like a web of privileges and favours (Bista, 1991). However, it results in alliances that can lead to patron–client type relationships, exclusionary practices, factionalism, failures in co-operation and corruption (ibid.: 4). Bista (1991) established that this system leads to a sense of fatalism and a belief that one cannot change one's position in society. Levy (2014) purports that in many low-income countries, state institutions are not separate from the economic, social or political realms.

Informal institutions that govern social norms and relations still operate behind the formal rules of a state in many low-income countries (Jütting et al., 2007). Weberian benchmarks of good governance can be misleading in a clientelist state that hides feasible directions for reform (Khan, 2010: 65). Consequently, public sector reforms have been spectacular failures in many low-income countries, including Nepal. Pritchett et al. (2013) argue that institutional reforms have a tendency to result in 'isomorphic mimicry' whereby institutions pretend to reform in terms of appearance and structure, but function does not improve. Khan (2010: 56) explains that 'even the partial enforcement of formal rules in these contexts requires compromises with organisers of informal power'.

There are a number of exclusion vectors that divide state from society in Nepal. Some of these are historically founded and cumulatively developed and others are

more recent (Jeffrey and Lerche, 2000). State dominance may have originated from the caste system and colonial strategies of constructing administrative and political classes to manage the empire, but in contemporary times it is maintained through the combination of wealth, discrimination, social closure and exclusion.<sup>9</sup> Jeffrey and Lerche (2000: 861) note that it is ‘access to state power in a wider sense that is of importance for the reproduction of social difference’ and class advantage.

### 3 Civil Service affirmative action

Claims for quotas in the civil service pre-date the Comprehensive Peace Agreement. In 2004 a high-level reservations committee proposed setting a reservation of 35% of civil service jobs (20% women; 10% Janajati and 5% Dalit) but political instability prevented the idea being enacted (Bennett, 2005: 26). The next reform to the civil service discussed quotas but did not include them because the Public Service Commission (PSC) was concerned that this might undermine meritocracy (ibid.: 36), yet separate exams for women, Dalits, Janajatis and disabled people were allowed (Bennett and Sharma, 2006: 93).

Despite a slow start and earlier concerns, the Civil Service Act 1993 was amended in 2007 to include quotas. A reservation of 45% was set and of this, 33% was reserved for women, 27% for indigenous groups, 22% for Madheshis, 9% for Dalit, 5% for differently abled and 4% for ‘backward regions’.<sup>10</sup> The remaining 55% of posts were to be filled through open competition.

Development partners helped to implement the civil service affirmative action system. The UK’s Department for International Development (DFID) funded a civil service reform programme that had a large affirmative action component. It worked with the PSC, which had the mandate for affirmative action. It addressed the policies of recruitment and selection of applicants by raising awareness of reservations, and encouraged excluded groups to apply by running preparatory examination classes and accepting lower exam scores.<sup>11</sup> It added six days of diversity training to the 90-day basic administrative training for new recruits.<sup>12</sup> In short, a concerted effort was made to recruit more excluded groups.

Data challenges were also overcome. The Swiss Agency for Development and Cooperation and DFID together supported a programme that worked with the Department of Civil Personnel’s Record Office under the Ministry of General Administration (MoGA), which collected sex-disaggregated data but did not collect caste or ethnic data. Although caste and ethnicity can often be determined by

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9. Max Weber (1964) introduced the idea of ‘social closure’, which is a strategy used by dominant groups to maximize their power. It involves shutting certain groups out of opportunities. Groups with power prevent others from having the same opportunities through various processes such as monopolizing resources or creating relationships of dependence and adverse incorporation (Mosse, 2010: 1173).

10. The bottom nine districts (of 75) on Nepal’s development index are considered ‘backward’ and include Achham, Kalikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla.

11. Open seats require a mark of at least 60% and reserved seats only 40% or higher.

12. Information in this paragraph comes from an interview on 24 July 2013 with an Enabling States Program employee.

surnames, some Dalits have changed their surnames to Brahman names to avoid discrimination and so a system was implemented to allow for the self-reporting of all civil servants' caste and ethnicity. This way an accurate baseline could be used to assess the diversity of the civil service.

There was even leadership support. A PSC employee involved in implementing the DFID-funded project for affirmative action explained that his manager is supportive of affirmative action. His manager (secretary level) wanted to come to district recruitment drives to raise the profile of the civil service as an inclusive employer.

He is Chaudhary you know from the Tharu community, so if he wants to go with us, it is very nice because it shows the public service is very fair. More people will believe it.<sup>13</sup>

Unfortunately, the secretary's lack of availability delayed the programme.

Comparing the posts available in 2009/10 (see Table 3 second column) against those recommended by the PSC for employment (second last column) shows that quotas were substantially under-met in 2009/10. However, the 2010/11 quota targets were met or exceeded except for the Dalit target (also Table 3). Surprisingly, the total number of applicants between 2009/10 and 2010/11 did not increase overall, but the number appearing in interview did, suggesting more were passing the entrance exam.

