

# Gender Equality and Social Inclusion Analysis of the Nepali Judiciary (Research Report) May 2013



National Judicial Academy, Nepal  
Hariharbhawan, Lalitpur



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## Foreword

Since its establishment, the NJA as an independent and autonomous institution has been carrying out its activities in imparting training, undertaking research activities and bringing out its publications meant to enhance knowledge and professional enhancement of human resources working for the judiciary. It has worked on commercial law, mediation, human rights, combating trafficking of women and children, juvenile justice, gender justice and rights of marginalized people through training, research and publications in Nepal. And to be honest this research report/findings submitted by experienced research professionals and high level officials, with wide-ranging understanding of justice sector has made this study a valued asset for the whole judiciary of Nepal.

Paying to the global concern over gender equality and social inclusion in policy debates, in spite of present political climate of Nepal, naturally a meaningful and critical engagement with the notion of equality and inclusion in the various political and social spheres becomes all the more urgent.

However, we would like to extend our sincere thanks to Enabling State Program (ESP) of Department for International Development (DFID) for carrying out such important research project on GESI analysis of Nepali Judiciary as a conscious and most awaited sphere of study.

First of all we are thankful to Advisory Committee headed by Hon'ble Kalyan Shrestha, Justice of the Supreme Court of Nepal, Hon'ble Khem Narayan Dhundgana, and Hon'ble Upendra Keshari Neupane members of Judicial Council for all inputs of constructive advices, suggestions and feedbacks for carrying out this research project.

Similarly we are thankful to Research Team Dr. Dinesh Pant, Team Leader, Ms. Neeta Thapa and Mr. Rajesh Hamal, Senior Consultants, Mr. Sushil Kumar Pant, Kripa Rana Shahi, Paras Poudel, Research Associates, Mr. Lekhnath Poudel, Registrar Mr. Dandapani Sharma, Deputy Registrar, Mr. Rajan Kumar KC, Project Coordinator, Office Secretary Ms. Poonam Lakhey for their wonderful contribution to carry out the research.

We would like to express sincere appreciation for inputs made available by different stakeholders and experts.

Lastly, but not the least, I would like to acknowledge professional engagements, supports and inputs from ESP/DFID and ESP officials Mr. Bishnu Adhikari, Governance Advisor and Ms. Renuka Gurung, Social Inclusion Action Programme (SIAP) Coordinator. I am hopeful that the findings of this study will be helpful to take steps in future for taking initiation on gender and social inclusion in Nepali Judiciary.

**Raghab Lal Vaidya**  
**Executive Director**  
**May, 2013**

## Executive Summary

This is a report as an outcome of research project undertaken with the main objectives of establishing a national level data base on the status of gender and social representation in Nepali Judiciary in particular and judicial sector in general and other supporting organizations such as Nepal Bar Association, law colleges and so on; identifying helping and hindering factors to inclusion; and suggesting policy options with a strategic framework involving various related organizations. Gender and social inclusion issues have been conceptualized in this study in line with the national policy documents. Although the concept of social inclusion is extended to include increased access to justice, the focus of present research is on assessment of gender and social representation in the judicial service and related sectors. Required data and information were gathered from different sources both from within and outside Judiciary by using different methods and instruments such as desk studies, checklists, interviews, interactions and focus group discussions.

### Reviews and Assessments

The major observations on the present inclusion status in Nepali judiciary, including the existing policy and institutional arrangements and related issues, are summarized below:

- a) Various institutional arrangements in terms of policy, laws and organizations exist to direct and regulate activities pertaining to recruitment and development of human resources required in the judicial sector. As the Interim Constitution 2007, Civil Service Act 1993 and Judge Appointment (Procedures) Standards 2012 have been the major policy mandates, the institutions like JC, JSC, SC, PSC, MoLJPA, MoGA, BC, NBA, NJA and law colleges constitute major organizational arrangements for working towards inclusive judiciary. However, these have hardly been reflective of adequate, specific and effective concerns for promotion of GESI in judiciary. New specific initiatives focusing on the nature and needs of the judiciary are lacking.  
Diversity in judiciary has long been a subject of concern even in the developed countries like France, the UK and the US in running the state affairs. Lessons can be learned from the policies and approaches pursued and diversity achieved in these countries in devising appropriate policy measures for promoting inclusive judiciary in Nepal.
- b) In judicial sector in Nepal, right from the beginning of entrance into legal education to legal profession, judicial service and in judiciary itself, the predominance of a few social, geographic and religious groups are seen across all position categories and service groups.

- i) In judicial sector employing 4908 persons, Brahman/Chhetri (B/C) is dominant by caste (77.6%), while Hindu is dominant by religion (98.3%) and Male is seen dominant by gender (86.1%). Brahman/Chhetris constitute 87.1% of judges, 87.6% of gazetted officers, 82.1% of non-gazetted staff and 66.6% of staff from other services or class-less positions. This is followed by Janajati group with 9.4% of total judges, 9.3% of gazetted officers, 11.2% of non-gazetted staff and 21.3% of other services. Janajati is the second largest group in judicial sector, but their representation is less than one fifth of B/C. The other groups are represented negligibly.
- ii) The concentration of B/C is high in higher positions involving the job areas which are of more technical nature requiring specific knowledge, skills, experiences and other competencies. Eight of nine special class positions were occupied by B/C while one is occupied by Janjati. Likewise, 96.9% of first class gazetted officers, 94.2% of second class officers and 83.2% of third class officers are from B/C only, each with predominance of Hill male B/Cs. The representation pattern with dominance of B/C, men, hill people and Hindu is almost consistent across all groups of judicial service, including Judicial group which combined with judges constitute core judiciary. However, such predominance of a few groups is relatively low in non-gazetted positions and other service groups, which can also be attributed to impact of the government's inclusion policy and growing consciousness among people of other caste and ethnic groups.
- iii) Of 9095 lawyers in the country, 90.6% are men, with only one as female senior advocate. While 76% of lawyers are B/C (from Hill and Terai), the share of Janajati among total lawyers is 18.3%. Dalits are least included among lawyers, accounting for 1.4% of total lawyers and 0.9% of total advocates. Among the students enrolled in LLB first year in 2008 in Nepal Law Campus, 83.4% were found from B/C followed by 14.6% of Janjati. Dalits accounted only for 0.7% and OBC comprised only 0.6%. The share of women in the enrolment was 23.9%. The low inclusion of women, Janjati, Madhesi, Dalit, religious minorities and other social groups from backward communities in law education and legal profession has also affected their entry into judicial service.
- iv) The inclusion status of judicial sector is imbalanced with the composition patterns of national population by gender, caste, ethnic and other social groups. For instance, women, despite making 51.5% of the national population, are represented in judicial sector by 13.9% only. Brahman/Chhetri, constituting 32.1% of national population, account for 77.6% of total judiciary staff, while the representation of Janajati in the judiciary is only 14.5% even if they constitute 36% of total population. Similarly, OBC and Dalit are represented in judicial sector by 4.8% and 2% respectively, who constitute 13.8% and 13.3% of national population. The

non-Hindu religious groups, comprising 18.7% of the national population, are poorly represented by less than 5% in all segments of judicial sector. Such a population-size based disparity is seen even among all lawyers and law students. All this reflects a different dimension of social exclusion in Nepal.

- c) The relevance of inclusive judiciary is not debatable for ensuring empowerment of all sections of society, with expanded roles and influences in both interpreting existing laws and promoting laws to uphold social justice, increased access to justice, creation and enforcements of affirmative legislations, wider participation in decision-making, analysis and hearing of cases in emphatic and objective ways from a broader perspective and fostering of faith of excluded groups on justice delivery. Though inclusive representation in the judiciary cannot guarantee quality of justice delivery, it is believed to generate faith and trust among all sections of the society towards judiciary as the last resort to receive justice. However, the idea of creating inclusive judiciary at the cost of indifference towards competency requirements of judicial officials and professionals and quality of justice delivery has widely been rejected.
- d) The unfolding situations in Nepal such as political change of 2006, new legal and policy reforms, profound right-based movements and enhanced GESI sensitivity within and outside judiciary have become helping factors for promotion of GESI in judiciary, but these also depict low level of diversity of persons not only in judicial sector but also in whole legal profession consisting lawyers and among those pursuing law education.
- e) The situation of low diversity has been attributed to many barriers faced by women and excluded groups to enter the judicial service, to become judges, to pursue law education and to join and grow in legal profession. The barriers are originated from legal and administrative procedures, inadequate proactive measures to fill-up reserved public positions and execute GESI approach in the judicial sector, constitutional provisions and related laws and process for appointing judges, education system and limited law colleges, associated economic hardship, professional challenges, including entrenched gender roles and socio-cultural practices that prevail for such women and socially excluded groups.
- f) The needs of women and social excluded groups to be fulfilled for ensuring their due representation in the judicial sectors are many and complex. However, these needs are related to creation of awareness and sensitization on the part of policy makers, women and socially excluded groups and their facilitators to make law education attractive, allocating adequate scholarship to pursue education, pre-service and in-service capacity building support, changing legal and administrative provisions as well as criteria of appointment of judges. Nevertheless, there is a need for a major shift in public policy and strategic focus to develop more inclusive judiciary without sacrificing the quality of justice delivery.



## **Policy Options and Strategic Plan Framework**

Though widespread reforms are needed not only in policy areas but also in institutional, systemic and procedural aspects of judicial service, legal profession and law education, this report recommends mainly policy reform options for consideration of Judiciary and other agencies which have stake on such reforms, with a strategic plan framework to execute them. The major policy recommendations are: i) making inclusive judiciary as an explicit policy with action plan in line with the current and future strategic plan of the Judiciary; ii) making special provisions for appointing judges from women and socially excluded groups; iii) amending the provision of reservation in Civil Service Act and Rules for wider representation; iv) developing an enlarged pool of capable candidates for judicial appointments; v) continue launching mass awareness campaign against discrimination in general in society; vi) creating opportunities for excluded groups to pursue law education; vii) ensuring inclusiveness in composition of recruiting/appointing agencies; viii) creating and building institutional mechanisms for effective drive towards promoting inclusive judiciary; ix) creating and maintaining data base on social diversity and representation in judicial sector; and x) undertaking research/case studies to generate new knowledge for informed reform initiatives.

The recommended policy options will have to be widely evaluated and these options, once selected, will have to be adjusted with the strategic plan framework suggested in this report, which consists of articulation of expected outcomes, outputs, objectives and 10 key result areas, each having goal, actions to be taken, targets and responsible actors. The expected outcome has been articulated as “Enhanced public faith on delivery of justice from Nepali judiciary with increased access of women and excluded groups to judicial services”. The expected outputs are: a) increased representation of women and socially excluded groups in judicial sector; b) creation of an enabling environment with development of capacity of women and socially excluded groups to compete for joining and striving in the judicial sector and legal profession and to pursue legal education; and c) making of necessary institutional arrangements by designating institutes, particularly JC, JSC and NJA, with clarity in their mandates and roles and provisions for building their capacity to promote inclusion in judicial sector.

The proposed strategic framework is merely an outline strategic plan for enhancing inclusiveness in judiciary and this has been developed in light of the assessments of existing institutional arrangements, generated representation data base, identification of helping and hindering factors and needs of women and socially excluded groups. It is recommended that the proposed strategic plan framework be expanded as a detail strategic plan for execution by JC/JSC, NJA and other responsible agencies within a given time framework of three to five years.

## Acknowledgements

We would like to extend our sincere thanks to the National Judicial Academy (NJA) and Enabling State Program (ESP) of Department for International Development (DFID) for trusting us to undertake such important research project on GESI Analysis of Nepali Judiciary.

First of all, we express our sincere gratitude to the Advisory Committee headed by Hon'ble Kalyan Shrestha, Justice of the Supreme Court of Nepal, Hon'ble Khem Narayan Dhungana and Hon'ble Upendra Keshari Neupane, both members of the Judicial Council, and Hon'ble Raghav Lal Vaidya, Executive Director of NJA, for all inputs of constructive advices, suggestions and feedback for carrying out this research project

Similarly, we are thankful to Hon'ble Til Prasad Shrestha, Faculty/Judge of NJA, for all kinds of inspiration, supports and suggestions. He was always cooperative in undertaking the research work by extending professional inputs. As Project Coordinator, Mr. Rajan Kumar KC facilitated our research activities with his energy and enthusiasm in all stages of this research project. We also acknowledge here the supports received from Registrar Mr. Lekhnath Poudel and Deputy Registrar Mr. Dandapani Sharma of NJA during this research. The Team is also thankful to Office Secretary Ms. Poonam Lakhey for her secretarial support.

Our research team had carried out the assigned tasks by meeting regularly and holding discussions with senior officials of NJA and occasionally with ESP officials Mr. Bishnu Adhikari, Governance Advisor, and Ms. Renuka Gurung, Social Inclusion Action Programme (SIAP) Coordinator. The feedback and comments received from ESP/DFID on design of research as well as draft research report have been very useful to bring this final report in the present shape.

Inputs were sought from different sources. The completion of research project would not have been possible without support and participation of the officials, experts and other stakeholder representatives met during focus group discussions and field studies. We would like to express sincere appreciation for their inputs once again.

Lastly, but not the least, I would like to acknowledge professional engagements, supports and inputs of our Team members Mr. Rajesh Hamal and Ms. Neeta Thapa for completing the research and preparing this report. The research associates, Mr. Sushil Pant and Ms. Kripa Rana contributed their best in different stages of the research. Statistician Mr. Paras Poudel was of great help in generating and producing data base on representation in judiciary as presented in this report.

**Dr. Dinesh P. Pant**

Research Team Leader

## TABLE OF CONTENT

|                   |   |           |
|-------------------|---|-----------|
|                   | <i>Executive Summary</i>  | iv        |
|                   | <i>Acknowledgements</i>   | viii      |
| <b>Chapter 1:</b> | <b>Project Backdrop and Methodology</b>   | <b>1</b>  |
| 1.1               | Background  | 1         |
| 1.2               | Aims and objectives   | 1         |
| 1.3               | Research team and scope of work   | 2         |
| 1.4               | Conceptualization of Gender Equity and Social Inclusion   | 4         |
| 1.4.1             | Situation of women and socially excluded groups   | 4         |
| 1.4.2             | Operational framework and categorization of socially excluded groups  | 7         |
| 1.5               | Approach and methodology  | 9         |
| 1.6               | Action plan   | 11        |
| 1.7               | Work modality   | 11        |
| <b>Chapter 2:</b> | <b>Review of Policy and Institutional Arrangements in Judicial Sector and Related Organizations from a GESI Perspective</b> | <b>13</b> |
| 2.1               | GESI in Nepalese judicial system  | 13        |
| 2.2               | GESI-related policies, laws, institutional structures and systems for inclusive judiciary                                   | 13        |
| 2.2.1             | General policy, legal and institutional provisions  | 15        |
| 2.2.2             | Specific provisions for appointment of officials in different groups of Judicial Service                                    | 20        |
| 2.2.3             | Provisions for appointment of judges  | 21        |
| 2.2.4             | Appointing authorities and provisions for their inclusiveness   | 25        |
| 2.3               | GESI-related policies, laws, institutional structures and systems for judiciary-related other organizations                 | 30        |
| 2.3.1             | Ministry of education and provisions relating to scholarship  | 30        |
| 2.3.2             | Educational institutions and their Law Education Programs   | 31        |
| 2.3.3             | Nepal Bar Council and Licensing of Lawyers  | 33        |
| 2.3.4             | Nepal Bar Association   | 34        |
| 2.4               | GESI in Judiciary: practices and experiences in other countries   | 36        |
| 2.4.1             | Trend of judicial diversity in Europe and United States   | 36        |
| 2.4.2             | Attempts made in different jurisdictions for judicial diversity   | 38        |
| 2.4.3             | Factors promoting judicial diversity  | 42        |
| 2.5               | Major highlights of review and assessments in the chapter   | 43        |

|                  |   |           |
|------------------|---|-----------|
| <b>Chapter 3</b> | <b>Assessments of Representations in Judicial Sector and Related Organizations</b>  | <b>41</b> |
| 3.1              | Staffing size in judicial sector  | 41        |
| 3.2              | Status of Gender and Social Representation in the Judicial sector   | 46        |
| 3.2.1            | Major highlights of inclusion status in judicial sector as a whole  | 46        |
| 3.2.2            | Status of inclusion among Judges  | 49        |
| 3.2.3            | Status of Inclusion by groups of Judicial Service:  | 52        |
| 3.2.4            | Status of inclusion among judicial service by position level  | 54        |
| 3.2.5            | Representation of women in judicial service   | 57        |
| 3.2.6            | Status of Inclusion among non-gazetted staff of Judicial Service  | 58        |
| 3.2.7            | Inclusion status in other services and class-less positions in judicial sector  | 59        |
| 3.2.8            | Overall diversities in judicial sector and national population  | 61        |
| 3.3              | Gender and social representation in the judiciary-related organizations   | 63        |
| 3.3.1            | Number of Lawyers   | 63        |
| 3.3.2            | State of inclusion among Lawyers  | 63        |
| 3.3.3            | Inclusion status in Nepal Bar Council   | 65        |
| 3.3.4            | Inclusion status in Nepal Bar Association (NBA)   | 66        |
| 3.4              | Assessment of status of Gender and Social Representation and level of diversity in students pursuing Law Education in Nepal | 68        |
| 3.4.1            | Coverage of students  | 68        |
| 3.4.2            | Enrolment   | 69        |
| 3.4.3            | Passed out students   | 69        |
| 3.4.4            | Analysis of findings on educational pursuit   | 73        |
| 3.4.5            | Diversities in law students and legal professional and national population  | 74        |
| 3.5              | Highlights of inclusion status in Judicial sector and related organizations   | 75        |
| 3.5.1            | Summary of inclusion status in judicial sector  | 75        |
| 3.5.2            | Summary of inclusion status among Lawyers and Law Students  | 77        |
| 3.5.3            | Critical observations on the inclusive status   | 78        |
| <b>Chapter 4</b> | <b>Assessments of Relevance and Enabling Factors and Barriers to Promotion of GESI in Judiciary</b>                         | <b>81</b> |
| 4.1              | Relevance of Inclusiveness in Judiciary in Nepal  | 81        |
| 4.1.1            | Expanded roles and influences of judiciary  | 81        |
| 4.1.2            | Increasing trust upon judiciary   | 82        |
| 4.1.3            | Increasing access to Judiciary  | 82        |
| 4.1.4            | Contributing towards the advent of affirmative legislations and actions   | 83        |

|                  |  |                |
|------------------|--|----------------|
| 4.2              | Enabling factors to promote GESI in judiciary of Nepal   | 83             |
| 4.2.1            | Political change   | 83             |
| 4.2.2            | Institution and policy reforms   | 84             |
| 4.2.3            | Right-based movement   | 85             |
| 4.2.4            | Enhanced understanding of GESI within the Judiciary  | 86             |
| 4.3              | Barriers faced by women and excluded groups for participation and representation in the judiciary          | 87             |
| 4.3.1            | Barrier to enter the judicial service  | 88             |
| 4.3.2            | Barriers to become Judges  | 89             |
| 4.3.3            | Barriers for pursuing Law Education  | 91             |
| 4.3.4            | Barriers faced by women and excluded groups in pursuing Legal Profession                                   | 95             |
| 4.3.5            | Allegation of Discrimination in the Bar and Bench  | 99             |
| 4.4              | Needs of women and socially excluded groups to enhance their participation and representation in judiciary | 99             |
| 4.5              | Major highlights of Review and Assessments in the Chapter  | 102            |
| <b>Chapter 5</b> | <b>Policy Reforms for Promotion of Inclusiveness in Nepali Judiciary</b>                                   | <b>105</b>     |
| 5.1              | Summary of observations on inclusion status of Judicial sector   | 105            |
| 5.2              | Policy Reform Options  | 108            |
| 5.3              | Strategic Framework  | 117            |
| 5.4              | Way Forward  | 118            |
|                  | <b>Bibliographic References</b>  | <b>146-148</b> |