By 2012/13 (Table 4), more members of excluded groups applied for civil service positions compared to 2009/10 or 2010/11, and sat the exam, suggesting that the recruitment drive was working. However, fewer people passed the entrance exam and made it to the interview stage. So despite leadership support and success in 2010/11, quotas were not met in 2012/13. The number of selected recruits from excluded groups had not reverted to 2009/10 levels but there was a considerable loss on the 2010/11 gains.<sup>14</sup> Nevertheless, overall Table 5 shows that the bureaucracy is more representative of excluded groups than what it was in 2006, when the Comprehensive Peace Agreement was signed.

A number of possible reasons, including programme delay and bureaucratic inefficiencies, were said to explain the poor quota results in 2012/13. Only the secretary level has decision making and financial delegation responsibilities. One respondent suggested they micro manage too many tasks: 'They want to be involved everywhere, which is not possible because at that level, with that work-load, they always say "please wait". It is the major problem to us. Another delay is this vacation and the election.'<sup>15</sup> The process of having decisions approved in the

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13. He is referring to the week-long Dashain holiday that is followed around four weeks later by the Tihar holiday. Nepalese frequently take a month off to travel back to their home village for this festival.

14. Unfortunately, the 2011/12 figures were not collected by the researcher and the public release of the figures was held back by the long caretaker period of government and backlog of work.

15. Bureaucrat from the PSC 10 November 2013.

**Table 3: Civil service statistics comparative chart**

Description	Total Posts		Total Applicants		Those appeared in written examination		Those appeared in interview		Recommended by PSC***	
	09/10	10/11	09/10	10/11	09/10	10/11	09/10*	10/11**	09/10*	10/11**
Women	495	367	55,902	44,137	NA	29,297 (66.38%)	181	987	86	471
Adibasi.janajati	368	286	22,196	18,694	NA	10,593 (56.67%)	124	803	59	371
Madheshi	319	235	13,734	12,597	NA	6,894 (54.73%)	78	547	36	300
Dalit	142	119	4,155	4,284	NA	2,349 (54.83%)	10	210	10	105
Disabled	64	45	2,106	2,348	NA	1,346 (57.33%)	23	132	9	59
Backward Areas	43	34	2,830	2,167	NA	1,241 (57.27%)	20	127	6	43
Total	1431	1086	100,923	84,227		51,720	436	2,806	206	1,349

Source: Awasthi and Adhikary, 2012: 67.

\*Covers only those interviewed in the central office. \*\*Also includes those interviewed in regional and zonal offices. \*\*\*The number of recommendations made by the PSC is more than the total positions due to the carryover of the recommendations from the previous financial year. NB: On average more than 40% of applicants do not attend the written examination.

**Table 4: Data for the 2012/13 financial year\***

Description	Total posts	Total applicants	Appeared in written examination	Appeared in interview (central level)	Central level recommended by PSC	Appeared in interview (regional/zonal)	Regional/zonal recommended by PSC	Total selected
Women	617	70,450	37,758	164	76	595	296	372
Janajati	482	36,384	16,803	134	62	556	256	318
Madheshi	369	26,584	11,489	112	51	427	203	254
Dalit	165	6,317	3,208	33	17	201	89	106
Disabled	97	2,509	1,630	14	7	117	44	51
Backward region	66	3,936	1,990	11	5	90	30	35
Total	1,796	146,180	110,478	468	218	1,986	918	1,136

\*Collected during interview with PSC 10 November 2013.

bureaucracy is slow and being accountable to an external actor added an additional layer of process and further delayed implementation.<sup>16</sup>

**Table 5: Representation in the national bureaucracy by broader social group 2011 figures\***

Caste/Ethnicity	Employee %**	% National Population 2011***
Hill Brahman	39.2	12.2
Hill Chhetri	22.3	16.6
Tarai Brahman/Chhetri	3.3	0.5
Tarai Other Caste	9.7	15.4
Hill Dalit	0.9	8.7
Tarai Dalit	0.5	4.6
Newari	7.9	5.0
Mountain/Hill Janajati	15.6	24.4
Tarai Janajati	7.0	7.3
Muslim	2.6	3.5

\*There are considerable challenges involved in making comparisons across time and social groups. Different reports count and subdivide social groups differently. For example, certain groups were categorized as Tarai in the 2001 census and lobbied to be defined as Tarai Janajati in the 2011 census reports. ‘Tarai middle castes’ have been labelled and divided differently in different reports. Additionally, Dalits argue that their proportion of the population is closer to 20%, but many do not identify as Dalit during census data collection because they have spent considerable time investing in moving locations and changing their surname to escape their ‘low caste/untouchable’ status.

\*\*Source: CDSA, 2014: 43–4.

\*\*\*Source: GoN, 2012.

Miklian (2008: 13) explains that language is another potential explanation, ‘the foreign service, civil service, and police are all under-represented by Madheshis, due as much to Panchayat<sup>17</sup> language policies as corruption and discrimination’. One notable improvement is that examinations are now allowed in English as well as Nepali, although some respondents suggested it should be in other languages as well. According to a respondent, the exam questions are biased towards a Brahman–Chhetri worldview and if it was written in other local languages this bias would reduce.<sup>18</sup> Additionally, many excluded groups are not proficient in English or Nepalese, and feel that language is a barrier to entering the civil service.

A PSC employee complained that it was difficult to reach quotas because it is hard to attract the ‘right’ people to the civil service. The educational attainment

16. Bureaucrat from the PSC 10 November 2013.

17. In 1959, under King Mahendra (1955–72), a party-free local government system known as the ‘Panchayat system’ was imported from India. Respected (usually wealthy and mostly upper caste) elders, were chosen by the local community to settle disputes between individuals and villages (Whelpton, 2005). However, Panchayat era (1960–1980) language policies refer to a period of assimilation where the slogan ‘*ek bhase, ek bhesh, ek desh*’ – meaning one nation, one language and one dress – sums up the nationalist identity promoted by the monarchy through the education system, radio and other forms of mass enculturation (Hangen, 2007).

18. Janajati development worker interviewed 12 June 2013.

rates of some excluded groups are particularly low. The Dalit quota was the hardest to fill because ‘If Dalits are educated they go and work for an NGO, which pays better than the civil service’.<sup>19</sup> Education may be a plausible explanation for the Dalit quota not being reached, but it cannot as readily account for the Janajati or female quota not being reached. Other factors influence the impact of affirmative action.

### **3.1 Discrimination**

Some respondents cited deliberate attempts to undermine affirmative action. According to respondents, there is a regulation in the Civil Service Act that states that if quotas are not filled one year, they should be added onto the next year’s quota. A Madheshi lawyer who has taken the government to court about this on a ‘number of occasions’, claims this is only arbitrarily done. He said:

In the Public Service Commission, there were three quota seats for officers in the bureaucracy last year, but no Madheshis passed. But this year the bureaucracy did not add the seats. So, we are going to challenge it this week.<sup>20</sup>

While this could be a sign of inefficient office practices and weak governance, the respondent suggested the reason was discrimination. He explained:

We litigated 70 cases of discrimination against social inclusion by the bureaucracy, judiciary and security forces at the Supreme Court, and in most of the cases we had success.<sup>21</sup>

In these instances, even the courts agreed that discrimination existed.

Discrimination could also explain the challenges in meeting the quotas after 2010. MoGA narrowed the eligibility for identity-based quotas to those who are economically and socially deprived. A foreign academic thought that means-testing the quota was done to reduce the pool of eligible candidates who could pass the entrance exam:

I think it is very insidious what the civil service is doing. Representation in the civil service is really about who you are. It’s a political influence thing. It’s not about your welfare. So not allowing an educated well-off Dalit to take advantage of the quotas is a sneaky little trick as far as I am concerned.<sup>22</sup>

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19. Bureaucrat from the PSC 10 November 2013.

20. Madheshi lawyer interviewed 30 December 2013, Kathmandu.

21. Madheshi lawyer interviewed 30 December 2013, Kathmandu.

22. Foreign academic interviewed 14 November 2013.

So, while anyone can sit the exam, the ability of excluded groups to face an interview depends on their economic status as well as their result. Given the low literacy rate and historical barriers to education of Dalits, there are not many poor but educated Dalits. The academic felt that introducing this caveat will reduce the ability of the civil service to recruit Dalits and was discriminatory. Bennett et al. (2010) explain this interpretation of the Civil Service Act 'as an illustration of the way that elites in the civil service can block implementation of changes agreed to in the political arena'.

A number of respondents concurred that it was the attitudes of elite castes and their sense of entitlement that prevented quotas from being fulfilled. A lawyer explained:

Look, we have had reservation policies in India since 1947 and they are implementing it quite well there. There is diversity, but diversity and difference is not seen as a problem, it is a beauty. But in our context it is projected as a problem, as something that creates violence, and this is because everyone in the bureaucracy and donors too are Brahman/Chhetri.<sup>23</sup>

A Dalit argued:

Active participation means there must be positive discrimination but there must be special provision in the decision-making level, in the executive committees. Dalits talk and nobody listens in Nepal. This type of mindset we have here. I went to an international conference and everyone listened to me ... the system suppresses people like always.<sup>24</sup>

Quotas were not enough in the context of Nepal because the attitudes of advantaged castes also need to change.

Similar to the findings in the literature, affirmative action measures were labelled as anti-merit and unfair by hill elites. A government interviewee described a common complaint against affirmative action:

Some people score higher than 60% on the civil service exam but miss out on a place and complain. They say 'there are no opportunities in Nepal' and that they have to go overseas for opportunities because even their government won't let them in.<sup>25</sup>

A senior bureaucrat felt that affirmative action reduced the productivity of the country and caused disputes:

In the name of inclusion and targeting, we should not compromise the meritocracy. That merit can yield more product. If we empower properly

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23. Madheshi lawyer interviewed 30 December 2013.