## LIST OF TABLES

|           |  |     |
|-----------|--|-----|
| Table 1:  | Diversity in Judiciary by broad position category  | 46  |
| Table 2:  | Distribution of judges by caste, ethnicity and sex   | 50  |
| Table 3:  | Distribution of judges by religion, physical condition and geographical location   | 51  |
| Table 4:  | Representation of Newar among Janjati group  | 52  |
| Table 5:  | Judicial Service Groups by caste, ethnicity and sex  | 53  |
| Table 6:  | Judicial Service Groups by physical disabilities, regions and religious groups   | 54  |
| Table 7:  | Gazetted Officials of Judicial Service (all groups) by caste/ethnicity and sex   | 55  |
| Table 8:  | Gazetted officials of judicial service (all groups) by physical disabilities, regions and religious groups   | 56  |
| Table 9:  | Class-wise representation of women in judicial service by caste/ethnicity, religion and region   | 57  |
| Table 10: | Representation of women in different groups of the judiciary service   | 58  |
| Table 11: | Status of representation among non-gazetted officials by caste, ethnicity and sex  | 58  |
| Table 12: | Status of representation among non-gazetted officials by physical disabilities, regions and religious group  | 59  |
| Table 13: | Status of representation among staffs from other services and class-less group in judiciary by caste, ethnicity and sex                            | 60  |
| Table 14: | Status of representation among staff from other services and class less group in judiciary by physical disabilities, regions, and religious groups | 61  |
| Table 15: | Distribution of lawyers from different gender and social groups  | 64  |
| Table 16: | Composition of board of Nepal Bar Council  | 66  |
| Table 17: | Inclusiveness in central executive committee of Nepal Bar Association  | 67  |
| Table 18: | Enrolment status 2008 in Nepal Law Campus  | 69  |
| Table 19: | Detailed Inclusion Status of 1st Year Result (2009)  | 71  |
| Table 20: | Diversity in the result of 3rd Year (2011), LL.B. (T.U.) –   | 72  |
| Table 21: | Inclusion Status of students Completing LL.B. (2008-2011 Batch)  | 72  |
| Table 22: | Percentage of GESI-related training programs conducted by NJA during 2009/10 to 2011/12  | 87  |
| Table 23: | Strategic Plan Framework for Promoting GESI in Nepali Judiciary  | 119 |

## LIST OF FIGURES

|           |  |    |
|-----------|--|----|
| Figure 1: | Framework of Judicial sector and related organizations                       | 16 |
| Figure 2: | Diversity of judiciary by broad position categories and sex                  | 47 |
| Figure 3: | Diversity in Judiciary by broad position categories / castes / ethnic groups | 48 |
| Figure 4: | Diversity in Judiciary by broad position categories and religious groups     | 49 |
| Figure 5: | Diversity in Courts by geographical Identity                                 | 51 |
| Figure 6: | Representations compared with population size and position level             | 62 |
| Figure 7: | Representation in legal profession by case/ethnic groups and sex             | 65 |

## LIST OF ANNEXES

|             |   |     |
|-------------|---|-----|
| Annex 1.1:  | Research activities and output milestones   | 125 |
| Annex 1.2:  | Action plan for research team   | 126 |
| Annex 2:    | Organizations visited/contacted for information collection  | 130 |
| Annex 3:    | Persons / officials interviewed   | 130 |
| Annex 4.1:  | Brief description of FGD in Kathmandu   | 131 |
| Annex 4.2:  | Brief description of FGD in Kathmandu   | 132 |
| Annex 4.3:  | Brief description of FGD in Kathmandu   | 132 |
| Annex 4.4:  | Brief description of FGD in Kathmandu   | 133 |
| Annex 5.1:  | Brief description of FGD in Dhangadhi   | 134 |
| Annex 5.2:  | Brief description of FGD in Dhangadhi   | 134 |
| Annex 6.1:  | Brief Information on FGD in Birat Nagar   | 135 |
| Annex 6.2:  | Brief Information on FGD in Birat Nagar   | 136 |
| Annex 7:    | Positions and Persons engaged in Judicial sector  | 136 |
| Annex 8.1   | Further breakdown of representations of castes / ethnic groups (by broad position categories)           | 137 |
| Annex 8.2   | Further breakdown of representations of other socially-included groups (by broad position categories)   | 138 |
| Annex 9:    | Further breakdown of representations of castes/ ethnic groups and other groups (Judicial Group)         | 139 |
| Annex 10:   | Further breakdown of representation of castes, ethnic Groups and other groups (Public Prosecutor Group) | 140 |
| Annex 11:   | Further breakdown of representation of castes, ethnic Groups and other groups (Legal Group)             | 141 |
| Annex 12.1: | Further breakdown of special class officials of Judicial Service by caste/ethnicity                     | 142 |
| Annex 12.2: | Further breakdown of special class officials of Judicial Service by other groups                        | 143 |
| Annex 13.1: | Further breakdown of first class officials of Judicial Service by caste/ethnicity                       | 143 |
| Annex 13.2: | Further breakdown of first class officials of Judicial Service by other groups                          | 143 |
| Annex 14.1: | Further breakdown of second class officials of Judicial Service by Caste/ethnicity                      | 144 |
| Annex 14.2: | Further breakdown of second class officials of Judicial Service by other groups                         | 144 |
| Annex 15.1: | Further breakdown of third class Officials of Judicial Service by Caste/ethnicity                       | 145 |
| Annex 15.2: | Further breakdown of third class officials of Judicial Service by other groups                          | 145 |



## LIST OF ABBREVIATIONS

|           |   |
|-----------|---|
| ABA       | American Bar Association  |
| AC        | Appellate Court   |
| B.A.LL.B. | Bachelor of Arts-Bachelor of Law                                |
| B/C       | Brahman/ Chhetri  |
| BC:       | Bar Council   |
| BL        | Bachelor's Degree in Law  |
| CA        | Constituent Assembly  |
| CBS       | Central Bureau of Statistics                                    |
| CEC       | Central Executive Committee                                     |
| CJ        | Chief Justice   |
| CL/PCL    | (Proficiency) Certificate Level                                 |
| CPA       | Comprehensive Peace Accord                                      |
| CPN-M     | Communist Party of Nepal – Maoist                               |
| DC        | District Court  |
| DFID      | Department for International Development (UK)                   |
| EC        | Executive Committee   |
| ESP       | Enabling the State Programme                                    |
| FGD       | Focus Group Discussion  |
| GESI      | Gender Equality and Social Inclusion                            |
| GoN       | Government of Nepal   |
| HDI       | Human Development Index   |
| IJWA      | International Association of Women Judges                       |
| JC        | Judicial Council  |
| JSC       | Judicial Service Commission                                     |
| KSL       | Kathmandu School of Law   |
| LL.M      | Master of Laws  |
| LLB       | Bachelors in Law  |
| MBBS      | Bachelor of Medicine, Bachelor of Surgery                       |
| MoE       | Ministry of Education   |
| MoGA      | Ministry of General Administration                              |
| MoF       | Ministry of Finance   |
| MoLJPA    | Ministry of Law, Justice and Parliamentary Affairs              |
| NBA       | Nepal Bar Association   |
| NBC       | Nepal Bar Council   |
| NDC       | National Dalit Commission                                       |
| NFDIN     | National Foundation for Development of Indigenous Nationalities |
| NEFIN     | Nepal Federation of Indigenous Nationalities                    |
| NGOs      | Non-Government Organizations                                    |
| NJA       | National Judicial Academy                                       |
| NPC       | National Planning Commission                                    |

|       |                                    |
|-------|------------------------------------|
| OAG   | Office of the Attorney General     |
| OBC   | Other Backward Community           |
| Ph.D. | Doctor of Philosophy               |
| PMU   | Project Management Unit            |
| PRSP  | Poverty Reduction Strategy Paper   |
| PSC   | Public Service Commission          |
| PWD   | Person with disability             |
| SC    | Supreme Court                      |
| SLC   | School Leaving Certificate         |
| ToR   | Terms of Reference                 |
| TU    | Tribhuvan University               |
| UNDP  | United Nations Development Program |

# Chapter 1

## Project Backdrop and Methodology

### 1.1 Background

Despite immense ethnic pluralism and cultural diversity, a significant part of the Nepalese population is underrepresented in decision-making processes at all levels of state organs, including judiciary. Although the strategic plan of the Supreme Court as well as the Nepal Bar Association (NBA) cite inclusiveness and representation as one of the core values they aim to promote in the Nepali judiciary, specific policy measures as well as actions to address these issues have yet to be incorporated in their strategic intervention areas.

The necessity for making the judiciary inclusive cannot be denied in order to help strengthen its ability to be responsive to different issues, be unbiased and accessible to all. There have been a number of interventions for gender equality and social inclusion in terms of increasing access to judiciary of women, the poor and excluded groups. However, a comprehensive analysis that appreciates the cross-cutting issues of gender and social identity in the judiciary, while devising specific operational strategies for implementation of appropriate policies to promote the inclusion concept, is seen to be lacking.

The National Judicial Academy (NJA) is an autonomous institution responsible for serving the training and research needs of the legal and judiciary community. It has been conducting various training programs to sensitize judges and officers of judicial system on human rights, including rights of women and children, and issues related to other disadvantaged groups. It had commissioned the present research project entitled “Gender Equality and Social Inclusion (GESI) Analysis of Nepali Judiciary” as part of its research activities in April 2012, with the funding support of the DFID/ESP.

### 1.2 Aims and Objectives

This project has aimed at: establishing a national level baseline data on the status of gender and social representation in the judiciary with assessments of diversity in the workforce of relevant offices of judicial sector and other related organizations; identifying the barriers to inclusion (institutional and policy wise as well as those identified by the excluded individuals and groups themselves), and suggesting policy options with a strategic framework to address them.

Specifically, the project has the following objectives:

- To conduct GESI analysis of the policies, institutional structures and systems, programming, monitoring and reporting of judicial bodies
- To create baseline data on status of gender and social representation and level of diversity in the judicial sector
- To produce an assessment of the status and nature of the social, economic and institutional barriers faced by women and excluded groups in terms of participation and representation in decision making structures of the judiciary and the legal profession; and their needs to enhance participation and representation in such structures/professions; and
- To recommend strategic policy interventions and a framework of strategic planning for the judiciary and other most relevant stakeholders to strengthen GESI integration in key aspects of decision making of the judicial sector and to address barriers for increased diversity in the judicial sector.

Given the lack of analysis of the existing policy, institutional structures and systems and programming for mainstreaming GESI in the judicial sector and the absence of comprehensive gender and social identity disaggregated data on the status of diversity in the legal and judicial sectors, this research document is expected to be the primary step for initiation of national level policy debate and dialogue on mainstreaming GESI in the judiciary.

### **1.3 Research Team and Scope of Work**

A research team, consisting of a team leader, two senior consultants (legal specialist and GESI specialist), three research associates and a data analyst (Statistician), was formed to carry out the research project. Three research associates and statistician supported the Team Leader and the Senior Consultants in various stages of the research. The entire research team worked in close coordination with NJA. The team took some nine and a half months (August 2012-15 May 2013) to complete the research by working on an intermittent basis.

After deliberations on the best way to meet the given Terms of Reference, the Research Team had undertaken the following seven interrelated research activities:

- a) Assessment of the policy mandates related to judicial service in Nepal from GESI perspective, including review of relevant policy/ institutional reform measures of other selected countries for promoting GESI in their judicial sector through literature review in cooperation with NJA.
- b) Exploration of representation status of women and men of various caste and ethnic /indigenous groups, including those belonging to some specific

geographic areas and disadvantaged groups, in judiciary and other related bodies /organizations of Nepal in cooperation with NJA

- c) Assessment of enrollment and course completion status of women and men of various caste and ethnic / indigenous groups, including those belonging to some specific geographic areas and disadvantaged groups, in legal education focusing on Bachelor-level programs of selected institutes in Nepal in cooperation with NJA
- d) Assessment of attitudes and perceptions of key members of decision making position of judicial system on gender equality and social inclusion to identify success factors in enhancing GESI in judicial sector
- e) Review of past attempts towards enhancing GESI in judiciary of Nepal
- f) Identification of barriers faced by women and men of excluded group to enroll in legal education and taking-up legal profession, including their needs to enhance participation and representation in such professions
- g) Identification of options of appropriate policy reform measures that help develop a framework for strategic planning to make the judiciary service more inclusive and GESI sensitive

These research activities also included facilitation of a number of focus group discussions and workshops for generating information and sharing research findings with stakeholder representatives and seeking for their feedback.

The scope of this research project included various agencies and organizations in the judicial sector of Nepal with policy making and implementing authorities such as Judicial Council, Supreme Court, Appellate and District courts, Bar Council, Bar Association, Ministry of Law and Justice, law colleges and universities as well as representatives of excluded groups (networks, NGOs, coordination committee, commissions). Voices of underrepresented and excluded groups were taken into account in analysing the institutional as well as socio-economic and cultural barriers to inclusiveness in Judiciary. However, this project could not cover departmental organs that practise quasi-justice systems like land reform office, district administration office and police, nor did it focus on justice quality and justice delivery systems.

The research has provided a basis on which to develop and update database on status of diversity in judiciary sector, devise required policy options with a strategic plan framework and suggest areas for further research in future for developing inclusive and accessible judicial systems.

## 1.4 Conceptualization of Gender Equity and Social Inclusion

Nepal is a multi-ethnic, multi-lingual and multi-religious country with diverse cultures. According to the census of 2011, its population comprises some 125 caste and ethnic groups speaking over 123 languages and practicing eight different religious beliefs (CBS 2012).

The concepts of gender equality and social inclusion in policy debates originated in Europe in response to the fear of social disintegration caused by social and economic crises. The World Summit for Social Development (Copenhagen, 1995) affirmed that social integration was one of the key goals of social development and that the aim of social integration was to create a “society for all”. Gender and social inclusion issues in Nepal have been conceptualized in this study in line with national policy documents. This also involved a brief review of situation of women and socially excluded groups in Nepal, including policy and legal initiatives towards their issues, and conceptualization of GESI and its coverage for the research.

### 1.4.1 *Situation of Women and Socially Excluded Groups*

The traditional patriarchal structure of the society and structural discrimination against women contribute to reduce their social and economic status in Nepal. The Gender-related Development Index, which adjusts the Human Development Index (HDI) to reflect the extent of gender disparity, shows that gender disparity is high. The discriminatory practices have observable outcomes in terms of lower literacy rates, access to basic healthcare and reproductive health services, nutrition, economic productivity and opportunities for income generation and representation in decision making.

Women experience multiple discrimination within ethnic, caste, religious and geographical stratum on account of a long history of systemic and institutionalised discrimination. For example, in education, which has a significant variable of inequality in Nepal, the differences are dramatic. Male literacy rate is 75.1 percent compared to female literacy rate of 57.4 percent<sup>1</sup>. Similarly, while 92.8 percent of Brahman men and 68.6 per cent of Brahman women are classified as literate, only 48.5 percent of Madhesi Dalit men and only 17.2 per cent of Madhesi Dalit women are literate. Though women have been placed in a discriminated position regardless of class, caste, ethnicity, and region, the important specificities of this diversity and other cross-cutting divides have been ignored. This is validated by the scarcity of sex disaggregated data related to different caste, ethnicity and region. This has made it difficult to accurately compare gender disparity in different groups.

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<sup>1</sup> CBS 2011

Although the Government of Nepal has initiated some policies and programs to address gender discrimination throughout the past five decades of planned development, it is only more recently that the issues of social exclusion and discrimination against Dalits, indigenous people, ethnic groups, Muslims and Madhesis have come to the forefront in public disclosure. Various reinforcing and complex historical, institutional, political and geographical factors have led to the current state of exclusion in Nepal. The advantaged groups experienced greater declines in poverty (with current rates among Newars of 14% and Brahman and Chhetri of 18%) than socially-excluded groups (with current rates among Dalits of 46%, Muslims 41%, hill Janajati 44%, and Tarai Janajati 35%). Similarly, HDI is higher among Brahman and Chhetri (0.552) compared to Dalits(0.424) and Muslims (0.401)<sup>2</sup>.

A sample review of the compositions of Council of Ministers and those in higher echelon of bureaucracy (Government Secretaries and those holding special class positions) shows the clear hold of Brahman/Chhetri (B/C) in decision-making bodies of the government. For instance, among 16 ministers of the government led by Prime Minister Dr. Baburam Bhattarai, 9 were B/C (including 2 Madhesi Brahman and 2 Chhetris), 4 Janajati (all hill origin including 2 Newars) and 3 OBC male<sup>3</sup>. There are no female in the Council of Ministers. Similarly among 49 Secretaries, including 1 Chief Secretary, 39 are B/C (including 1 Madhesi) and 10 Janajatis (including 1 Madhesi)<sup>4</sup>. There is no representation of women, Dalit, OBC and others among the Secretaries.

The situation of Judiciary is also alike. Among 20 Chief Justices of the Supreme Court of Nepal, 16 were from BC (including 2 from Terai/Madhesh origin) and 4 were Janajati (all Hill origin)<sup>5</sup>. No women, Dalit or OBC have ever been a Chief Justice in the history of Nepal. Details for the current situation of diversity in judiciary are in Chapter 3 as the main subject of the present research.

In the civil service, Hill Brahmans, Chhetris, and Newars continue to dominate. While Brahmans account for 58% of gazetted employees, the shares of Newars and Chhetris are 14% and 13%, respectively. Madhesi, Muslim, and Marwari together account for 9.9% of the gazetted level employees. The representation of Janajatis (excluding Newars) is only 3.3% while it is a meagre 0.9% representation for the Dalit communities. Women's representation in the civil service, which was only 7.8% in 2000 (with the majority in the non-gazetted category), increased to

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<sup>2</sup> Overview of Gender Equality and social Inclusion in Nepal, Asian Development Bank, 2010

<sup>3</sup> As of March 9, 2013, <http://www.opmcm.gov.np/en/council/>

<sup>4</sup> Ibid.