24. Dalit NGO leader interviewed 7 August 2013.

25. Bureaucrat from the PSC 10 November 2013.

the Dalit and vulnerable community, even the poor Brahman, we will be a global asset. But if we give only to them, the remaining society will be frustrated.<sup>26</sup>

Some respondents suspected that affirmative action did not find the best person for the job. Singling out certain groups for special treatment is frequently met with resistance around the world.

Stereotypes about groups can be so ingrained in the labour market that recruitment managers or peers do not even realize that they have internalized them (see Deshpande and Newman, 2007). Choosing the 'right' candidate is done by a select and privileged minority of the population in Nepal rather than the broad citizenry (Bennett, 2005). One informant provided a useful anecdote in which a combined donor and Nepal government recruitment panel did not find a Dalit man suitable as a project leader. The informant said the person was quite capable.<sup>27</sup> She convinced the sceptical panel members to hire the Dalit man in the name of affirmative action. She explained that when it comes to affirmative action, it is important to identify and invest in the potential of recruits rather than judge them based on experience. The informant explained that the Dalit man was recruited, but he experienced workplace distrust and harassment, and resigned. She lamented, 'They just didn't give this man a fair chance.' Cleaver (2005) argued that the chronically poor lack the capacity to represent themselves favourably in available socio-political organizations. This works against them when it comes to quotas and receiving equal treatment.

Some respondents blamed the lack of accountability in the civil service as an inhibiting factor to the bureaucracy becoming more inclusive:

at the implementation level there is no mechanism to monitor bureaucrats. There is no monitoring to strategically change the behaviour of the bureaucracy; they are not very friendly to inclusion. So, convincing them is not happening.<sup>28</sup>

A Janajati development worker lamented that:

There is no performance evaluation in this country. It is just on the whim of the supervisor who gives some marks because he/she likes that person. In the whole bureaucracy you might have ten people who sincerely focus on delivery and are highly professional. Most have lost all motivation and have no accountability.<sup>29</sup>

In post-conflict states, the appetite for reform and productivity is slow in the absence of accountability (Becker and Goldstone, 2005).

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26. Ex-Government secretary interviewed 28 November 2013.

27. Nepalese development worker interviewed 15 November 2013.

28. Madheshi lawyer interviewed 30 December 2013.

29. Janajati development worker interviewed 12 June 2013.

The broader institutional culture can actively discourage affirmative action and social inclusion (ADB et al., 2012: 14). Indications were given that bureaucrats felt they would be ‘laughed at’ if they advocated for excluded groups or women (ibid.). One respondent explained:

My conclusion is that the culture of institutions hasn’t changed at all. Look at the bureaucracy. You would require a new generation who think differently to really infiltrate the bureaucracy. In the current leadership, there is so much self-serving attitude. If they were not like that, they wouldn’t be able to survive. The culture, the institution, it is so difficult for them to be the one person to make the change. I don’t see sufficient motivation and force within the bureaucracy to make this shift. Because our bureaucracy is not very diverse – highly one gender, one caste and one set of orientation – all agreeing to one set of values and it would be difficult for them also to think of the other way, find alternatives and know that there are also different ways of doing things which could be better.<sup>30</sup>

This led a number of respondents to advocate that behavioural change should accompany affirmative action.

Broader governance failures and informal power also prevent reforms. Reforming a bureaucracy in a clientelist state is immensely challenging. Four administrative reform commissions were set up during between 1953 and 1975 (Shakya, 2009). In 1991, a high-level administrative reform commission made 116 recommendations (some of which are still unimplemented) to make the civil service ‘more efficient, motivated and responsible’ (Shakya, 2009: 42). Development partners became involved in civil service reform in 1999, with limited success. One project report said it failed because ‘verbal commitments were not backed by action’,<sup>31</sup> and there was ‘frequent transfer of staff’, ‘resistance from the bureaucrats to implement changes’, ‘lack of political will’, ‘political instability’, ‘politicization of the bureaucracy’ and lack of ‘consideration to change management processes’ (Shakya, 2009). Collectively, the evidence suggests that discrimination, informal power, resistance to quotas and weak governance inhibit affirmative action from being more successful.

## 4 Political inclusion

Of utmost concern to excluded groups is political representation. Hasan (2014: 240) explains that political representation is often viewed as a pursuit of recognition – the quest for dignity and a way to redress disparities. A Dalit respondent thought that:

Unless and until people from the Dalit community are in political decision-making positions and they are making policy and can focus on whatever our people need and can raise our agenda, things will not change.<sup>32</sup>

30. Janajati development worker interviewed 12 June 2013.

31. On the Institutional Support for Governance Reform Project.

32. Dalit NGO leader interviewed 7 August 2013.

Given the importance of political parties and regimes to Nepal's state and society, political representation is considered a precondition for securing rights, justice, basic services and development resources. This section explores the history of affirmative action in political parties.