<sup>5</sup> As of 9 March, 2013, Supreme Court of Nepal, <http://www.supremecourt.gov.np/main.php?d=justices&f=default>

12.7% by 2007<sup>6</sup>. However, in the absence of a strategic fast track approach, the progress towards gender parity in the civil service is likely to remain sluggish

An effective and accessible legal system is central to assist all citizens to become equal partners in decision-making and development processes. One of the key challenges confronting women and excluded groups to achieve equality and inclusion is their inability to avail existing legal provisions to realize their rights. They have for long struggled to access legal provisions that protect them from discrimination and inequality, but a large majority of them are still unable to benefit from the justice system.

Despite the formulation of inclusive laws and policies, the vast majority of women and excluded groups face several barriers to access justice on account of insufficient knowledge of rights and remedies, illiteracy or poor literacy and lack of resources or time to participate in justice processes. They are unable to invest considerable time, effort and money needed to pursue cases through the courts. For women, this is compounded by financial dependency, lack of support system and fear of social exclusion. Generally they prefer to stay passive rather than taking any legal recourse to stop the violence against them.

Women and excluded groups face multidimensional barriers to access justice which go beyond legal aspects. Political, social, cultural, economic and psychological barriers that obstruct women and excluded groups' access to justice are found at every stage of the 'justice chain'. Thus, a broader economic, social and institutional context needs to be addressed to enhance women and excluded groups' access to justice.

Some significant changes have been made through legal and policy reforms concerning GESI in Nepal after the people's movement of 2006. The declaration of Nepal as a federal republic on 28 May 2008 has fostered hope for greater progress towards this direction. Although the failure of the first-elected Constitution Assembly to draft a new Constitution has reflected difficult political transition and inherent turmoil, the new CA to be formed after the proposed fresh election is expected to promulgate new constitution and promote GESI more systemically.

The Interim Constitution of Nepal (2007) guarantees all citizens the right to equality. It specifically states that "no discrimination shall be made against any citizen in the application of general laws on grounds of religion, race, sex, caste, tribe, origin, language or ideological conviction or any of these". It also states that

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<sup>6</sup> Ibid



the “right to equality” does not mean any restriction on making legal provision for protection, empowerment and development of women, Dalit, indigenous ethnic groups, Madhesi or farmers, labourers or economically, socially and culturally backward group or children, old and physically or mentally disabled persons. Likewise, the provision of "right to social justice" in the Constitution provides for the right to participate in the state mechanism on the basis of proportional inclusive principles to excluded groups such as women, Dalits, indigenous tribes, Madhesi community and oppressed groups who are economically, socially or educationally backward. Nepal has also taken a number of international commitments to nondiscrimination, gender equality, and social justice.<sup>7</sup> Amendment to the Civil Service Act (2007) has aimed to increase the representation of women and socially excluded groups in government service.

#### *1.4.2 Operational framework and categorization of socially excluded groups*

For the purpose of present research, social exclusion has been taken as a state where individuals, groups or society as a whole are fully or partially excluded from their participation in judicial service and from having access to equitable judicial services in view of the generally perceived institutional barriers originating from policies, legal systems, social norms, mindsets and socio-cultural values. Social inclusion has been understood as the efforts by the judicial system to remove the social, cultural, economic and institutional barriers, to improve the access of women, the poor, Dalits and other marginalised groups on the resources, opportunities and services related to judicial services and to increase the institutional representations of women and excluded groups in an equitable manner. Although definition of social inclusion covers the aspect of access to justice by women, poor and the excluded ones, the focus of present study is limited to assessments of representation of women and socially excluded groups in the judicial services and related organizations.

In Nepal, classification of caste and ethnicity has been done in many ways. It is generally done on the bases of ethnic origin, untouchability and regional location. On this ground, Nepalese people can be broadly divided into two major categories: i) caste groups; and ii) indigenous people. In a gender and social exclusion assessment, 103 caste and ethnic groups as listed by population census of 2001 were organized into 10 categories (DFID-WB 2006), which included: i) Brahman/Chhetri (Hill); ii) Brahman /Chhetri (Terai); iii) Terai Middle Castes; iv)

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<sup>7</sup> Some of the major international commitments are: The Convention on the Elimination of all Forms of Discrimination against Women, the Beijing Platform for Action (1995), the Millennium Development Goals (2000), and United Nations security Council Resolution 1325. International conventions such as the Convention on the Elimination of All Forms of Discrimination; the United Nations Covenant on Economic, Social and Cultural Rights; and the ILO (International Labour Organization) Indigenous and Tribal Peoples Convention 169 (2007)

Dalits (Hill); v) Dalits (Terai); vi) Newar; vii) Janjati (Hill); viii) Janjati (Terai); ix) Muslim; x) others. Likewise, a total of 59 ethnic groups have been identified as indigenous nationalities by the National Foundation for Upliftment of Aadibasi/Janjati Act (2002), which have been further categorized into five groups (endangered group, highly marginalized group, marginalized group, disadvantaged group and advantaged group) in terms of their socio-economic condition by Nepal Federation of Indigenous Nationalities (NEFIN). Likewise, as stated in other sources, OBCs include 24 different sub-ethnic groups of the Terai region, citing census of 2001 (Mahato 2009). However, the population census data of 2011 identify only 125 caste and ethnic groups without clustering them in any other categories.

As the Civil Service Act 1993 has made a provision for promoting inclusiveness in the civil service through recruitment to vacant positions in the civil service, the Public Service Commission undertakes group-wise competitive tests to recommend suitable candidates for appointment by allocating 45 percent of the vacant positions to six excluded groups in accordance with designated group-specific quota, while the rest of the (55%) positions are to be fulfilled through free competition for all eligible candidates. According to the law, the six excluded groups who are eligible to compete for the reserved positions in such close group basis are: i) women ii) ethnic/indigenous; iii) Madhesi (originating from Terai/Madhes); iv) Dalit; v) persons with disability; and vi) backward region (people from nine backward districts of the mid-western region).

The present research has focused on seven groups for gathering data and analysing inclusiveness in the judiciary by adding one more group of Brahman/Chhetri (including Thakuri and Dashnami) to the list of six excluded groups identified in the Civil Service Act. The coverage of Brahman /Chhetri group, which is often labelled as non-excluded group, was deemed necessary for having comparative study of representations in the judiciary sector. The research team has two main reasons for adopting this classification. First, these seven groups tend to be the focus of all debates and policy reform drives over the years for promoting gender equity and social inclusiveness in Nepal. Second, the existing legal provisions have already recognized the above stated first six groups as target groups for special treatment in recruitment in government services and promoting social inclusiveness in the country.

However, the research team has also attempted to explore further data to analyse the GESI situations with further breakdown of above stated seven groups in line with what has been practiced in the past by government and other authentic agencies. Though data on each of the selected groups were not available for every subject or organization (e.g., person with disability pursuing law education), each

of the selected groups was divided as men and women. Likewise, Brahman/Chhetri, Janjati (ethnic) and Dalits were re-grouped as Hill (Pahade) and Terai (Madhesi). Different religious groups were broadly re-grouped as Hindu, Muslim and others.

With a view to avoiding possible controversies being surfaced as to who belonged to what group and the criteria for deciding the grouping, different legal and policy provisions and documents of government and other authentic institutions were adopted, e.g., list of ethnic groups in the National Foundation for Upliftment of Aadibasi-Janjati Act (2002), list of Dalits identified by National Dalit Commission, list of nine districts identified as backward areas in the Civil Service Act and so on.

### **1.5 Approach and Methodology**

The research has been exploratory as well as descriptive and analytical in nature. This has been a mix of survey and case methods to some extent, gathering both quantitative and qualitative data and information. The research team focussed towards achieving mainly the following as the four major outputs of the research project:

- a) establishment of national baseline level data in selected themes concerned with judiciary and other related selective institutions, covering inclusiveness in legal educational institutions in Nepal on enrolment, dropout rates, and completion of legal undergraduate course (Bachelor of Law) and data of registered lawyers in the NBA, officers with legal educational degree in MoLJPA, members of the JSC and judges and judicial staff in all District, Appellate and other Special courts from the GESI perspective
- b) identification of the success factors and barriers in the promotion of GESI in the judicial sector of Nepal
- c) general assessment of needs of women and excluded groups to enhance their access to legal education and judiciary positions
- d) generation of appropriate policy reforms measures, with a framework for strategic planning to make the judicial sector more inclusive and GESI sensitive

Various methods were applied for gathering data and information for research. Among them included desk studies, internet search, collection of factual data and information and relevant documents through checklists and questionnaires and gathering of opinions through interview schedule, focus group discussions, meetings and interaction sessions. Necessary tools for gathering data and information were prepared and shared with officials of NJA and ESP and these were finalised in line with the feedbacks received. A preliminary review of basic policy documents and basic information on status of representation and inclusiveness in higher echelons of civil service (secretary level), cabinet, judiciary and related institutions had offered

meaningful insights for detailed research planning. The major data collection instruments prepared and used by the team were:

- a) Checklists for collection of baseline data on inclusiveness in legal education institutions, on enrolment, dropouts and completion of legal undergraduate course
- b) Checklists for collection of national level data (from GESI perspective) of registered lawyers, officials in MoLJPA, public prosecutors, members of JC and JSC and judges and judicial staff in different courts
- c) Interview guides / checklists
- d) FGD checklists
- e) Other checklists for gathering policy documents and other basic quantitative and qualitative data from judiciary and other legal institutions.

Data on one three-year academic cycle of LLB graduating in 2011 were collected from selected major legal educational institutions and the Examination Control Office of Tribhuvan University, covering enrolment and passed-out students in each of three yearly examinations in an effort to analyse diversity of students covering the entire course period of the graduating batch (i.e. from the enrolment to the year of graduation). However, data analysis was undertaken focussing on year-wise situation only to cope with limitations in gathering all required data for a particular academic cycle (further details in Chapter 3).

The research team visited various organizations (like MoGA, MoLJPA, MoE, PSC, JSC, JC SC, BC, NE BA,) pertaining to study of inclusiveness in Judiciary Service in order to gather information and data on their organizational set-up, functions, policy mandates for GESI issues and current status of diversity in higher echelons of Judiciary and related institutions (Annex 2). Relevant web-sites were also accessed for collecting useful information and data for desk studies. Primary diversity data on number of judges, government attorneys, and other officials and staff of Supreme Court, Appellate Courts, District Courts and Office of Attorney General, including its field offices, were gathered in special formats from different sources designated as focal points. The research team also conducted a number of interviews and interactions sessions with officials of judiciary and related institutions and representatives of women and socially excluded groups for collecting qualitative data, information and opinions (detail in Annex 3). Eight focus-group discussions were organized to interact with judges of special, appellate and district courts, public prosecutors, officials/members of NBA, civil society members representing different excluded social groups and law students. Among them, four FGDs were held in central region and two each in Eastern and Far-western regions. One FGD with law students was organized only in central region to assess general interest in pursuing law education and constraints in doing so. Further details on FGD at regional levels are in Annex 4, 5 and 6.

Likewise, considering the exploratory nature of research work, a review of relevant policies and institutional reform measures for GESI in Judiciary in other countries was also conducted by using secondary literature to the possible extent.

Most of data and information required for this research undertaking were gathered from September to December 2012. Therefore, the end of December 2012 should be considered as the reference period for time validity and applicability of the data and information presented in this report.

### **1.6 Action Plan**

The research activities were organized into 11 work packages for execution as part of the research project, which were broadly grouped as different project phases (Annex 1). The first phase work was to be concluded with submission of a draft report, covering establishment of baseline data, identification of barriers to inclusion in Judiciary and general assessments of needs of women and excluded groups, for sharing with stakeholders. Likewise, the second phase work had required submission of another draft report with identification of appropriate policy options to address the barriers to inclusive judiciary and formulation of recommendations with a framework of strategic planning for sharing with stakeholders. However, for practicality of preparation and sharing of reports by avoiding redundancy and ensuring connectivity between the contents of the two reports, a single draft report was prepared covering the activities of both first and second phases and it was shared with stakeholders by organizing one workshop-meeting. The present report was submitted as the final consolidated project report by incorporating comments and feedback received on the draft report as completion of the second phase project work, which was also disseminated later to representatives of all relevant stakeholders by organizing a report dissemination session.

### **1.7 Work Modality**

The research team carried out all necessary activities as stated in given ToRs and contributed to produce team outputs and reports. It had undertaken research project by maintaining contact with NJA through designated official and mechanism for communication and reporting on work processing and delivery. NJA was cooperative in extending all necessary supports to the research team to facilitate the undertaking of the research work, including accessing to sources of required data and information, persons/officials, offices for gathering of information and interviews, conduction of workshops, discussions, interactions, etc. and availing necessary logistic support.



## Chapter 2

### Review of Policy and Institutional Arrangements in Judicial Sector and Related Organizations from a GESI Perspective

#### 2.1 GESI in Nepalese Judicial System

The history of Nepalese administrative and judicial systems marks no deliberate and systematic efforts to make them GESI friendly until the legal changes made after people's movement of 2007. The ancient kings are found to have included different social groups in their advisory teams but they were not systematic; rather they had institutionalized caste-based hierarchical social and penal systems through rules based on religious norms. The first written law of the country, *Muluki Ain* (National Code) promulgated by the King Surendra Bikram Shah in 1854 (1910 BS) also reinforced the caste system prevailing in the country. Judicial function was considered an extension of executive function and the Kings used to be directly involved in justice delivery and selection of judges. They selected royal priests, advisors or their keens for the works of justice delivery, who were mostly Brahmins and sometimes Chhetri and Janjatis.

Gender equality and social inclusion in public services and other walks of life was time to time discussed in public forums and demanded by discriminated groups after the movement of 1990, but GESI in general administration including judicial administration could be started only after second amendment in the Civil Service Act in August 2008. The Act formally introduced method of making Civil Service inclusive of gender, caste and ethnic groups.

There is still no mandatory provision to diversify the profession of judges and lawyers, though Judicial Council has introduced the Judge Appointment (Procedures) Standards in 2012 that directs for making the appointment of judges diverse to the extent possible.

#### 2.2 GESI-related Policies, Laws, Institutional Structures and Systems for Inclusive Judiciary

In Nepal, judiciary has been a collective name for all types of courts and is composed of judges, officials and staff of judicial group and support staff of other services (e.g., computing, accounting and class less staff) working in the courts. Judicial service is composed of officials and staff appointed under different professional service groups namely judicial, public prosecutor and legal and they help Judges in justice delivery. While the officials and staffs of the judicial group work only in the courts of different levels, those of public prosecutor group are placed in the Office of Attorney General, Appellate Government Attorney's Offices, Special Court Government Attorney's Office and District Government

Attorney's Offices. Similarly, the officials and staff of Legal Group work under the Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs (MoLJPA) and are posted in different ministries and government offices to look after legal affairs. All these can be identified as the "judicial sector".

Though private lawyers, law teachers, researchers or academicians or their organizations or association are not formal part of judiciary, they too help the judiciary directly and indirectly and also serve as pool for appointment of judges. These services can broadly be termed judiciary related services. Likewise, educational institutes produce human resources required for both judicial services as well as other legal services. Moreover, there are some other organizations which are engaged in recruiting officials and staff for judicial sector besides designing and executing necessary national or sectoral policies and these too are having direct or indirect roles to contribute towards making inclusive judicial sector in general and judiciary in particular. All such institutions are labelled as "related organizations" for judiciary and judicial sector. A broad framework of judicial sector for scoping of the present research is presented in this report (Figure 1).

Judicial Service is one of ten different services provisioned under the Civil Service of Nepal which is administered through the Civil Service Act 1993. Unlike the three professional groups of the Judicial Service (i.e., judicial, public prosecutor and legal), judges of the courts are not labelled as a professional group, but they constitute a core part of the judiciary and its human resource base. As provisioned for all services under the Civil Service Act, the position levels in judiciary service have also been broadly divided into two major categories - Gazetted and Non-Gazetted<sup>8</sup>. The Gazetted level positions (officer level) are further divided into four classes- Special, First, Second and Third. Similarly Non-gazetted level positions (non-officers) are divided into 5 classes - first to fifth<sup>9</sup>. In addition, there are also classless positions as prescribed in Civil Service Act like driver, office helper (formerly known as peon), gardener, sweeper, etc.

Judiciary is inter-linked with many overarching state policies, laws and institutional structures that exist in the country and the administration of judicial service and service groups, including judges, are caused and influenced by those institutional arrangements. It is therefore necessary to review such general provisions covering relevant constitutional and legal provisions, policies and institutional arrangements before reviewing appointing procedures and institutional structures for judicial services.

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<sup>8</sup> Civil Service Act, 1993 (2049 BS), Section 3.

<sup>9</sup> Ibid, Section 4.



### *2.2.1 General policy, legal and institutional provisions*

All the constitutions promulgated since 1951 have some explicit and non-explicit provisions on equal opportunity for all citizens in any government employment, with possibility for reservation in government services. The Constitution of the Kingdom of Nepal 1990 not only required the State making the female population participate, to a greater extent, in the task of national development by making special provisions for their education, health and employment but also directed it to pursue a policy to promote the interests of the economically and socially backward groups and communities by making special provisions with regard to their education, health and employment<sup>10</sup>.

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<sup>10</sup> The Constitution of the Kingdom of Nepal 1990, Article 26

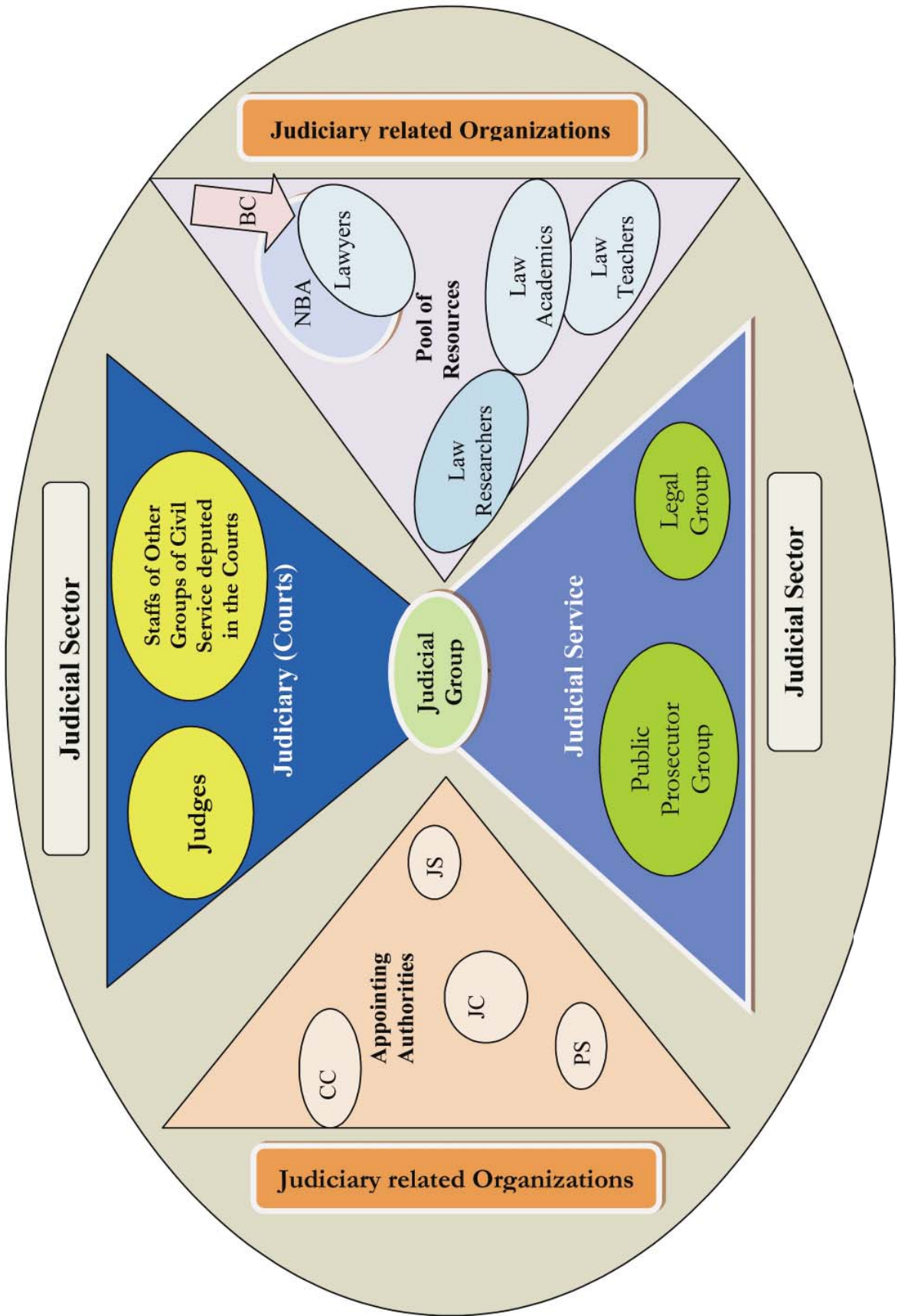


Figure 1: Framework of Judicial Sector and Related Organizations

Despite such constitutional provisions, the provision of reservation was never introduced to Civil Service or Judiciary. Rather, stringent recruitment or appointment processes were applied based on 'equality of opportunity' by Public Service Commission, Judicial Service Commission, Judicial Council and Constitutional Council without giving consideration to diversity of language, culture and different orientation of diverse population. The government rarely paid attention to diversification of judicial or any other public services other than making some special provisions for women and people from marginalized groups or backward community in general education, social security, health care and income generating activities.

As briefly indicated in chapter 1, the present Interim Constitution 2007 has pledged progressive restructuring of the state and introduced 'right to social justice' that ensures right to take part in the structures of the State on the basis of the principle of proportional inclusion to the economically, socially or educationally backward women, *Dalits*, indigenous peoples, Madhesi communities, oppressed classes, poor farmers and labours<sup>11</sup>. The provision of right to equality indicates the possibility of special provisions for the protection, empowerment or advancement of these groups. Ensuring the participation of the people of these communities in all organs of the state structure has been stated as the obligation of State<sup>12</sup>. Likewise, the constitution has directed to take policies of maximizing women's participation in national development by making special provisions for their education, health and employment<sup>13</sup>; and policy of uplifting the economically and socially backward indigenous peoples, Madhesi, Dalit, marginalized communities and workers and farmers living below the poverty line by making a provision of reservation in education, health, housing, food sovereignty and employment for a certain period of time<sup>14</sup>.

The Labor and Employment Policy of the State stipulates ensuring equal access of women, Dalits, indigenous nationalities and the displaced persons to employment<sup>15</sup> and pledged the adoption of international standard of gender equality and positive discrimination at all levels to ensure access of women of all sections, castes and ethnic groups to productive employment and in women's empowerment<sup>16</sup>.

In order to fulfill these constitutional and policy commitments, the government has amended the Civil Service Act 1993 in 2007 to reserve 45% of total vacant

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<sup>11</sup> Interim Constitution of Nepal 2007, Article 21

<sup>12</sup> Ibid, Article 33(d1), Inserted by first amendment 14 March 2007

<sup>13</sup> Ibid, Article 35(8)

<sup>14</sup> Ibid, Article 35(10)

<sup>15</sup> Labour and Employment Policy (2062 BS), Objectives, Section 3.5, <http://www.molm.gov.np>

<sup>16</sup> Ibid, Policy and Approach, 3.5.5

positions in the civil service for six groups consisting of women and socially excluded people<sup>17</sup>. As stated in chapter 1, 45 % of the vacant positions are set aside for in-group competitions, while the rest are allocated for open competition. According to such legal provision, the reserved percentage of vacant positions is considered as 100 and then the vacant positions are allocated to each of six groups differentially by following some pre-determined criteria such as 33% for women, 27% for Adiwasi/Janjati, 22% for Madhesi, 9% for Dalit, 5% for Disabled and 4% for people from Backward Area<sup>18</sup>. The "backward area" denotes 9 districts, namely- Acham, Kalikot, Jajarkot, Jumla, Dolpa, Bajhang, Bajura, Mugu and Humla and women, Adiwasi/Janjati, Madhesi and Dalit are supposed to be economically and socially backward people of those category.<sup>19</sup> But, there is less clarity in the law as to whether '*Madhesi*' is determined on the basis of area of residence or race or language or culture. Similarly, ambiguity remains there regarding the classification of a person having double identities, for example women of particular caste or ethnic group. However, in practice, this is found to be left up to the candidate to choose the group which s/he wants to compete with.

The percentage of reservation specified above is subject to revision every ten year<sup>20</sup>. The Council of Ministers had decided to increase the reservation percent from 45 to 48 but the bill has not been passed yet<sup>21</sup>. In addition to such provision for inclusion, the government can also specify a position to be competed only by women for any specific nature of function or post in accordance with the Civil Service Act.

There are some institutional structures, systems and policies or programs which do not specifically aim at promoting GESI in Judiciary, but these are meant to promote gender equality and social inclusion in public and private spheres. Public Service Commission and Judicial Service Commission are the main agencies that exist to recommend candidates to be appointed in the judicial service with potential roles to play towards promoting GESI in judicial sector (described separately in this chapter). Department of Women Development, under the Ministry of Women Children and Social Welfare, has a mandate to empower women, especially those who are economically poor, socially deprived or otherwise kept at a disadvantage. Currently, the Department of Woman Development has its offices, headed by Women Development Officers, across all 75 districts of the country which work mostly for awareness of women, their empowerment and skill development. National Women Commission is

<sup>17</sup> Second Amendment to the Civil Service Act (2007), Section 7(7).

<sup>18</sup> Civil Service Act, 1993, Section 7(7).

<sup>19</sup> Ibid, Section 7(7), Explanation (1) and (2).

<sup>20</sup> Ibid, Section 7(11).

<sup>21</sup> Gorkhapatra Daily, Jan 8, 2013: "Forty Eight Percent Reservation in Government Service"

established with an objective of protecting and promoting the rights and interests of the women and thereby effectively includes them in the mainstream of development and makes overall development of the women establishing gender justice<sup>22</sup>. It has a mandate to formulate national policy and program concerning with the right and interest of women and present it before the government of Nepal for execution<sup>23</sup>. However, neither Department nor Ministry concerned with women affairs nor National Women Commission has been able to look after the matters of increasing women's representation in Judiciary or judicial service. But occasionally preparatory classes for women in different localities with a view to helping them to make entry into the civil service, including judiciary service is understood to have been arranged.

Nepal Federation of Indigenous Nationalities (NEFIN) exists as an independent body for the social, economic and cultural development of indigenous nationalities by promoting their equal participation in mainstream development process. Likewise, National Dalit Commission (NDC) works with objectives of increasing active participation of socially, economically, politically and educationally most backward Dalit Community in the mainstream of national development<sup>24</sup>. Nepal Muslim Commission and Social Inclusion Commission are also formed to economic and social development of the people of the community or socially excluded groups. Though these commissions have not been effective in promote inclusion of the concerned groups in civil service or in judiciary, some organizations such as NEFIN and NDC too have been organizing preparatory classes for Adiwasi/Janajati and Dalit candidates to increase their representation in the civil service. However they do not have specific programs targeting the entry of those groups into judiciary or judicial service.

National Planning Commission (NPC) acts as an authentic body for formulating development plans, policies and programs of the country, including those with GESI approaches, and monitors the progress under the directives of the National Development Council.<sup>25</sup> Currently, the three-year plan of the country has pledged to promote inclusion and adopted an approach of providing access of women, Dalit, indigenous nationalities/Janajati, Madhesi, Muslim, backward community, persons with disability, minority group, people from remote areas, poor and excluded people to public employment so that they could be mainstreamed in state structures and provided with increased access to their economic, social, cultural and human rights<sup>26</sup>.

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<sup>22</sup> National Women Commission Act 2007, Preamble

<sup>23</sup> Ibid, Section 11(1)(A)

<sup>24</sup> Vision of National Dalit Commission, <http://www.ndc.gov.np/vision-8-en.html>

<sup>25</sup> National Planning Commission, <http://www.npc.gov.np>

<sup>26</sup> The three year Plan 2067/68-2069/70, Chapter 7.3

Most of the offices like MoGA, PSC, MoLJPA, MoE, OAG, SC, etc have designated a Gender Focal Point for looking after the matters relating to mainstreaming gender in their activities, but their role seems to be limited in attending gender-related programs or meeting and serving as contact point for gender-related issues. The focal points are not in a position to influence the decisions of the organization required for gender mainstreaming.

### ***2.2.2 Specific provisions for appointment of officials in different groups of Judicial Service***

The appointment through internal competition, transfer, promotion and departmental action of gazetted officers of the Judicial Service are done on the recommendation of the Judicial Service Commission<sup>27</sup>. However, the appointment to the positions required to be fulfilled by open competition, including promotion from non-gazetted to gazetted positions, can only be made on recommendation of PSC<sup>28</sup>.

Most of the positions of Judicial Service need recommendation of independent bodies such as Public Service Commission and Judicial Service Commission for the appointment, promotion, transfer and disciplinary action and but there are other positions that can directly be fulfilled by concerned department or head of the offices. Thus the diversity of certain services or offices is, to some extent, dependent on appointment procedures as well.

The provision of reservation made in the Civil Service Act has been playing positive role in making the civil service, including judicial service, inclusive. The increased number of women staffs and staffs from the excluded groups in gazetted third class and lower positions (details in Chapter 3) can be attributed to the reservation provision of the Civil Service Act. Similarly, higher level of diversity among lower positions that can be fulfilled without recommendation of any independent bodies and without following the specified reservation criteria can be assumed as increased understanding of the need for inclusion. However, in the absence of a strategic fast track approach, the progress towards gender parity in the civil service is likely to remain sluggish. As a matter of concern, the inclusive policy as incorporated in the civil service law does not arguably apply to the appointments of the judges of different courts because of application of different and distinct criteria for such positions (Jha, 2012).

<sup>27</sup> Interim Constitution of Nepal 2007, Article 114(1) and Judicial Service Commission Act 1991 (2048 BS), Section 3.

<sup>28</sup> Ibid, Section 8(1)

### 2.2.3 Provisions for Appointment of Judges

The appointment procedure of judges is guided by the constitution. Despite the generic provisions and promises of making all organs of the state structure inclusive, the present constitution is silent in the matter of appointment of judges. However the existing standards for appointment of Judges have provided some space for practicing inclusive approach. Nevertheless, the appointments of Judges tend to be a subject of multiple challenges (Chudal, Kumar 2012).

The Constitution has provisioned three tier court system: Supreme Court, Appellate Court and District Court. In addition, the constitution provides room for constitution of other courts and judicial bodies or tribunals for the purpose of trying and disposing special types of cases. The composition and appointment process of judges of different courts are not alike.

#### *a) Appointments for the Supreme Court:*

The Supreme Court is the highest court in the judicial hierarchy. It is the final interpreter of the Constitution except for the cases falling under the domain of special provision. In addition to ordinary jurisdiction to hear original cases and appeals and revise cases and hear petitions, it has extraordinary power to declare a law to be void either *ab initio* or from the date of its decision if it appears that the law in question is inconsistent with this Constitution and likewise it has also got extraordinary power to issue necessary and appropriate orders to enforce such right or settle such disputes where no other remedy is available or available remedy appears to be inadequate or ineffective. It is also provided with the authority to review its own decisions, frame rules for its procedure and power to inspect, supervise and give necessary directives to its subordinate courts and judicial bodies. These ordinary and extraordinary jurisdictions of the Supreme Court enable it to protect the rights of the people and also to promote GESI through the interpretation of national and international laws.

As of December 2012, the Supreme Court is composed of a Chief Justice and maximum 14 justices, however temporary Justices for a fixed term can be appointed in case the number of justices falls short because of increase in number of cases. The Chief Justice is appointed by the President on the recommendation of the Constitutional Council<sup>29</sup>. Generally, the senior most Justice is recommended to become the Chief Justice, however interplay of political party has sometimes overruled the tradition in the past. The Chief Justice has to have worked as a Justice of the Supreme Court for at least three years and should also go through the process of parliamentary hearing, where there is parliament.

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<sup>29</sup> Interim Constitution of Nepal 2007, Article 103 (1)

Generally the senior most justice is recommended for the position. In addition to this, the Constitutional Council considers his/her social prestige, high moral character, honesty, public attitude toward him/her previous service and professional experience<sup>30</sup> too.

The other Justices including the temporary justices of the Supreme Court are appointed by the Chief Justice upon the recommendation of Judicial Council. In order to be appointed as a Justice of the Supreme Court, one has to have worked as a Judge of an Appellate Court or in any equivalent office of the Judicial Service for at least seven years or worked in the position of Gazetted class I or a higher post of the Judicial Service for at least twelve years or practiced law for at least fifteen years as a law graduate advocate or senior advocate or should be a distinguished jurist having worked for at least fifteen years in the judicial or legal field.<sup>31</sup> In addition, seniority, experience, knowledge on subject matters, skills, honesty, impartiality and moral conduct etc are also taken into consideration while recommending a person for the post of Justice of the Supreme Court<sup>32</sup>.

The stringent criteria and requirement of long experiences for the appointment of the Supreme Court are considered one of the barriers for promoting judicial diversity. It is also alleged that the lack of diversity among the recommending bodies also play a role in seeing 'others' incapable. In reality, the prevailing interplay of network and patronage which marks Nepal's public life is seen to have worked in favour of members of advantaged groups due to their ability to have links with power centers and others who are decision makers, although there is a provision of parliamentary hearing for being recommended to these positions.

***b) Appointments for Appellate Courts and District Courts:***

There are 16 Appellate Courts and 75 District Courts in the country. According to the Interim Constitution, the Judges of Appellate Courts and District Courts are appointed by the Chief Justice on the recommendation of Judicial Council. They do not have to pass through the parliamentary hearing. To be eligible for the appointment of a Chief Judge or Judge of an Appellate Court, one has to have Nepali citizenship with a Bachelor's Degree in law and an experience of working as a Judge of a District Court or first class gazetted officer of Judicial Service for at least seven years or has to have practiced law for at least ten years as a law graduate advocate or senior advocate or taught law or done research or worked in any other field of law or justice for at least ten years<sup>33</sup>.

<sup>30</sup> Constitutional Council (Functions, Duties, Powers and Procedures) Act, 2010 (2066 BS), Section 5(2)

<sup>31</sup> Interim Constitution of Nepal 2007, Article 103

<sup>32</sup> Judicial Council Act 1991 (2047 BS), Section 4(1)(b)

<sup>33</sup> Interim Constitution of Nepal 2007, Article 109 (2)



To be a District Court Judge, one has to be a Nepali citizen having a Bachelor's Degree in Law in addition to an experience of working in the post of Gazetted second class of the Judicial Service for at least three years. A law graduate advocate who has practiced law for at least eight years can also be eligible for District Court Judge after passing written and oral examination conducted by the Judicial Council<sup>34</sup>. But this constitutional provision has not yet been realised due to some unidentified reasons.

In addition to the eligibility mentioned above to become the Chief Judge or Judge of Appellate Courts and Judge of District Court, the Judicial Council considers all other things required while recommending a person for a Justice of Supreme Court<sup>35</sup>. Here too, the stringent criterion, requirement of long experiences, non-inclusive nominating bodies and patronage system are alleged to have attributed for lack of diversity in Appellate and District Courts. Unlike in different groups of judicial service, the increased representations of women and excluded groups do not feature among Judges of different tiers of courts.

### ***c) Appointments for other Courts Tribunals:***

**Special Court:** It is constituted under the Special Court Act, 2002 (2059 BS) in order to accomplish trial and decision of the special types of case in expeditious, prompt and effective manner. The chairperson and required members of the Special Court are appointed in consultation with the Judicial Council from amongst the Judges of Appellate Court<sup>36</sup>.

**Revenue Tribunal:** It has a jurisdiction to hear appeal and petition on a case relating to revenue in accordance with Revenue Tribunal Act, 1974. The Tribunal consists of 3 types of members- Law Member, Revenue Member and Accounts Member and they are appointed by the government. The Law Member acts as the Chairperson of the Tribunal, who should either be a sitting judge of Appellate Court or as qualified to become a judge of Appellate Court<sup>37</sup>. The other Members should have bachelor's degree with at least 7 year experience in revenue/ accounts administration.

**Administrative Court:** It is constituted by the Government of Nepal under the chairpersonship of a sitting or a retired judge or a person qualified to be a judge of an Appellate Court in order to hear appeals against the decisions of the official authorized to issue order of departmental punishment<sup>38</sup>. The other members of

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<sup>34</sup> Ibid, Article 109 (3) and (4)

<sup>35</sup> Judicial Council Act 1991, Section 4(2)(a), (b) and (c)

<sup>36</sup> Special Court Act 2002 (2059 BS), Section 3

<sup>37</sup> Revenue Trial Act 1974, Section 4(a).

<sup>38</sup> Civil Service Act 1993, Section 69.

**the Court are:** one person designated or appointed from amongst gazetted first class officers in judicial service graduated in law or a law graduate having at least ten years experience in legal or judicial sector; and one person designated or appointed from amongst the gazetted first class officers of Administrative Service graduated in any subject and or any graduate having at least ten years experience in public administration<sup>39</sup>.