Brahmans and Chhetris have always dominated all major political parties at the local and central levels (ILO, 2005; Neupane, 2000). In the last District Development Committee election in 1997, Brahmans and Chhetris won 59% of the total 823 positions and Janajatis (excluding Newars) constituted only 19.3% – no Dalits were successful (ILO, 2005: 24). Village Development Committee (VDC) chairpersons were elected in a slightly more balanced way, in 1997: Brahmans/Chhetris won 54.42%, Janajatis 39.86% and Dalits 1.63% of the 735 VDC chairperson positions (ILO, 2005: 163). It is unsurprising that political representation via quotas was demanded by excluded groups.

Political quotas for women were first implemented in the Local Election Act 1997. This Act mandated all political parties to have at least one female candidate at the village, municipality and district levels, resulting in several thousand female candidates being elected to the Village Assembly in 1997 (ADB, 1999; Parajulee, 2010). At the central level, the 1990 Constitution required every party to allocate at least 5% of seats to female candidates for the Lower House but just 3% to the Upper House, resulting in seven elected female representatives in 1991 and 1994 and 12 in 1999 (ADB, 1999). However, the elected women were largely from the dominant Brahman, Chhetri or Newar groups and held junior positions within the party (UNDP, 2007).

The 2008 Constituent Assembly elections were the most successful for women and were impressive by international standards: Nepal ranked 13th out of 188 countries in the world (up from 69th in 2007) in terms of percentage of women in national parliament.<sup>33</sup> According to the Election Act 2007, political parties that are allocated over 30% of proportional representation seats should ensure 50% women members, 31.2% Madheshi members (equal gender ratio), 13% Dalits (women and men 6.5% each), 37.8% Janajati (equal gender ratio), 4% from backward regions (equal gender ratio) and 30.2% 'others' (equal gender ratio). Although women and Dalit quotas were not met, the new electoral system produced a far more inclusive Constituent Assembly than what would have been possible without quotas (Vollan, 2011).

Despite successes, there were problems with the new proportional representation system. The quota process was more complicated for the parties than it needed to be to produce a proportional representation result (Vollan, 2011). Identity definitions were complex and unclear: the United Nations Mission in Nepal found more than 20 obvious mistakes when they reviewed the classification of all the proportional representation candidates. The short-listing process was not as helpful as intended: of the 58 seats won by short-listing, the Madheshis won 72.4%, Janajatis 22.4% and Dalits only 8.6% (Vollan 2011). Madheshis and Janajati did well even in the First Past the Post (FPTP) race where quotas were not applied

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33. Unfortunately, after the 2013 CA elections this figure dropped to 29.9%, ranking Nepal 36th out of 189 countries (See: <http://www.ipu.org/wmn-e/classif.htm>).

because the votes were captured by the privileged and the well connected (Vollan, 2011). The genuinely underprivileged and excluded did not win seats; the lower castes within the Madheshi group and the marginalized Janajatis were only slightly helped by quotas (Vollan 2011). This fuelled ‘creamy layer’ or intra-group inequality arguments (see Moodie 2013).

Voices from all sides of affirmative action called for the Election Act to be reformed before the 2013 election. Vanaik (2015) found that Nepal’s old elite ‘considered the social composition of the assembly to be an affront’ and that it was too large to bring results and that quotas should be reduced. Excluded groups were concerned that the 2013 results would not be as inclusive as the 2008 election unless the system was changed. Some argued that parties had learnt to manipulate the proportional representation system and the short-listing process, and others argued that it was not as helpful as hoped for initially, because the wealthier and well connected still won more seats (Vollan, 2011). Either way, excluded groups wanted the Election Act amended prior to the 2013 election.

The electoral system is part of the constitution-drafting process and was therefore left unchanged for the 2013 election, knowing that change would follow once the constitution was passed. However, the 2013 Constituent Assembly election results not only had less inclusive representation (See Table 6), but also gave the majority of votes to the conservative traditional Nepali Congress party. Despite a ten-year civil war and affirmative action policies, Nepal currently has a similar leadership as in the 1990s (Panday, 2012: 92). The next section will explore some of the reasons heard for why this is the case.

## 5 Challenges with political quotas

This section examines some of the reasons cited by respondents as to why proportional representation was not sustained in 2013. Young (2000) differentiates between internal and external political exclusion to explain the inadequacy of quotas in highly entrenched cultures. Although people may have ‘access’ to the forums for discussions and decision making, they have little ‘voice’ or ability to influence discourse (Young, 2000: 53–5). The decisions and ideas of marginalized groups are ignored, dismissed or patronized by the powerful. Young labels this as ‘internal political exclusion’. This is in contrast to ‘external political exclusion’ involving backroom brokering by powerful people, and being excluded from public discussions and decision-making processes (Young, 2000). Affirmative action is useful for moving excluded groups into political office but this does not translate into decision-making power.