**Labour Court:** It is established by the Government of Nepal publishing a notice in Nepal Gazette pursuant to Labour Act, 1992 (2048). Having both original and appellate jurisdictions, it hears appeals against the punishments or orders given by the proprietor or concerned authority. The Appellate Court hears appeal against the decision made by Labour Courts in original jurisdiction. Until 1991, the function of Labour Court was carried by Appellate Court in accordance with the Labour Act. According to Labour Court (Procedure) Rules (1991), one or more officials can be appointed to hear labour cases. In a case where more than one official is appointed, one of them is appointed as a Chairperson.

**Debt Recovery Tribunal and Appellate Authority:** They are established by the Government to try and settle cases relating to recovery of debts of banks and financial institutions as per necessity. The tribunal is comprised of 3 members- a Law Member, Banking Member and Accounts Member. The Law member chairs the Tribunal, who is either deputed or appointed by the Government from among an incumbent government officers or a person who has already become or is qualified to become a judge of District Court. For the purpose of hearing appeal against a decision made by the tribunal, the Government of Nepal has established a Debt Recovery Appellate Authority for which an incumbent judge of an Appellate Court or a person who has already become or is eligible to become a judge of Appellate Court is deputed or appointed by the Government<sup>40</sup>.

**Foreign Employment Tribunal:** This tribunal is headed by one judge of court of Appeal and has two more members. One of the members is chairperson of the Labour Court as ex-officio member and the other one is appointed by the government in recommendation of the Judicial Council from among the Gazetted first class officers of the Judicial Service. The Tribunal enjoys the original jurisdiction on all foreign employment disputes excluding those explicitly assigned to be punished by the Department as per the Foreign Employment Act 2064.

The requirements for the appointment of Judges in different courts look very tough. The reason as explained by the members of judicial council was that the position is highly technical and needs skill, knowledge, wisdom and high moral

<sup>39</sup> Administrative Court Rules 1995 (2051 BS), Rule 3(1).

<sup>40</sup> Recovery of Debts of Banks and Financial Institution Act 2002, Section 9.

values. No compromise can be made in order to protect rights of the people and providing remedies to the victims. Therefore competency comes first with due regards to diversity. The Standards (Procedures) for the Appointment of Judges 2012 (2069 BS) issued by the Judicial Council also merely state that appointment of judges shall be inclusive 'as far as possible' without specifying the process for inclusion and who to be included in. The standards emphasize the recommendation of the qualified person from the angle of ability, capacity, experience, and commitment towards justice, reputation of the person, high morality, and knowledge of subject matter, seniority, honesty and efficiency. Nevertheless, as mentioned by its officials during the interview, the Judicial Council has given due importance to the issue of inclusion in its last selection and upcoming appointment process of judges. According to some interviews, it was difficult to find persons from marginalized groups meeting the criteria and even if they find ones, they were not interested to take up the responsibilities of a judge because of its limited scope, moderate benefit and facilities, and requirement of high level of dedication, labour and accountability.

The courts other than the Supreme Court, Appellate Court and District Courts are generally composed of the existing or retired judges and civil servants of higher echelon. The inclusion or diversity in these courts is even rare because of low diversity among such officials and lack of expertise relating to the specific functions of the courts or tribunals among excluded or disadvantaged groups.

#### *2.2.4 Appointing Authorities and Provisions for their Inclusiveness*

##### **a) Constitutional Council:**

Constitutional Council is a body for recommending appointment of authorities to the constitutional bodies including the name of Chief Justice (CJ) and the names of Chairperson and other members of the Public Service Commission who have roles to play in making the judiciary and related bodies inclusive. The Council consists of the Prime Minister as its Chairperson and Chief Justice, Speaker of the Legislature Parliament, three ministers as designated by the Prime Minister (to have representation of different political parties representing in the Council of Ministers) and Leader of Opposition Party in Legislature Parliament as members. The Chief Secretary of the Government of Nepal acts as the secretary of the Constitutional Council. While making recommendation for appointment to the office of the Chief Justice, the Council is expected to include Minister for Justice as its member.<sup>41</sup> However, the present composition does not include Speaker of Parliament and Leader of Opposition Party because of dissolution of

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<sup>41</sup> Interim Constitution of Nepal 2007, Article 149 has made provisions relating to Constitutional Council

Constitutional Assembly. Out of 5 members of the Council, one is female representing hill Janajati and rest are all hill Brahmins.

The formation provision of Constitutional Council does not necessarily have any space for making it socially or gender inclusive if the positions required to be represented in the Council are not already filled in with members of excluded groups. The only space for making the Council inclusive is in the hands of the political parties that suggest their cabinet representatives to the Prime Minister.

The Constitutional Council (Functions, Duties, Powers and Procedures) Act 2010 (2066 BS) has been promulgated to provide for legal provisions on the procedures of the appointment of officials of constitutional bodies, functions, duties, powers and procedures of the Council. But it has not mentioned anything about making the Constitutional Council inclusive or monitoring of matters relating to GESI in the Council or in its appointment decisions. However, the Council is required to maintain the record of persons who are eligible for the appointment to the constitutional bodies and keep record of appointment, tenure, vacancy and re-appointment of the officials. It has not any particular desk that looks after issues relating to gender equality and social inclusion in its recommendations.

### **b) Judicial Council:**

The concept of Judicial Council (JC) was first introduced in Nepal by the Constitution of the Kingdom of Nepal 1990. The present Constitution has provided the Judicial Council with the role to make recommendation or give advice on the appointment, transfer, disciplinary actions and dismissal of judges and other matters relating to the administration of justice<sup>42</sup>. The Council is required to keep the record of eligible persons for the appointment of judges at different levels together with details of their performance and other necessary details<sup>43</sup>. Although the Judicial Council recommends for the appointment of judge of the Supreme Court, it does not have any role on their dismissal or in taking disciplinary action against them, as they can be removed from their position only through impeachment by Legislature Parliament on the grounds of incompetence, misbehaviour or failure to discharge the duties in good faith or inability to discharge duties because of physical or mental reason<sup>44</sup>.

The Council is a five member body composed of the Chief Justice as the Chairperson and the Minister of Justice, one senior most Judge of the Supreme Court, one jurist nominated by the President on the recommendation of the Prime Minister and a senior advocate or an advocate having at least 20 years of

<sup>42</sup> Interim Constitution of Nepal 2007, Article 113

<sup>43</sup> Judicial Council Act 1991, Section 3 and 4

<sup>44</sup> Interim Constitution of Nepal 2007, Article 105

experience, appointed by the CJ on the recommendation of Nepal Bar Association<sup>45</sup> as members. The Council has its separate office and is administered by a Secretary, who is equivalent to the Gazetted Special Class officer of judicial service<sup>46</sup>. There is limited space to make the composition of JC inclusive as most of its officials are ex-officio. It can be inclusive only to some extent if jurist member and representative of Nepal Bar Association are nominated from the perspective of inclusiveness. Currently, to rely on base line data all five members including the Chairperson of the Council are male Brahmins from hill origin. The Secretary of the Council, who acts as the administrator of the Council, is also a male Brahman, coming from hill origin.

The Judicial Council Act 1991 (2047 BS) has been enacted to make necessary provisions relating to powers and functions of the Judicial Council. It has not provisioned anything for making the inclusive composition of Council, nor has it required the Council to consider inclusiveness in making appointments of Judges. However, as stated earlier, the Council itself has formulated Standards (Procedures) for the Appointment of Judges 2012 which mentions that the appointment of judges shall be inclusive as far as possible.

The Council does not have ever any desk or statutory responsibility to look after issues relating to gender equality and social inclusion in the recommendations of appointment made by the Council. However, it is required to keep updated record of persons eligible for appointment as judges<sup>47</sup>.

### **c) Judicial Service Commission:**

Judicial Service Commission is a body that recommends the government in appointing, transferring or promoting gazetted officers of the Judicial Service or taking any departmental action against the officers in accordance with law<sup>48</sup>. The Commission is provided with the power to demand any information from concerned authority or conduct inquiry with an employee in course of providing advice on disciplinary action<sup>49</sup>. It consists of the Chief Justice as the Chairperson and the Minister for Justice, a senior most judge of the Supreme Court, Chairperson of the Public Service Commission and Attorney General as its members<sup>50</sup>. The Secretary of Judicial Council works as ex-officio Secretary of the Commission<sup>51</sup>. The chance of making the Commission inclusive is dependent on the respective persons representing concerned constitutional bodies. No

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<sup>45</sup> Interim Constitution of Nepal 2007, Article 113

<sup>46</sup> Judicial Council Act 1991, Section 12(1) and (2)

<sup>47</sup> Ibid, Section 3(1)

<sup>48</sup> Interim Constitution of Nepal 2007, Article 114(1)/ Judicial Service Commission Act 1991 (2048 BS), Section 3.

<sup>49</sup> Judicial Service Commission Act 1991, Section 4 and 5.

<sup>50</sup> Interim Constitution of Nepal 2007, Article 114(2).

<sup>51</sup> Judicial Service Commission Act 1991, Section 10.

deliberate attempt to make the Commission inclusive has been observed. Currently, there are only four members in the Commission, of whom one is male Janjati and three are male Brahmans and all 4 members come from hill origin.

Like CC and JC, there is no particular desk or function prescribed in the Judicial Service Commission too to look after issues relating to gender equality and social inclusion in the recommendations made by the Commission. However, the reservation clause for open competition provided by Civil Service Act is applicable for the appointments made by the Commission and the advice of Public Service Commission is to be sought while making appointments through open or internal competition<sup>52</sup>.

#### **d) Public Service Commission:**

Public Service Commission is a constitutional body to advise the government on the appointment, transfer and promotion of and departmental action against civil servants. It also advises the government on matters concerning the law relating to the service conditions of the civil servants and on the general principles to be followed in making appointment and promotion and taking departmental actions.<sup>53</sup> PSC's role is limited in the cases of officers of judicial service only to recommend candidates for entry level gazetted positions. Its recommendation is required only when a gazetted officer is to be recruited through open competition or promotion of a non-gazetted staff is to be made to the gazetted position within the Judicial Service. It does not have any role in the matters relating to promotion, transfer or departmental action of staffs of Judicial Service.

According to the Interim Constitution, PSC is composed of a Chairperson and required number of members, who are appointed by the President on the recommendation of the Constitutional Council. At least fifty percent of the total members of the PSC are required to be from amongst the persons who have worked for at least twenty years in any government service and rest are appointed from amongst people who have contributed in the field of research, investigation, teaching, science, technology, art, literature, law, public administration, sociology or any other sphere of national life holding a high reputation. Currently, till the base line data collection date there are only three members in PSC after the end of tenure of the Chairperson and the positions of chairperson and few other members are yet to be filled-up. The current Commission has one female/ Janjati member working as acting chairperson and two members are from BC - one from Pahade origin and one from Madhesi origin.

<sup>52</sup> Civil Service Act 1993, Section 7 & 8

<sup>53</sup> Interim Constitution of Nepal 2007, Article126(3)

There is a chance of making it inclusive from GESI perspective as no ex-officio members are required in the Commission, but neither the Constitution nor any other law including Public Service Commission Act requires the composition of Commission to be inclusive. However, the general principle of inclusion as mentioned in the Constitution is applicable to make the Commission inclusive. Nevertheless, PSC is required to follow the provision of Civil Service Act that provides for making inclusive appointments in Civil Service, while recommending candidates to the government.

**e) Ministry of General Administration:**

MoGA is entrusted with the major functions of formulation, implementation, monitoring and evaluation of policies, plans and programs relating to appointment, placement, transfer, promotion, disciplinary action and retirement of the civil servants. Although it has important roles in appointment, placement, transfer, promotion, disciplinary action and other matters of civil servants, it has very limited role in the administration of these functions for the officials and staff of judicial services as these fall under the functional scope of other bodies as described earlier.

It keeps the record of all judicial officials and staff as civil servants. One important function of MoGA, among others, is related to formulation of training policies and coordination and evaluation of various training programs conducted by the Government of Nepal. The government has developed 'National Training Policy for Civil Service 2001', which requires MoGA to be the focal point for training coordination. It stipulates a policy to increase women participation in training<sup>54</sup>, but it is silent about the issue of social inclusion.

MoGA also administers allocation of scholarships available to the Government of Nepal to civil servants, including to the staffs of judicial service, and their descendants mostly for pursuing technical education<sup>55</sup>. The directives have given priority to the merit list prepared in accordance with the directives for providing scholarship. However, this has proposed grace mark for the students coming from nine districts (as declared most backward by the government) and students having passed from community (Government) schools. The excluded groups like women, Adibasi/Janjati, Madheshi, Dalit and students with disability or students coming from remote areas are given priority only when there is a tie on their evaluation scores.

MoGA has a Gender Focal Point, but it has no mandate to involve in making the gender inclusive appointments or placements. The focal point functions merely as

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<sup>54</sup> National Training Policy for Civil Service 2058 BS ,Point 5(x).

<sup>55</sup> Directives to avail scholarship to the descendants of Staff of Civil Service, 2067 BS Section 5.

a liaison officer to be contacted by other ministries or offices to deal with issues of women or gender. Despite being the central personnel agency, MoGA has limited role in making the judicial service inclusive in practice.

**f) Ministry of Law, Justice and Parliamentary Affairs (MoLJPA):**

MoLJPA's main functions are to administer Judicial Service, draft laws, ordinance, formation of orders, provide legal advice to the government and other government agencies and prepare inputs for international agreements to be concluded by the Government. It engages in making decisions on the matters relating to administration of judicial service like appointment, placement, transfer, promotion, disciplinary action, national and international training, study and special leave of officers upon recommendation of the Judicial Service Commission and for others upon receipt of files with departmental recommendation.<sup>56</sup>

It also serves the Supreme Court, Office of the Attorney General, Judicial Council and Judicial Service Commission as a liaison ministry to deal with the Government/Executive and get the decisions made by different levels of the government as required. It also has a Gender Focal Point, but it has no mandate to involve in making the gender inclusive appointments or placements. It serves only as liaison officer to be contacted to deal with issues of women or gender. MoLJPA has very limited role in making the judicial service inclusive.

**2.3 GESI-related Policies, Laws, Institutional Structures and Systems for judiciary related Other Organizations**

While studying inclusiveness in the Judiciary, it is imperative to study arrangements of institutions that serve as sources of supply of human resources to the judiciary from a GESI perspective. The completion of law education is a basic requirement for one's engagement in legal and judicial sector. Private lawyers, law teachers, researchers and law students constitute a pool of present and prospective candidates from where the positions of judges and other officials and staffs in judicial service are fulfilled. Therefore, an analysis of policies and programs, related laws, institutional structures and systems of other selected bodies like Ministry of Education, educational institutes, Nepal Bar Council (NBC) and Nepal Bar Association (NBA) from a GESI perspective is important.

**2.3.1 Ministry of Education and provisions relating to scholarship**

Ministry of Education is responsible for overall development of education in the country<sup>57</sup>. In addition to formulation, implementation, monitoring and evaluation

<sup>56</sup> Website of Ministry of Law, Justice and Parliamentary Affairs <http://www.moljpa.gov.np/>

<sup>57</sup> Ministry of Education, The Government of Nepal, <http://www.moe.gov.np/>



of educational policy, plan and programs, the functions of the Ministry also include allocation of scholarship to study inside and outside the country and allow foreigners to study in Nepal<sup>58</sup>. The Government of Nepal has enacted Scholarship Act, 1964 (2021 BS) and Scholarship Rules 2003 (2060 BS) to make some legal provisions with regard to scholarships to be given to the brilliant and needy students. The term scholarship denotes not only economic donation or facility provided by Government for any study, research or training but also encompasses economic aid (donation) or facility or technical assistance provided by any foreign country, international or other donor agency or any national or foreign educational institution to the Government of Nepal<sup>59</sup>.

The Scholarship Act requires securing prescribed number of seats for poor, woman, person with disability, and persons from indigenous tribe, Dalit and persons coming from remote area. The Scholarship Rules prescribe percentage for reservation. It stipulates that 45% of the scholarships provided to the Government of Nepal should be reserved for persons coming from poor community or who have passed SLC (School Leaving Certificate) from community school. Considering the reserved seats as 100 percent, 25% seats are to be allocated for economically or socially poor, 33% for women, 2% for persons with disability, 27% for Janjatti, 9% for Dalit and 4% for persons coming from backward area<sup>60</sup>. These reserved scholarships are further allocated to include Madhesi, Muslim, family members of people's movement, Dalit women, Madhesi Dalit and Muslim women in a way to make them real beneficiary.

However, scholarship to study law is rarely announced by the government. Most of the scholarships are locally administered by the law colleges and fund for those scholarships are made available by generous people of the community.

### ***2.3.2 Educational institutions and their Law Education Programs***

Though ignorance of law is no excuse, law is neither taught at school level nor are law colleges available in all parts of the country. This has largely affected GESI in judicial sector. The Faculty of Law of Tribhuvan University (TU) had introduced a two-year Certificate of Law (CL) (after SLC) and three-year Diploma in Law (after CL or Bachelor's degree in any other subject) from 1972, which were later renamed as Proficiency Certificate in Law (PCL) and Bachelor's Degree in Law (B.L.) in 1980.

The PCL program was phased out in 1995 and B.L. was replaced by LL.B. program to be joined only after earning Bachelor's degree in any discipline. TU

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<sup>58</sup> The Government of Nepal (Allocation of Business) Rules 2012 (2069BS), Section 18(5).

<sup>59</sup> Scholarship Act 1964, Section 2

<sup>60</sup> Scholarship Rules 2003, Rule 10A(1)

has also introduced a 5-year B.A.LL.B program (after +2), a two-year and three-year Master of Laws (LL.M.) programs and a Ph.D program in Law. Purbanchal University is also providing a 5-year LL.B course to be joined after completion of proficiency certificate level or +2 in any discipline and two-year LL.M. program through three outlets in the country.<sup>61</sup> The phasing out of PCL program has resulted not only into a pool of less dedicated students but also caused shortage of assistant level human resources having legal knowledge in the judiciary, and other related legal institutions. It has also caused the closure of many law schools in remote areas reducing the access of poor and marginalized people into law education and legal services.

Currently, law education is available only in 11 colleges of 10 cities of Nepal, namely Biratnagar, Dharan, Rajbiraj, Birgunj, Kathmandu, Bhaktapur, Patan, Pokhara, Butwal and Nepalgunj under Tribhuvan University and Purbanchal University. The Faculty of Law in TU admits maximum 70 students in B.A.LL.B course, who are divided into two sections. Eleven seats in each section are reserved for excluded groups; two for women, two for indigenous/Janjati group, two for Madhesi, one for Dalit, one for person with disability and one for person coming from backward area and two for foreigners. Similarly, out of 50 seats available for LL.M. program, 14 seats are reserved, out of which three seats are allocated for women, three for indigenous/Janjati, two for Madhesi, one for Dalit, one for person with disability and one for person from backward area and three for foreigners.

There is no reservation in LL.B. program of TU as there is no limit of number of students for admission to this program. For three-year LL.M program, two seats each are reserved for women, Adibasi/Janjati, Madhesi and Foreigners and one seat each is reserved for person with disability and person from backward area. If the student falling under reservation criteria does not take admission within specified time, the seat is given to other student from the merit list. The reservation is exclusively meant for the purpose of getting admission; it does not guarantee any type of economic privilege, stipend or freship.

Despite being a private college, the Kathmandu School of Law has scholarship schemes for students coming from *Dalit*, endangered minorities and indigenous/Janjati communities. The scholarships range from exemption of admission fee and tuition fee to accommodation and stipend as per necessity<sup>62</sup>.

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<sup>61</sup> Brief History of Legal Education in Nepal, [http://www.nlc.edu.np/index.php?type=content&content\\_id=1](http://www.nlc.edu.np/index.php?type=content&content_id=1) (viewed on 15. 02. 2013)

<sup>62</sup> Kathmandu School of Law, <http://www.ksl.edu.np/scholarship.asp>

### 2.3.3 *Nepal Bar Council and Licensing of Lawyers*

Nepal Bar Council (NBC) is an independent body established under the Nepal Bar Council Act (1994) mainly to conduct examination for entry into legal profession, issue license for legal practice, keep their record, monitor the conduct of the lawyers and take disciplinary action if found violating Code of Ethics and organize capacity building programs for lawyers to make the profession prestigious<sup>63</sup>. In the past, the Supreme Court used to award license of the lawyers under Supreme Court Act, 1956 and Supreme Court Regulations 1957. Most of the lawyers were licensed on the basis of their experience in legal field because law education was not available in the country<sup>64</sup>. The Disciplinary Committee of the Supreme Court was responsible for any kind of disciplinary action against Lawyers.

There are three types of lawyers in the country, namely Senior Advocate, Advocate and Pleader. However legal agents are also there who are authorized to write some legal documents and plead in inferior courts in limited circumstances. NBC does not issue license for the agents, but it does not impede such agents continue legal practice who were registered pursuant to Legal Practitioners Act, 1968. It had provisioned for elevation of Agents to Pleader for the period of 9 years after the establishment of the Council, but the provision has been extended till the end of 2070 BS.

According to Nepal Bar Council Act, one has to be a Nepali Citizen having passed the Legal Practitioner Examination and not convicted of any criminal offence inflicting moral turpitude in order to be registered as a lawyer. A person having Bachelor's Degree in Law or a person who has practiced as a Pleader (Abhivakta) for 15 years are eligible for contesting the Legal Practitioner examination. The registration of a lawyer is solely based on interest and capacity of a candidate. Licensing itself is not a guarantee of job nor does it create an obligation on the licensee to carry out the profession.

Senior Advocates and Advocates are allowed to practice in any court or authorities whereas the Pleaders are allowed to practice in all courts or authorities except in the Supreme Court. There is no difference in the authorities between Senior Advocate and Advocate other than the recognition of seniority and contribution to judicial sector by the Supreme Court. However, Senior Advocates get right to address first before an authority or judge in a hearing if there are more than one lawyer representing in a case unless s/he allows doing otherwise.<sup>65</sup>

<sup>63</sup> Detailed function of the Council is mentioned in Nepal Bar Council Act 1993 (2050 BS), Section 8.

<sup>64</sup> <http://www.nepalbar.org/?url=pages&capid=2>

<sup>65</sup> Nepal Bar Council Act 1993, Section 22 and 23.

NBC has as said above planned to remove Pleader category of lawyers' certification system in long term by taking different measures such as providing an opportunity to sit in the bar examination to become an Advocate without having Bachelor's degree for those who have practiced for 15 years and awarding new license of Pleader only until the end of 2070 B.S<sup>66</sup>.

NBC has formed an examination committee which include concerned specialists as well to take examination of the candidate willing to be registered as an advocate. Such examination is conducted once a year. In order to maintain fairness in the examination, a Councillor cannot take part in the examination committee if his/her family member is appearing in an examination. There is no provision in prevailing laws for consideration of any caste, race, sex, religion, tribe, origin or disability etc while conferring a license of a legal practitioner. However, Nepal Bar Association (NBA) and National Judicial Academy, Nepal have been including lawyers from excluded community in their capacity development programs

There is no explicit provision or policy relating to NBC that requires inclusiveness inside the organization or gives it responsibility to consider GESI in its work. Since most of the members of the Council are ex-officio, there is only little chance of making it inclusive by nominating people from the excluded groups in two council member positions by NBA. It does not have any wing, department or focal person to look after GESI issues, nor has it offered any specific training or privilege for women lawyers and lawyers belonging to excluded groups. It has included all the interested lawyers whoever had applied for the training organized by the Council. By now, the Council has been able to organize only 2 sets of training for novice lawyers.

#### ***2.3.4 Nepal Bar Association***

NBA is a professional organization of lawyers. Its main objectives are to protect and promote the interest of lawyers, make the profession dignified, assist in development and modernization of judicial administration and contribute to the independence of judiciary<sup>67</sup>. There are one Supreme Court Bar Unit, sixteen Appellate Court Bar Units and sixty four District Court Bar Units under NBA<sup>68</sup>. In addition to its existence as professional body, it is also a statutorily recognized institution having legally specified duties. Most of the members of the Bar Council including its Vice Chairperson<sup>69</sup> and the members and member-secretary

<sup>66</sup> Nepal Bar Council Act, 1993, Section 17 (as amended on 2011Dec11)

<sup>67</sup> The Statute of Nepal Bar Association 1991 (2048 BS) Section 3

<sup>68</sup> <http://www.nepalbar.org/?url=district>

<sup>69</sup> Nepal Bar Council Act 1993, Section 4.

of Central Legal Aid Committee and District Legal Aid Committees are from NBA<sup>70</sup>.

The Central Executive Committee (CEC) of NBA is composed of 17 elected members including a Chairperson, five Vice-Chairpersons representing five development regions, a General Secretary, a Treasurer and 9 members. Likewise, each bar unit of NBA has Executive Committee which consists of a Chairperson, a Vice Chairperson, a Secretary, a Treasurer and maximum 9 members<sup>71</sup>. The members of all 81 bar units elect the CEC of NBA to implement the activities of the organization and to make regional representations too. In addition to this, an Executive Council is also formed to supervise implementation of the decisions made by the General Assembly and the Executive Council. It also ensures coordination among different bar units and between the bar units and the Center. It is comprised of the CEC, representatives of Bar Units and maximum 5 members nominated by joint committee of CEC and Bar unit representatives. There is no specific provision in the Statute to make the Central Executive Committee inclusive, but the election panels of different groups have been proposing inclusive lists of candidates.

NBA provides opportunity to its members for leadership development through participation in different committees formed under the Association, such as Lawyer's Academy Committee, Curriculum Integration and Coordination Committee (for Continuing Legal Education Training), Constitutional Law Committee, Administrative Law Committee, Family Law Committee etc. in addition to the executive committees in different bar units. It has also formed Women Lawyers Concern Committee, Adhibasi and Janajati Lawyers Concern Committee, Dalit Lawyers Concern Committee, Madhesi Lawyers Concern Committee, Remote Area Layers Concern Committee and Differently Abled Lawyers Concern Committee. These committees are meant to protect and promote the interests of the lawyers of concerned groups in NBA.

In order to fulfill its objectives, NBA organizes various types of programs such as providing free legal aid to the needy clients and training for newcomer lawyers. The government sponsored legal aid activities are also conducted through members of NBA<sup>72</sup>. For promoting inclusion among lawyers, NBA has recently concluded three-month professional capacity building training for 32 newcomer lawyers from women, Dalit, Janjati, Madhesi, marginalized groups and lawyers having disability with the support of UNDP Access to Justice Project. Similarly, it has also prepared and prescribed a course of study to be introduced in higher

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<sup>70</sup> Legal Aid Act 1997 (2054), Section 6 and 7.

<sup>71</sup> The Statute of Nepal Bar Association 1991, Section 25.

<sup>72</sup> Legal Aid Act 1997 (2054), Section 5.

education considering the need of compulsory legal education. It has also promoted women lawyers by supporting national women lawyer's meet<sup>73</sup>.

NBA has organized paralegal training in five districts for 80 men and 130 women from Dalit community in 2012. In addition to such activities, it has also organized seminars and talk programs on issues of inclusiveness in democratic society, domestic violence, reproductive rights, women's rights, etc. The declaration passed by 38th meeting of the Executive Council of NBA has directed the CEC of NBA to prepare a solid plan of action for the development of woman, adibasi/Janajati, Madhesi and Dalit lawyers in coordination with concerned authorities<sup>74</sup>. It had also conducted a research on "Ringing the Equality Bell: The Role of Women Lawyers in Promoting Gender Equality in Nepal" in August 2009<sup>75</sup>.

Though there are no laws relating to NBA that obliges it to be inclusive or to promote GESI among lawyers, it has set up different mechanisms like concern committees. It has in practice tried making different committees inclusive and has been conducting different activities to promote GESI in legal profession.

## **2.4 GESI in Judiciary: Practices and Experiences in other Countries**

Gender and social diversity in judiciary is being progressively demanded all over the world with increased understanding of equality, justice and human rights. The world experience shows that women and minorities are less represented in judiciary and deliberate efforts are to be made, and have also been made, in different parts of the world for their equitable representation in the sector so that fairness in the justice can be perceived together with real impartiality. It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen that it has been so done.

The objective of this section is to briefly review the situation of diversity in other jurisdictions and to have a cursory review of judicial appointment processes to see how judicial diversity can best be achieved. In so doing, France among civil law jurisdictions and the USA and England and Wales from common law countries are selected.

### ***2.4.1 Trend of judicial diversity in Europe and United States***

The situation of inclusion of women in judiciary seems encouraging in European countries than in any other countries. In Europe, the average gender balance

<sup>73</sup> Secretary's Report, 39th Executive Council Meeting, 11-12 Dec 2012 (Mangsir 26-27, 2069 BS) p-4.

<sup>74</sup> Secretary's Report, 39th Executive Council Meeting, 11-12 Dec 2012 Annex I, P- 12.

<sup>75</sup> Developing Democracy In Nepal Project, Nepal Bar Association, <http://www.nba-cba.org.np/index.php?option=CMS&task=detail&cid=5>.

among judges is 52% men and 48% women<sup>76</sup>, but the number of women judges is significantly low in higher courts. Women are found to have better representation in countries that have adopted civil law system than in countries having common law system. Nevertheless, representation of women judges in higher courts is significantly low in civil law jurisdictions as well. The civil law system promotes career judges, whereas the countries having common law emphasize more on experience and merits of judges.

France can be taken as one model of higher representation of women where they account for average 58% of the total judges. The percentage of such representation of judges varies according to the type of the court. For example, in 2010, 78% of the judges of Family Courts and 74% judges of Civil Courts of first instance are women.<sup>77</sup> But in higher judicial positions, the percentage goes down to 21% and amongst the most senior judicial positions only 11% are women. The data on representation of ethnic minorities are not available for France, as there is a general reluctance to factor in background considerations such as ethnicity in judicial appointments, and there are also legal restrictions on collecting data on racial origins.<sup>78</sup>

In England and Wales, 23% women in average are represented in judiciary. As pointed by Lady Hale, the only lady Judge of the Supreme Court of the United Kingdom, the higher up the court system, the more male-dominated the bench becomes. Only 15.5% of high court judges are women and 4.5% are from an ethnic background. Only 10.5% on the court of appeal are women and there is none with an ethnic background.<sup>79</sup> The situations in 1992 and 2005 were 6.5% and 16.8% women judges and 1% and 3.1% from ethnic minorities respectively.<sup>80</sup> The proportion of population of non-white ethnic minorities in the UK is 9%<sup>81</sup> and that of women counts 51%.<sup>82</sup> Women comprise 32% of the Bar and 39.7% of solicitors, while ethnic minorities comprise 10.7% of the Bar and 7.9% of solicitors in the legal profession in England and Wales.<sup>83</sup>

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<sup>76</sup> The Himalayan Times, Sunday, March 13 (Nepal)

<sup>77</sup> Lord Sumption, Home Truths about Judicial Diversity: Bar Council Law Reform Lecture, 15 November 2012, p-12 (<http://www.supremecourt.gov.uk/docs/speech-121115-lord-sumption.pdf>)

<sup>78</sup> Dr. Cheryl Thomas, University of Birmingham School of Law, Judicial Diversity in the United Kingdom and Other Jurisdictions: A Review of Research, Policies and Practices, Nov 2005, P-93.

<sup>79</sup> The Himalayan Times, March 3, 2013.

<sup>80</sup> Dr. Cheryl Thomas, University of Birmingham School of Law, Judicial Diversity in the United Kingdom and Other Jurisdictions: A Review of Research, Policies and Practices, Nov 2005, P 17.

<sup>81</sup> Anita Böcker and Leny de Groot-van Leeuwen; Ethnic minority representation in the judiciary: diversity among judges in old and new countries of immigration; The Judiciary Quarterly 2007 (<http://www.rechtspraak.nl/english/publications/documents/ethnic-representation-in-the-judiciary.pdf>; viewed 3.23.2013)

<sup>82</sup> Lord Sumption, Home Truths about Judicial Diversity: Bar Council Law Reform Lecture, 15 November 2012, p-2 (<http://www.supremecourt.gov.uk/docs/speech-121115-lord-sumption.pdf>).

<sup>83</sup> Dr. Cheryl Thomas, P- 17

Despite being a common law jurisdiction, the United States of America has made significant progress in diversifying judiciary in last decades. In 1980, just over 3% of federally appointed judges were women in the United States, but by June 2003 this had risen to 26%.<sup>84</sup> The Ethnic minorities comprised 17% of the federal bench, just below the national population level of 20%.<sup>85</sup> The percentage of minority judges at every level of the state courts during the time were 9.1% on all general jurisdiction trial courts, 10.7% on all intermediate appellate courts, and 9.8% on state supreme courts.<sup>86</sup> Currently, of the 874 federal judgeships, 39 percent are held by women and 37 percent are held by non-whites, according to data kept by the Federal Judicial Center.<sup>87</sup>

## 2.4.2 *Attempts made in different jurisdictions for judicial diversity*

### *a) The United States*

The USA has both Federal Courts and State Courts having separate jurisdictions. The judges of the Federal Courts are appointed by the President with the advice and consent of the Senate. The federal judges are appointed for lifetime and remain in their position until they are not impeached against by the senate or they themselves resign. The appointments of judges of State Courts vary from one state to another. Some States have merit selection plans where judicial applicants are evaluated by a nominating commission and the names of the best qualified candidates are sent to the Governor to select one of them. Some States practice Gubernatorial appointment where the Governor appoint the judges without the recommendation of a commission, but they may require confirmation by the legislature or an executive council. In some States, voters elect judges from multiple candidates (partisan or non-partisan) like other public officials, whereas in some States judges are nominated/ appointed or elected by legislative vote only.<sup>88</sup>

The introduction of federal judicial nominating commission and the introduction of 'merit plans' by the US President Jimmy Carter in 1977 can be said to be the first deliberate effort to achieve judicial diversity in the world. These were introduced with intent to remove perceived bias in the appointment of judges, reduce the overtly political nature of judicial appointments and to make the appointment commission itself diverse. President Carter had issued an executive

<sup>84</sup> Ibid, P-84 (The percentage of women judges including the US Supreme Court, all Circuit and District Courts and the International Trade Court is said to be 22% after 3.5 % positions falling vacant in 2004, at P- 79)

<sup>85</sup> Ibid, P-79.

<sup>86</sup> Ibid, P-104-105.

<sup>87</sup> The Washington Post, published on 4 March, 2013, [http://www.washingtonpost.com/politics/obama-pushing-to-diversify-federal-judiciary-amid-gop-delays/2013/03/03/16f7d206-7aab-11e2-9a75-dab0201670da\\_print.html](http://www.washingtonpost.com/politics/obama-pushing-to-diversify-federal-judiciary-amid-gop-delays/2013/03/03/16f7d206-7aab-11e2-9a75-dab0201670da_print.html) (viewed on 24 march 2013).

<sup>88</sup> Fiona O'Connell & Ray McCaffrey, Judicial Appointments in Germany and the United States, March 2012, P-26.



order in 1977 as one of his first acts on taking office to establish the United States Circuit Judge Nominating Commission, specifically requiring the inclusion of both men and women as well as members of minority groups on such “merit commission” for federal court. Later, it was followed by a number of states as 'Merit Selection Commissions'. However, similar practice was already initiated by Missouri State in 1940 and some other States too had introduced such practice. The commission is composed of legal and lay persons to nominate the candidates for judicial appointment by the Executive Head.<sup>89</sup> President Jimmy Carter had appointed 57 minority judges and 41 female judges to the federal judiciary, more than all previous presidents combined.<sup>90</sup>

In the 1990s, President Clinton adopted and broadened the Carter approach to affirmative action for federal court staffing by appointing women and minorities to more than 60% of all new judgeships, although President Regan had repealed the executive order in his time.<sup>91</sup>

President Barack Obama has made unprecedented record in diversifying judiciary by appointing 37% non-whites and 42% women during his first term. President G.W. Bush had appointed 19% non-whites and 27% women where as President Clinton had appointed 21% non-whites and 30% women in Judiciary. Obama has gone further to nominate 48.6% (17) women and 42.9% (15) ethnic minorities in his second term.<sup>92</sup>

The Standing Committee of American Bar Association (ABA) on the Federal Judiciary also provides an evaluation of the professional qualifications of a judicial nominee. These ratings provide an evaluation of a nominee's integrity, professional competence and judicial temperament.<sup>93</sup> The role of ABA is helpful in increasing judicial diversity as it involves its Judicial Division to advocate for increasing minority membership. The Standing Committee of Judicial Division on Minorities promotes full and equal participation by minorities in the judiciary and the ABA Judicial Division by assisting in identifying minority individuals for leadership positions, for committee positions and for educational programs; providing information about minorities in the judiciary; and assisting with outreach and partnership efforts with minority bar associations.<sup>94</sup>

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<sup>89</sup> Dr. Cheryl Thomas, *Ibid*, P- 26-27 and P- 78.

<sup>90</sup> The Carter Center, Trailblazer Legend Award Recognizes President Carter's Judicial Appointments, June 14, 2012, <http://blog.cartercenter.org/2012/06/14/trailblazer-legend-award-recognizes-president-carters-judicial-appointment/> (visited 3/23/2013).

<sup>91</sup> Dr. Cheryl Thomas, *Ibid*, P- 79.

<sup>92</sup> The Washington Post, published on 4 March, 2013.

<sup>93</sup> Fiona O'Connell & Ray McCaffrey, *Judicial Appointments in Germany and the United States*, March 2012, P-26.

<sup>94</sup> Dr. Cheryl Thomas, *Ibid*, P- 26-27 and P- 24.