Indeed, very few senior roles within political parties were assigned to quota seat holders. Of 308 members in the central committees of the four main political parties, only 42 (14%) were women, Dalit presence ranged from 2% in the Unified Communist Party of Nepal (Maoist) to 7% in the Communist Party of Nepal (CPN–Maoist); Janajatis fared the best in the CPN–Maoists at 35% and the worst in the Nepali Congress (NC) at 18% (Thapa 2013). A female Madheshi Muslim bemoaned, ‘If we had real decision-making power, we would have brought

Table 6: Constituent Assembly of Nepal: statistical comparison

Ethnicity	2008				2013				Difference (2013–2008)							
	FPTP	PR	N <sup>2</sup>	Total	%	FPTP	PR	Total	%	FPTP	PR	Total	%	Within	%	Overall
Hill Dalit	6	30	0	36	5.99	1	26	27	4.70	-5	-4	-9	-25.00			-1.57
Madhesi Dalit	1	12	0	13	2.16	1	12	13	2.26	0	0	0	0.00			0.00
Hill Janajati	66	89	9	164	27.29	43	88	131	22.78	-23	-1	-24	-14.63			-4.17
Terai Janajati	13	30	7	50	8.32	19	27	46	8.00	6	-3	3	6.00			0.52
Madhesi	48	76	4	128	21.30	36	65	101	17.57	-12	-11	-23	-17.97			-4.00
Muslim	7	9	1	17	2.83	5	12	17	2.96	-2	3	1	5.88			0.17
Hill Brahmin, Chhetri	99	89	5	193	32.11	135	105	240	41.74	36	16	52	26.94			9.04
Total	240	355	26	601	100	240	335	575	100	0	0	0	0.00			0.00
Women	30	161	6	197	32.78	10	162	172	29.91	-20	1	-19	-9.64			-3.30

Source: UNDP, 2014.

\*While the FPTP results were worse for excluded groups in 2013 than 2008, the point to note is that Hill Brahmin and Chhetris gained more PR seats in 2013.

development to our places which would have created employment opportunities and the younger generation would not have to go abroad for work.’<sup>34</sup> Excluded groups may have been included in political parties, but not necessarily given equal power, as Table 7 reveals.

**Table 7: Representation on the central committees of political parties by broader social group – 2008 figures**

Caste/Ethnicity	% in central committee	% National Population in 2001 Census
Hill Brahman	24.3	14.3
Hill Chhetri	18.1	16.6
Tarai Brahman/Chhetri	4.1	1.0
Tarai Other Caste	13.4	13.6
Hill Dalit	2.8	9.1
Tarai Dalit	2.7	3.9
Newari	6.4	5.5
Mountain/Hill Janajati	15.6	21.9
Tarai Janajati	7.0	9.8
Muslim	2.6	4.3

Source: CDSA, 2014: 36.

The perceived low performance of quota seat holders in the 2008 to 2012 Constituent Assembly and the running of uneducated and disempowered candidates was seen as another reason why the 2013 elections went badly for excluded groups. One Dalit interviewee commented:

Parties don’t want to take vocal, educated and able people into the party. They just pick people in the name of inclusion. If you look at who they choose, these Dalits don’t know anything about international conventions or policy or what the government has signed, they have no analytical skills and they can’t raise their voice or put issues on the table. They are just symbolic representation. We want to see meaningful representation, active participation overall.<sup>35</sup>

Quotas drove political parties to run candidates from excluded population segments and they supported candidates who were often timid or depoliticized, possibly due to the desire to maintain the power embedded in existing arrangements, and possibly because of discrimination or resentment of the quota system.

In terms of affirmative action, class also matters, and adds an extra layer of challenges. Quota seat holders cannot buy votes and cannot compete with the wealthy for political seats without political party backing. Members of excluded

34. Leader of Madheshi Muslim women’s NGO, interviewed 22 August 2013.

35. Dalit NGO leader interviewed 7 August 2013.

groups lack a wealthy and well-connected network. This makes them dependent on the political party funding during campaigns, and they then ‘owe’ the political party once elected. Wood (2003) describes this as a Faustian bargain whereby those with the least power trade away their agency in return for benefits. This means that they may not be able to voice their true concerns if they are at odds with those of their patron. Quotas do not necessarily produce parity of participation in clientelist states, and this affects voting preferences. Shneiderman (2013: 53) examined political quotas, and found that those who win seats from affirmative action measures are not seen as fully competent.

Another academic concurred that power and wealth can be bigger barriers to substantial social inclusion than caste or ethnicity:

I would emphasise the class nature of this dominance. It’s not just that people are Brahmins and Chhetris or Newar ... I see it as a power and wealth control issue rather than one that should be framed always in terms of caste and ethnicity ... in my view there is a class basis under which it is the rich and powerful who control the country (*Nepali Times*, 2012).

Fuller (1996: 17) argues that class distinctions are as culturally constructed as caste or other identity categories. Jeffrey (2001: 232) explains how caste and class are separate but overlapping axes of domination, and are bases for spatial and social control that result in double exploitation.