<sup>94</sup> Dr. Cheryl Thomas, *Ibid*, P-80.

### *b) England and Wales*

The formal power to appoint most judges is vested in the Crown, but in practice the Lord Chancellor and the Department for Constitutional Affairs (DCA) play the central role in judicial appointments in England and Wales. The judges in England and Wales were recruited basically through co-option from the limited pool of candidates that mainly consisted barristers and a few solicitors. This was considered as the main barrier to achieve judicial diversity.

The deliberate effort to enhance judicial diversity in England and Wales started in 1992 with Chief Justice Lord Taylor's statement to achieve significant change in the imbalance between male and female and white and black in the judiciary within 5 years. But the change was not that much significant even after 13 years for ethnic group; however it was somewhat better for women. As of October 2005, 16.8% of judges in England and Wales were women and only 3.1% were from ethnic minority groups.<sup>95</sup>

Following continuing concerns about the lack of openness and oversight of judicial appointments, a review of the system of judicial appointments was conducted in 1999 by Sir Leonard Peach, which subsequently in 2001 led to the appointment of an independent statutory body called 'Commissioners for Judicial Appointments (CJA)' to review the judicial and Queen's Counsel appointment procedures, and to investigate complaints about the operation of those procedures.<sup>96</sup> Likewise, following various consultations organized by Department for Constitutional Affairs, the Secretary of State, Lord Falconer, announced legislative plans in 2005 to allow a wider group of legal practitioners to apply for judicial office and to reduce the period of practice required before applying. The same year, various programs were introduced to encourage applicants from underrepresented groups such as providing information about applying for judicial appointment, scheme to enable barristers and solicitors to follow the work of a Circuit Judge, District Judge or Deputy District Judge over a 3 day period, etc.<sup>97</sup>

After the promulgation of Constitutional Reform Act of 2005, a new Judicial Appointments Commission (JAC) was established as an independent non-departmental Public Body to select candidates for judicial office and to make recommendations for appointment to the Lord Chancellor. They make selections solely based on merit, through fair and open competition, from the widest range

<sup>95</sup> Dr. Cheryl Thomas, *Ibid*, P-74.

<sup>96</sup> Dr. Cheryl Thomas, *Ibid*, P-74.

<sup>97</sup> Dr. Cheryl Thomas, *Ibid*, P-76.

of eligible candidates having good character<sup>98</sup>. However, the JAC is mandated to have regard to the need to encourage diversity in the range of persons available for selection for appointments.<sup>99</sup>

The JAC has adopted 3-pronged approach to achieve judicial diversity- i) Fair and non-discriminatory selection processes, ii) Advertising and outreach and iii) Working with others to break down barriers.<sup>100</sup> Fair and non-discriminatory selection processes comprise of different activities such as selection of candidates on the bases of qualities and abilities of judge craft (not of legal practice), equality proofing by equality and diversity experts from Bar Council and Law Society, monitoring of diversity progression, six monthly publication of Official Statistics bulletin twice a year to record its performance including on diversity performance in each exercise, equality impact assessments to ensure that the policies, processes and services do not discriminate against anyone and reasonable adjustment of the test dates with the candidates on case by case basis. Advertising and outreach comprises of acts such as organizing seminars and webinars with under-represented groups, awareness building on current and forthcoming selection exercises and information of selection process and advertising of vacancies. Working with others to break down barriers encompasses continuation of benefits of providing salaried part-time working opportunities, challenging additional selection criteria such as 'paid experience' for certain groups such as women and solicitors etc. and widening of diversity of the candidate pool by providing more opportunities to government lawyers and general legal community, etc.

### *c) France*

There are different ways of entry into the judiciary in France. Most of the judges enter through a competitive test (*concours*) directly after university, and then enter the Judicial School for a number of years of training prior to being appointed as a lower-level judge. The written examination is marked anonymously. The examinees are exposed only during their interviews after passing the written test. The panel decides eligibility of the candidates for vacant positions and their order of merit. A candidate is given a place depending on the number of places available and his or her ranking.<sup>101</sup>

Professionals having minimum 8 years of legal experience in private practice, in elected local government or as a lay judge, or civil servants and other state employees and who have completed 45 years of age can also switch to entry level

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<sup>98</sup> Constitutional Reform Act of 2005, Section 63

<sup>99</sup> Constitutional Reform Act of 2005, Section 64

<sup>100</sup> Judicial Appointment Commission, Diversity Strategy, <http://jac.judiciary.gov.uk/about-jac/256.htm>

<sup>101</sup> Anita Böcker and Leny de Groot, *Ibid*, P-9-10.

judges. Some appointments are made directly at Court of Appeal and Court of Cassation (Supreme Court) from among professionals having 15 year experience in legal, economic and political fields and completed 50 years of age. Similarly, senior positions in First Instance Courts can be filled by professionals who have completed the age of 35 and have 10 years of experience.<sup>102</sup>

Affirmative action and recording and monitoring of ethnicity often meet with more opposition in France as the immigrants have traditionally been integrated via the path of assimilation and the ‘republican’ integration model expects them to adopt the French language and culture.<sup>103</sup> Therefore no other specific measures are adopted to promote diversity in judiciary. However, there is increasing concern about the lack of ethnic minorities in the judiciary in France, which has the largest Muslim population in Europe (approximately 10% of the population).<sup>104</sup>

### ***2.4.3 Factors promoting judicial diversity***

The study of judicial diversity in different jurisdictions indicates a combination of different factors that have worked in different countries.

In civil law jurisdictions, provision of career judge account for overwhelming entrance of women in judiciary than in common law countries where they have limited pool of candidates. Selection of fresh university graduates and providing with specific training to become entry level judges are seen very effective in attracting women in judiciary. However, it is not seen effective for achieving inclusion of ethnic minorities in the judiciary.

In common law jurisdictions, such as in the United States and Canada, committed political leadership and provision of nominating commission with a mandate to promote diversity have worked well. The steps taken by President Carter and its continuity by other democrat Presidents in USA have accounted for significant change in judicial diversity. The changes were brought only through change in practice rather than change in legislations or constitution. Formation of independent nominating commissions with a clear mandate to consider and monitor diversity in judiciary has also worked in the United States and England and Wales. The diversity of the nominating commission itself is also considered key to promote diversity in judiciary. The US President Carter had given special instruction to make the commission diverse by including women and ethnic minorities.

<sup>102</sup> Dr. Chery Thomas, Ibid, P-92

<sup>103</sup> Anita Böcker and Leny de Groot , Ibid, P-6.

<sup>104</sup> Dr. Cheryl Thomas, Ibid, P-93

Transparent nomination process and scrutiny from different stakeholders such as American Bar Association in the USA have also been supportive in promoting diversity. England and Wales have also been able to promote diversity in judiciary after the constitution of independent nominating body and establishing monitoring system of such nominations. In addition to these, provision of part-time judgeship, like in England and Wales, can be an alternative to make judiciary as the attractive service for women and persons who need more time to look after their home or for people from ethnic minorities who cannot work for full time. A number of women in England and Wales have become a judge because of this provision only. Other outreach programs to attract under-represented groups, such as organizing seminar with the target groups and their organizations, introduction of 'work shadowing scheme' to observe judges' works and providing information about application procedure and criteria for selection etc, have been useful in England and Wales.

A review of diversity in judiciary in Asian countries too is worth undertaking, but its inclusion could not be possible in this research due to lack of access to relevant and organized information during the research period despite reasonable attempts made. However, quick review reveals that there has been some concerted effort towards this direction. For instance, a Women Court having all women judges and supported by all women government attorneys and women staffs was established by written order of Chief Judge of Kolkata High Court, West Bengal (Kantipur Daily, 2013).

## **2.5 Major highlights of review and assessments in the chapter**

The past rulers of Nepal used to appoint experts of religious norms and trusted persons for justice delivery, as religious norms were the sources of law. After the establishment of Supreme Court, the function of justice delivery was separated from the executive, but the issue of gender and social inclusion was not given an importance until the people's movement of 2006; only merit and qualification was given priority for judicial appointments.

Although the Judges are the ones to deliver the justice, judicial sector is formed by the involvement of staffs of judicial groups, legal groups, public prosecutors and private lawyers. These groups also serve as pool for judicial appointments. Moreover, since completion of certain level of law education is required to join judicial service and legal profession, academic institutes and their education system too as a contributing part of judicial sector supply necessary human resources. In order to make judiciary inclusive, the whole judicial sector is to be GESI friendly.

The current Interim Constitution has broadly established the need of inclusiveness in public services. The second amendment of Civil Service Act (2007) has made a clear provision to include persons with disability, persons from backward area, women, Janajati, Dalit and Madhesi in the civil service (that includes judicial service) in recruiting staffs through open competition. Similarly, the Judicial Council's standards for the appointment of judges has also provisioned inclusive appointment of judges; however it does not specify the types and percentage of socially excluded groups to be included as provided in Civil Service Act. These provisions have been helpful to diversify the judicial service at entry level gazetted positions and among non-gazetted staffs and to some extent to diversify the appointment of judges.

No legal provisions exist to diversify private legal practice; however the Nepal Bar Association has been trying to promote women and people from excluded groups to enter into and sustain in the profession by providing some opportunities like training and by formation of different concern groups, etc. However, specific policies to promote legal education among women and excluded group, which is a key to diversify judicial sector, are lacking. Besides having different ministries, commissions or entities established to uplift women and other backward or excluded communities and mainstream them in development process, gender focal persons are also designated in different ministries, but they have not been so effective in making judicial sector inclusive lacking clear and specific GESI-related mandates, policies and authorities and effective programs. Moreover, the existing institutional arrangements are scattered and they, despite being helpful to increase diversity in judicial service to some extent, are yet to be effective due to absence of specific policies to diversity issues in the judiciary from GESI perspective.

GESI in judiciary continues to be a concern for all policy makers in the western countries too in realization of their relevance in structuring and running state affairs. Different attempts have been made with some degree of successes in increasing diversity in judiciaries in countries like France, the UK and the US. The policies and approaches pursued in these countries are valuable reference points in articulating policy measures for promoting inclusiveness in Nepali judiciary.

## Chapter 3

### Assessments of Representations in Judicial Sector and Related Organizations

#### 3.1 Staffing Size in Judicial Sector

As of November 2012, the total number of people working in judicial sector of Nepal is 4908, which include 233 Judges, 2873 officials and staffs belonging to different groups of Judicial Service and 1802 staffs of other services and classless employees (Details in Annex 7).

The number of permanent Justices of the Supreme Court is specified by the Constitution. There is also a provision for having temporary justices in the Supreme Court as per the workload of cases. The number of judges in Appellate Court, District Court and other courts are also subjected to their workloads of. Special Class officials are part of the Judicial Service without belonging to any group of Judicial Service, are or may be posted in Courts, Attorney General's Office, Ministry of Law, Justice and Parliamentary Affairs, Office of Prime Minister and Council of Ministers, Nepal Law Commission, etc irrespective of their previous attachment to any particular group of Judicial Service. Currently, there are nine Special class officers in the Judicial Service, out of which four are posted in the Attorney General's Office, one each in the Supreme Court and the Judicial Council and three under the Ministry of Law, Justice and Parliamentary Affairs. In addition to Special class officers, each of three groups of the Judicial Service (i.e., Judicial Group, Public Prosecutor Group and Legal Group), consists of Gazetted officers of First, Second and Third classes and non-gazetted staffs of First, Second and Third classes. The Classless employees are also posted in almost all organizations.

There are altogether 782 Gazetted officers (9 Special class, 65 First class, 253 Second and 455 Third class) in three professional groups of Judicial Service. Altogether 2031 non-gazetted staffs are working in Judicial Service, out of which 834 are non-gazetted first class and 1197 as non-gazetted second and third class staffs. The number of working staff was found to be less than what was approved by the concerned authorities.

Currently, in addition to the Supreme Court, Appellate and District Courts there are one Special Court, one Administrative Court, four Revenue Tribunals, one Debt Recovery Tribunal, one Debt Recovery Appeal Authority and one Labour Court and one Foreign Employment Tribunal in Nepal. The Judge(s) of the

Special Court and the Law-members of other courts are mostly sitting judges of the Appellate court or equivalent. So the number of judges in other courts presented in the table below refers only to the judges who are not counted as Appellate Court Judges. By the end of data collection in December 2012, the number of approved positions of judges in different courts was 264.

Total approved positions in the Judicial Service were 3244 (including 9 Special class positions) and the staffs made involved from other services were 1989. Of 805 gazetted positions, 782 were filled up and likewise only 2031 of 2410 non-gazetted positions were found being filled up. All of them were working in different courts and offices and 88.9% (1805) of the non-gazetted staff were employed in the courts only.

### 3.2 Status of Gender and Social Representations in the Judicial Sector

This section present data base on diversity of persons working in judicial sector, including the core judiciary, by caste, ethnic and other socially excluded groups. The diversity is analysed in different ways by focussing on broad position categories, service groups, position levels, gender and service types.

#### 3.2.1 Major highlights of inclusion status in judicial sector as a whole

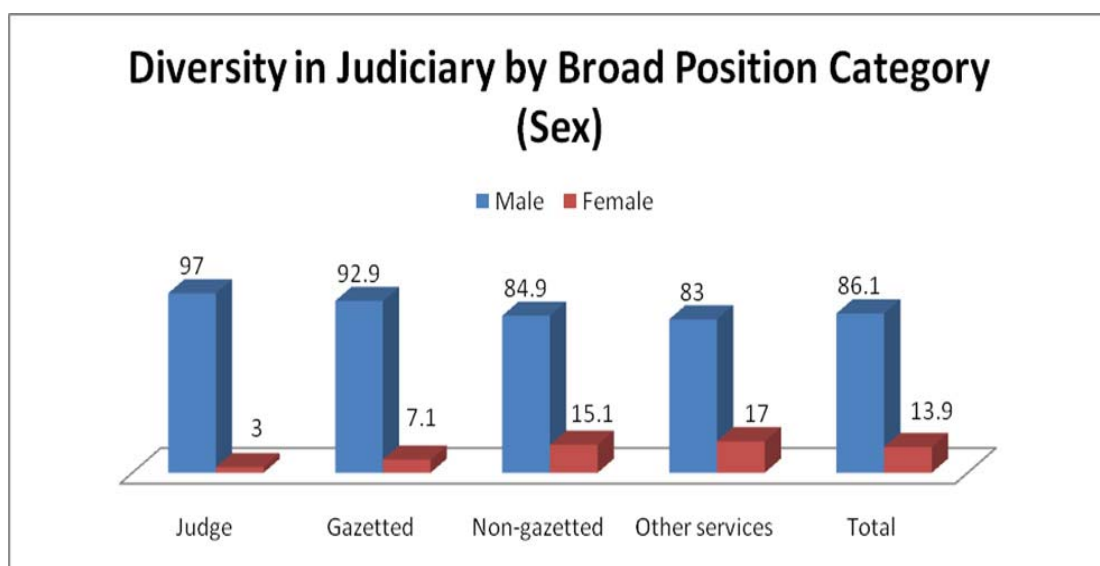
As shown in Table 1, of the total staffing size of 4908 of judicial service and other services engaged in judiciary and related government organizations, 4228 (86.1%) are male and 680 (13.9%) are female. Most of occupied positions of judiciary and related organizations are represented by males with varied degree; 97% judges, 92.9% gazetted officers, 84.9% non-gazetted staff and 83% staff from other services. (Also shown in Figure 2)

**Table 1: Diversity in Judicial Sector by Broad Position Category**

| Caste/Ethnic Groups | All Judicial services and Judges |       |          |      |              | %    | Other services | %    | Total | %    |
|---------------------|----------------------------------|-------|----------|------|--------------|------|----------------|------|-------|------|
|                     | Judge                            | %     | Gazetted | %    | Non-gazetted |      |                |      |       |      |
| Brahman/Chhetri     | 203                              | 87.1  | 738      | 87.6 | 1667         | 82.1 | 1201           | 66.6 | 3809  | 77.6 |
| OBC (Madhesi)       | 4                                | 1.7   | 14       | 1.7  | 82           | 4.0  | 138            | 7.7  | 238   | 4.8  |
| Dalit               | 1                                | 0.4   | 4        | 0.5  | 32           | 1.6  | 60             | 3.3  | 97    | 2.0  |
| Janajati            | 22                               | 9.4   | 78       | 9.3  | 228          | 11.2 | 383            | 21.3 | 711   | 14.5 |
| Others              | 3                                | 1.3   | 8        | 1.0  | 22           | 1.1  | 20             | 1.1  | 53    | 1.1  |
| Total               | 233                              | 100.0 | 842      | 100  | 2031         | 100  | 1802           | 100  | 4908  | 100  |
| Disable             | 0                                | 0.0   | 2        | 0.2  | 15           | 0.7  | 3              | 0.2  | 20    | 0.4  |
| Backward Areas      | 4                                | 1.7   | 9        | 1.1  | 68           | 3.3  | 84             | 4.7  | 165   | 3.4  |



|                  |        |     |       |     |      |      |      |      |       |      |      |
|------------------|--------|-----|-------|-----|------|------|------|------|-------|------|------|
| Religious groups | Hindu  | 229 | 98.7  | 824 | 99.6 | 1947 | 98.7 | 1610 | 97.1  | 4610 | 98.3 |
|                  | Muslim | 2   | 0.9   | 2   | 0.2  | 9    | 0.5  | 19   | 1.1   | 32   | 0.7  |
|                  | Others | 1   | 0.4   | 2   | 0.2  | 16   | 0.8  | 29   | 1.8   | 48   | 1.0  |
|                  | Total  | 232 | 100   | 828 | 100  | 1972 | 100  | 1658 | 100   | 4690 | 100  |
| Gender           | Male   | 226 | 97.0  | 782 | 92.9 | 1724 | 84.9 | 1496 | 83.0  | 4228 | 86.1 |
|                  | Female | 7   | 3.0   | 60  | 7.1  | 307  | 15.1 | 306  | 17.0  | 680  | 13.9 |
| Total            |        | 233 | 100.0 | 842 | 100  | 2031 | 100  | 1802 | 100.0 | 4908 | 100  |



**Figure 2: Diversity in Judiciary by Broad Position Category and Sex**

According to available information, total staffing of judicial sector by caste and ethnic classification includes 3809 (77.6%) Brahman / Chhetri (from both Hill and Terai), followed by 711 (14.5%) Janajati, 238 (4.8%) OBC-Madhesi, 97 (2%) Dalit and 53 (1.1%) others. By religious groups, 4610 (98.3%) are Hindu, 32 (0.7%) are Muslim and 48 (1%) are others. Likewise, only 165 (3.4%) come from backward districts and only 20 (0.4%) are from a group of persons with disabilities (PWD).