There was also a reported lack of interest and leadership shown by political parties for affirmative action. A Dalit respondent explained, ‘the political parties are not taking the issue of Dalits very seriously’.<sup>36</sup> In fact, Dalits expressed feeling used by the Maoists:

At the time of Maoist insurgency, they [the Maoists] used Dalits with different slogans and promises. But can you see any Dalits in the cabinet? Not one ... only one of the ministers ... Khadka Bishwokarma is Dalit. Only one! Even some of the army positions were not given to Dalits ... They used us as a vote bank. Now they say, ‘you have no education that’s why you are not allowed’. But we were commanders in the insurgency and we have so many leaders who are at least +2 SLC.<sup>37</sup> But they are not taking them. The political parties have a biased mindset.<sup>38</sup>

An academic claimed that all political parties exploited the issues of social inclusion to win votes, not just the Maoists and that, instead of having a monarchy, Nepal now has four fiefdoms all competing with, and for, state resources:

The Brahman and Chhetris who control the political parties are basically interest groups. They are clans of groups that are going to share

36. Dalit NGO leader interviewed 7 August 2013.

37. SLC – school leaving certificate – is equivalent to year 10 and +2 is equivalent to year 12.

38. Dalit NGO leader interviewed 7 August 2013.

patronage. They are not ideological parties and that's one of the things you have to get. The ideologies that they say they represent is bullshit. I mean they do on some level because that's the game they are playing but ... basically there are no parties that represent the interest of the excluded groups. So they have to form their own.<sup>39</sup>

As such, the underlying cause of the lack of meaningful representation is that political parties are patron–client networks.

The parties have no interest. The parties are controlled by people who've no interest ... in fact they have an interest in not letting this work. So that's status quo and basically the whole power structure, the whole set of power relations is built on not letting this happen.<sup>40</sup>

The *aafno manchhe* system and other informal institutions undermine many reform efforts, including affirmative action.

### ***5.1 Attempts to maintain power***

Patrons and the political parties control and maintain power in various ways including through the manipulation of recruitment in Nepal. Thapa (2010: 123) argues that:

At all levels of Nepalese public services, favoritism is being practised based on proximity to political parties. Nepotism and kinship are other instances that help to provide appointments while sidelining meritorious candidates.

Mishra (2014) concurs, and argues that political parties control all leadership positions, even in universities: 'political parties mutually allocate "seats" among themselves and appoint party members and well-wishers as well as personal relatives to such positions'. The intellectual quality of applicants is a peripheral attribute, which is why merit-based claims against affirmative action are incongruous.

Political manipulation also affects the bureaucracy and affirmative action outcomes overall. In terms of the civil service, Mishra (2014) claims that:

The employee unions, egged on by political parties, play havoc with physical and ministerial location of staffing – much of which has to do with the distribution of corruption-high opportunities and direct rent seeking ... [and they] bend and break the monitoring and supervisory system.

Similarly, a Madheshi NGO director claimed that the quota for women was manipulated:

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39. Foreign academic interviewed 14 November 2013.

40. Foreign academic interviewed 14 November 2013.

The 33% government jobs allocated for women is being misused because the seats are represented by the family members of the politicians belonging to the hilly areas. Educated and qualified women are not getting an opportunity. We are demanding a separate mechanism to ensure representation of Madheshi women from the allocated 33%.<sup>41</sup>

Additionally, one newspaper article suggested that:

high caste men have been manipulating their surnames to sound more like prominent indigenous and Janajati surnames. For example, the use of 'la' at the end of surnames (for example Dahala, Nepala, Khanala) has spread in order to secure the control of the traditionally dominant groups over state bureaucracy and resources (Chaudhary et al., 2011).

There are myriad ways to manipulate control in Nepal.

According to respondents, some upper castes with power co-opt a system that works for them, with as little cost and effort as possible. Their intent is believed to be deliberate, discriminatory and involve social closure. For other respondents, the discriminatory behaviour reported is based on 300 years of socialized practice, and it is now so ingrained that it is automatic, if unconscious. So, while meddling in recruitment can reflect patron–client relations, the research reveals a separate and distinct problem associated with the sense of entitlement and superiority held by upper caste groups.

However, it should be noted that all castes and ethnic groups recruit according to personal interest and not merit. Affirmative action may attempt to shift the balance of power to better favour excluded groups, but there is no guarantee that excluded groups would be less nepotistic than their predecessors. As one academic respondent stated, 'the patronage model really needs to be understood. It is expected and it is the way things work. You can't get anyone to follow you if you are not using that model.'

A review completed by the Social Inclusion Action Group (SIAG) (2008: 24) concurs that *aafno manchhe* is practised by all social groups in Nepal, and not just the privileged: Project Team Leaders seemed to favour recruiting staff from their own community whether they were from 'advantaged' or 'disadvantaged' communities. Leaders with or without intention promote caste loyalists because they feel secure and comfortable with family and caste members who share a similar world view, language, culture and religion (Lawoti, 2010a: 38). According to Earley and Mosakowski (2000), it is typical for cultural groups to prefer similar company, even in the workplace. Yet in Nepal these practices destabilize the state and contribute to weak governance. Even the human rights movement risks being sidelined by donors because 'different human rights organizations belong to particular ethnic groups' (Cox et al., 2015: 3).

In clientelist states the lack of accountability and transparency in recruitment is a major inhibiting factor of many reforms. Quotas alone will not overcome this

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41. Madheshi NGO director interviewed 8 August 2013.

challenge. Yet, when affirmative action successfully creates a more representative state, it can have ramifications for the country as a whole. Harriss (2005: 227) found a relationship between a history of upper caste/class social and political dominance in India and economic backwardness. So, affirmative action is a necessary component of building an inclusive state, economic growth and an entry point for governance reform.

In clientelistic states, the benefits of affirmative action may not always be so pronounced. Greater representation of excluded groups through quotas in Uttar Pradesh eventually broke the power of old elite classes, but it did not translate into addressing the concerns of excluded groups (Hasan, 2014: 246; Jeffrey and Lerche, 2000). Development gains for excluded groups were not realized, and this is partly because political instability plagued successive governments (Hasan, 2014: 242). Similarly, corruption, wasteful public expenditure, weak governance, inadequate planning and poor implementation were other barriers, and these did not improve with greater representation (Kohli, 2012: 177). Development partners in Nepal have not yet funded a second affirmative action programme.

## 6 Conclusion

A study of affirmative action policies and implementation in Nepal reveals the way relationships of exploitation and exclusion are institutionalized. Consequently, ‘the different ways in which people are represented – or incorporated into broader political forms of organization, institution and discourse’ involves adverse incorporation and ‘relates closely to the persistence of poverty’ and how it is reproduced (Hickey and du Toit, 2007: 10, 19). The effects of exclusion and exploitation are reproduced over time in Nepal and institutionalized in such a manner that it is difficult to employ educated and experienced Dalits in 2015. Attempts at affirmative action highlight a deeply entrenched exclusion in Nepal that merges the political with the social. The strength of tradition and belief in a preordained place in society are other issues raised by affirmative action that are hard to solve.

Nepal’s institutions are still controlled by the old leaders whose families were powerful in feudal times. The data demonstrate that the state does not function for, nor include, the mass of citizens. The nature of Nepal’s political settlement is one that is based on agreements between groups of elites that use state resources and institutions to augment their power. Reforms can be blocked or achieved depending on a patron’s network and how well the patron has bought into the political settlement. Power works through informal practices, institutions and mechanisms that are internalized and accepted as the way things are done. This may be conscious or unconscious as it is deeply embedded in the state and society of Nepal and its history.

The ability of affirmative action to have an impact on inclusion in such a state will be limited. Yet, affirmative action can help to bring some subtle and important changes. Quotas build capacity for decision making and understanding ‘the rules of the game’, and give future generations of excluded groups role models (Thapa, 2103). When quota seat holders return to their communities, their status is elevated and they can share the knowledge gained from political participation. Additionally,

affirmative action will keep the issue of caste, gender and ethnicity on the national agenda even if it does not change the ‘rules of the game’. Affirmative action has a place within Nepal’s social inclusion agenda and it has increased the participation (or at least attendance) of excluded groups in the state and political apparatus, but needs to be accompanied by other short- to medium-term strategies to be more effective.

It is difficult to assess the impact of affirmative action on Nepal’s excluded groups. Firstly, a range of factors such as mid-cycle policy changes could have affected affirmative action outcomes, along with the capacity and the interests of donors. Isolating these influences is difficult with the data available. Further research on the effects that quotas are having on education levels and household consumption, and other indicators of social and economic development, would be beneficial. Additionally, there is a dire need to understand the attitudes and approaches of Nepalese human resource officers and where there are gaps in capacity and accountability.

Affirmative action is difficult to apply in any country. In a clientelistic state with a competitive clientelistic political settlement and low educational attainment rates, gains will be slow. The rise of intermediate classes to power means they have a stake in an exclusive state. Even though some bureaucrats may have good intentions for affirmative action, the system that operates throughout institutions undermines these efforts, along with bureaucratic inefficiencies. Affirmative action challenges the power hold of elites and the intermediate classes and the way that informal institutions and practices of clientelism and the *aafno manchhe* system influence decision making and state institutions. Like elites, the intermediate classes frequently shut excluded groups out of recruitment and other opportunities to influence decision making. When excluded groups have the opportunity, they do the same.

If Nepal is to achieve equitable opportunities for all, as stipulated by the CPA and the interim constitution, then affirmative action should be included in development partner strategies as an approach or development tool that can help with this objective. The literature shows that when affirmative action is done well, it generates less backlash and can improve meritocracy and accountability. This would slowly have an impact on the bureaucratic culture and politicization. Rao (2013) and Carter (2014) note that meritocratic state bureaucracies are systematically associated with less corruption and higher growth rates. This suggests that development partners should make long-term investments in affirmative action and not prematurely judge the success of affirmative action when it has mainly been interpreted as implementing quotas. The business school literature on diversity policies is considerable and many lessons have been learnt about human resource management and successful affirmative action policies even in culturally diverse settings. Perhaps donors need to draw more heavily on this literature when implementing affirmative action programmes in Nepal. Not all failures are the fault of a weak state.

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