The diversity scenario can be observed further deeply when these persons belonging to caste, ethnic and religious groups are classified by level of positions and service types (See Table 5, 6, 7 and 8) Accordingly, all position holders are dominantly Brahman/Chhetri; 87.1% of total judges, 87.6 of Gazetted officers, 82.1% of non-gazetted staff and 66.6% of staff from other services. As far as the representation of Janajati group in positions of Judicial Sector is concerned, 22 are judges (9.4% of judges), 78 are gazetted officers (9.3%), 228 are non-gazetted staff (11.2%) and 383 are from other services (21.3%). Likewise, of 238 persons from

OBC-Madhesi group, only 4 are judges (1.7% of total judges), 14 are Gazetted officers (1.7% of this officer category), 82 are non-gazetted staff (4% of this level) and 138 are from other services (7.7%). Of 97 belonging to Dalit Group, only one is Judge (0.4%), 4 are gazetted officers (0.5% of gazetted officers), 32 are non-gazetted staff (1.6%) and 60 from other services (3.3%). Among those 53 from other caste / ethnic groups, 3 are Judges (1.3), 8 gazetted officers (0.9), 22 non-gazetted (1%), 20 in other services. (Also shown in Figure 3)

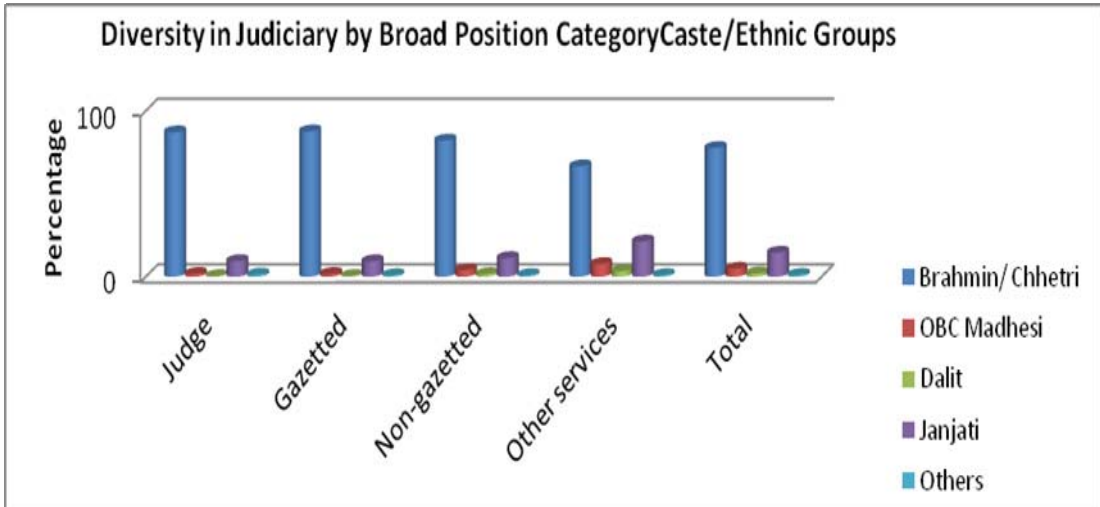
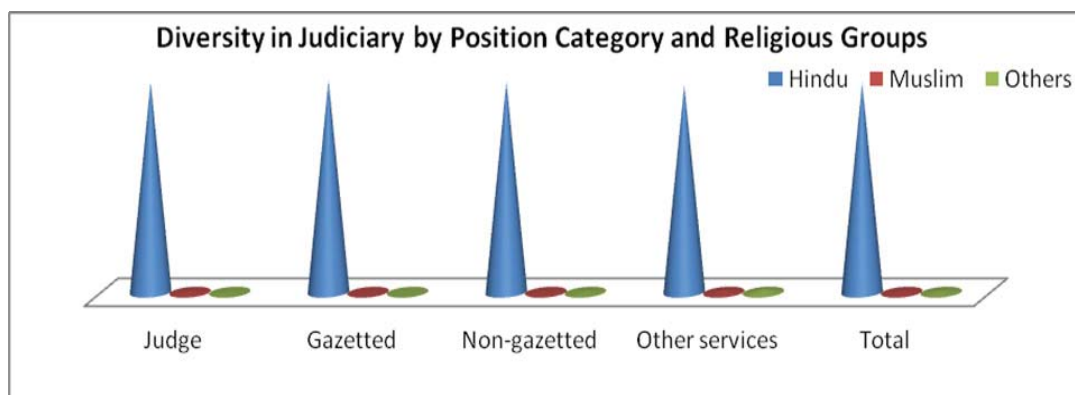


Figure 3: Diversity in Judiciary by Broad Position Categories Caste/Ethnic Groups

On diversity by religion, Hindu constitute 98.3% of total staffing in judicial sector; 98.7% of judges, 99.6% of gazetted officers, 98.7% of non-gazetted staff and 97.1% staff from other services. As only 165 persons from backwards areas are in judicial sector, their presence is very small in all position categories, i.e., 4 judges (1.7%), 9 gazetted officers (1.1), 68 non-gazetted staff (3.3) and 84 from other services (4.7%). With regard to representation from physically disabled group, no one is in gazetted post though there are 15 non-gazetted staff (0.7%) and 3 are in other services (0.25). (Also shown in Figure 4)



**Figure 4: Diversity in Judiciary by Position Category and Religious Groups**

Further data on staff diversity in judicial sector by other classification like hill/Terai, gender, position levels are in Annex 8.1 and 8.2. Nevertheless, the diversity of persons working in judicial sector is further described in succeeding sub-sections by service groups, position levels and organization types.

### ***3.2.2 Status of inclusion among judges***

Although the state of gender inequality and non-inclusiveness in the judiciary has been raised as a key issue for over a decade, little progress has been made in increasing representation of women and disadvantaged groups in judicial services. As Table 2 shows, women judges account for only 6 (3%) of the 232 judges in the country. Among the fourteen justices of the Supreme Court, only one is a woman and likewise only one of 10 judges of the Special Courts is woman. There are only four women judges in the Courts of Appeal out of 83 judges and only one in the district courts out of 122 judges. Of the six women judges, five are Hill Brahmin/Chhetri (B/C) and one is Hill Janajati. Dalit, OBC and Madhesi B/C and Terai Janajati women are not represented. The reason for better representation of excluded groups in Appellate court can be attributed to direct appointment system from the pool without tests (unlike District Court) and comparatively low experience requirement compared to the Supreme Court.

Since 178 of 232 judges are Hill Brahman/Chhetri men, they are the major dominant group accounting for 76.4 % of total judges. By types of court, most of them are serving in districts courts (81.7%) followed by those in courts of appeal (73.5%). Dominant position of men hill B/C is followed by Terai B/C and Hill Janajati who each account for 8.6% of the judges respectively. While there is nominal representation from male Hill Dalit and OBC groups, Terai Dalit and Janajati are not represented. Reasons for non-representation of these groups are stated in Section 4.1.

**Table 2: Distribution of judges by caste, ethnicity and sex**

| Caste/ Ethnic Groups |       |   | Supreme Court | %    | Court of Appeal | %    | District Court | %    | Special Court | %   | Total | %    |
|----------------------|-------|---|---------------|------|-----------------|------|----------------|------|---------------|-----|-------|------|
| Brahmin /Chhetri     | Hill  | M | 8             | 57.1 | 61              | 73.5 | 103            | 81.7 | 6             | 60  | 178   | 76.4 |
|                      |       | F | 1             | 7.1  | 3               | 3.6  | 1              | 0.8  | 0             | 0   | 5     | 2.1  |
|                      | Terai | M | 3             | 21.4 | 6               | 7.2  | 9              | 7.1  | 2             | 20  | 20    | 8.6  |
|                      |       | F | 0             | 0    | 0               | 0    | 0              | 0    | 0             | 0   | 0     | 0    |
| Dalit                | Hill  | M | 0             | 0    | 1               | 1.2  | 0              | 0    | 0             | 0   | 1     | 0.4  |
|                      |       | F | 0             | 0    | 0               | 0    | 0              | 0    | 0             | 0   | 0     | 0    |
|                      | Terai | M | 0             | 0    | 0               | 0    | 0              | 0    | 0             | 0   | 0     | 0    |
|                      |       | F | 0             | 0    | 0               | 0    | 0              | 0    | 0             | 0   | 0     | 0    |
| Janajati             | Hill  | M | 1             | 7.1  | 8               | 9.6  | 10             | 7.9  | 1             | 10  | 20    | 8.6  |
|                      |       | F | 0             | 0    | 1               | 1.2  | 0              | 0    | 1             | 10  | 2     | 0.9  |
|                      | Terai | M | 0             | 0    | 0               | 0    | 0              | 0    | 0             | 0   | 0     | 0    |
|                      |       | F | 0             | 0    | 0               | 0    | 0              | 0    | 0             | 0   | 0     | 0    |
| OBC                  |       | M | 0             | 0    | 2               | 2.4  | 2              | 1.6  | 0             | 0   | 4     | 1.7  |
|                      |       | F | 0             | 0    | 0               | 0    | 0              | 0    | 0             | 0   | 0     | 0    |
| Others               |       | M | 1             | 7.1  | 1               | 1.2  | 1              | 0.8  | 0             | 0   | 3     | 1.3  |
|                      |       | F | 0             | 0    | 0               | 0    | 0              | 0    | 0             | 0   | 0     | 0    |
| Total                |       | M | 13            | 92.9 | 79              | 95.1 | 125            | 99.2 | 9             | 90  | 226   | 96.9 |
|                      |       | F | 1             | 7.1  | 4               | 4.8  | 1              | 0.8  | 0             | 10  | 6     | 3    |
|                      |       | T | 14            | 100  | 83              | 100  | 126            | 100  | 10            | 100 | 233   | 100  |

The concentration of B/C in overall is seen more in District Courts (89.6%) where most of the judges come from judicial service. Such representation of B/C is 85.6% in the Supreme Court and 84.3% in Appellate Court. Judges from OBC are seen only in Appellate Court (2.4%) and District Court (1.6%) and likewise there is only one judge from Dalit community in Appellate Court (1.2%). The representation of total Madheshi (combining B/C, Dalit, Janajati and OBC in Terai) in Supreme Court is 21.4%, in Appellate Court 9.6%, in district court 9.5% and in Special Courts it is 20%. Janajatis (Hill/Terai) account for 7.1% in the Supreme Court, 10.8% in the Appellate Courts, 7.9% in the District Courts and 10% in Special Courts. (Also shown in Figure 5)

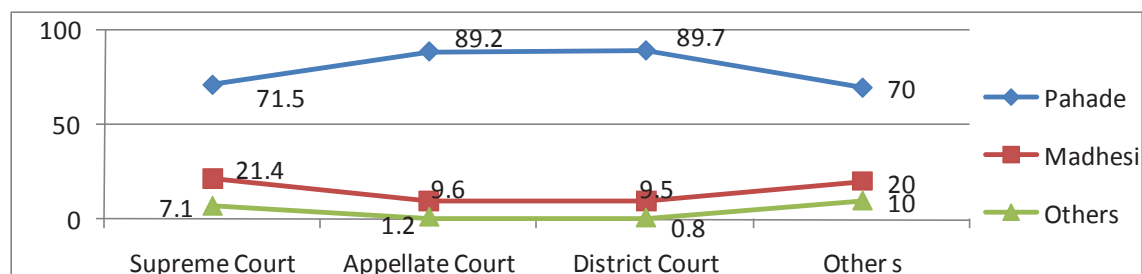


Figure 5: Diversity in Courts by Geographical Identity

Table 3: Distribution of judges by religion, physical condition and geographical area

| Courts                   |        | Supreme Court | Court of Appeal | District Court | Special/Tribunal Courts | Total | %     |      |
|--------------------------|--------|---------------|-----------------|----------------|-------------------------|-------|-------|------|
| Number of Judges         |        | 14            | 83              | 126            | 9                       | 232   | 100.0 |      |
| Person with Disabilities | M      | 0             | 0               | 0              | 0                       | 0     | 0.0   |      |
|                          | W      | 0             | 0               | 0              | 0                       | 0     | 0.0   |      |
| Backward regions         | M      | 0             | 2               | 2              | 0                       | 4     | 1.7   |      |
|                          | W      | 0             | 0               | 0              | 0                       | 0     | 0.0   |      |
| Religious group          | Hindu  | M             | 12              | 78             | 124                     | 9     | 223   | 96.1 |
|                          |        | W             | 1               | 4              | 1                       | 0     | 6     | 2.6  |
|                          | Muslim | M             | 0               | 1              | 1                       | 0     | 2     | 0.9  |
|                          |        | W             | 0               | 0              | 0                       | 0     | 0     | 0.0  |
|                          | Others | M             | 1               | 0              | 0                       | 0     | 1     | 0.4  |
|                          |        | W             | 0               | 0              | 0                       | 0     | 0     | 0.0  |

Likewise, as stated in Table 3, none of 232 judges nationwide are persons with disabilities (PWD). Similarly, representation of backward regions among judges is 1.7%, which is below their share (4.2%) of the total population of the country. The dominant religious affiliation among the judges (both men and women) is Hinduism with over 98.7% representation. Although religious groups other than Hinduism comprise over 18.7% of the national population, these groups are represented by less than 1.3%.

**Table 4: Representation of Newar among Janajati groups**

| Courts          | Male     |                      | Female   |                      | Total Janajati | Total Newar | % of Newar |
|-----------------|----------|----------------------|----------|----------------------|----------------|-------------|------------|
|                 | Janajati | Newar among Janajati | Janajati | Newar among Janajati |                |             |            |
| Supreme court   | 1        | 1                    |          |                      | 1              | 1           | 100        |
| Court of Appeal | 8        | 5                    | 1        | 1                    | 9              | 6           | 66.6       |
| District Court  | 10       | 6                    | -        | -                    | 10             | 6           | 60         |
| <b>Total</b>    | 19       | 12                   | 1        | 1                    | 20             | 13          | 65         |

As Newars are among the advantaged groups and have more representation in the state structures among the Janajati, their representation among the judges was analysed as a sample case separately in this report. As Table 4 shows, only one Janajati representation in the Supreme Court is Newar. Similarly, 6 out of 9 Janajati representations in the Court of Appeal and 6 out of 10 Janajati representations in the district court is Newar. Overall, out of the total 20 representatives of Janajati among the judges, Newar occupy 65% representation.

### ***3.2.3 Status of inclusion by groups of Judicial Service***

As explained in chapter 2, besides judge as a special group, the Judicial service is made up of three groups, namely Judicial, Public Prosecutor and Legal, and each is formed consisting of gazetted and non-gazetted position levels. While those on Judicial Group work in the courts at different levels, those in Public Prosecutor group work in offices of attorneys at central, regional (appellate) and district levels. As part of constitutional duty of Legal Advisory role of the Attorney General's Office, some attorneys are usually deputed in CDO Offices and in some constitutional bodies and ministries too for that purpose. Likewise, those in legal group work in the MoLJPA and other ministries too which have to deal with legal affairs. Therefore, diversity in Judicial Service has also been observed across three such service groups.

As shown in Table 5, male staffs have dominant presence in each group, i.e., 87 % in Judicial, 88.2% in Public Prosecutor, and 87.9% in legal. In terms of caste / ethnic groups, each of service groups is dominantly represented by Brahman/Chhetri, i.e., 82.7 % in Judicial Group, 88.1 in Public Prosecutor group and 86.3% in Legal group. Such representation is followed by Janajati, i.e., 11% in judicial group, 9% in Public Prosecutor group and 9.3% in legal group. In both cases, those from hill have dominant presence compared to those from Terai. The representation of other caste and ethnic groups in these services are negligible.

**Table 5: Judicial Service Groups by Caste, Ethnicity and Sex (Gazetted and Non-Gazetted)**

| Category            | Division | Gender | Judicial group* | %    | Public Prosecutor Group | %    | Legal Group | %    | Total | %     |
|---------------------|----------|--------|-----------------|------|-------------------------|------|-------------|------|-------|-------|
| Brahmin/Chhetri     | Hill     | Male   | 1526            | 67.3 | 317                     | 75.1 | 137         | 75.3 | 1980  | 68.9  |
|                     |          | Female | 222             | 9.8  | 36                      | 8.5  | 17          | 9.3  | 275   | 9.6   |
|                     | Terai    | Male   | 110             | 4.8  | 15                      | 3.6  | 3           | 1.6  | 128   | 4.5   |
|                     |          | Female | 18              | 0.8  | 4                       | 0.9  | 0           | 0.0  | 22    | 0.8   |
| OBC Madhesi         |          | Male   | 87              | 3.8  | 8                       | 1.9  | 0           | 0.0  | 95    | 3.3   |
|                     |          | Female | 1               | 0.0  | 0                       | 0.0  | 0           | 0.0  | 1     | 0.0   |
| Dalit               | Hill     | Male   | 23              | 1.0  | 3                       | 0.7  | 1           | 0.5  | 27    | 0.9   |
|                     |          | Female | 1               | 0.0  | 0                       | 0.0  | 2           | 1.1  | 3     | 0.1   |
|                     | Terai    | Male   | 6               | 0.3  | 0                       | 0.0  | 0           | 0.0  | 6     | 0.2   |
|                     |          | Female | 0               | 0.0  | 0                       | 0.0  | 0           | 0.0  | 0     | 0.0   |
| Janajati (D)        | Hill     | Male   | 173             | 7.6  | 24                      | 5.7  | 14          | 7.7  | 211   | 7.3   |
|                     |          | Female | 44              | 1.9  | 10                      | 2.4  | 3           | 1.6  | 57    | 2.0   |
|                     | Terai    | Male   | 28              | 1.2  | 4                       | 0.9  | 0           | 0.0  | 32    | 1.1   |
|                     |          | Female | 6               | 0.3  | 0                       | 0.0  | 0           | 0.0  | 6     | 0.2   |
| Others (Except A-D) |          | Male   | 21              | 0.9  | 1                       | 0.2  | 5           | 2.7  | 27    | 0.9   |
|                     |          | Female | 3               | 0.1  | 0                       | 0.0  | 0           | 0.0  | 3     | 0.1   |
| Total               |          | Male   | 1974            | 87.0 | 372                     | 88.2 | 160         | 87.9 | 2506  | 87.2  |
|                     |          | Female | 295             | 13.0 | 50                      | 11.8 | 22          | 12.1 | 367   | 12.8  |
| Grand Total         |          |        | 2269            | 100  | 422                     | 100  | 182         | 100  | 2873  | 100.0 |

\* Except Judges

In terms of religious groups, dominance of Hindu (both men and women) is seen in all groups like 98.7% in Judicial group, 99.5% in Public Prosecutor and 100% in Legal group. However, representation of backward areas is negligible with 3.2% in Judicial, 0.7% in Public Prosecutor and no one in legal group. Same is the case of representation of persons with disability in the first two groups with 0.5% and 1.4%, respectively. Male domination by more than 85% is common in all these representations (Detail in Table 6).

Further detailed information of distribution of staff of judicial sector by gazetted and non-gazetted level in each service group is provided in Annex 9 to 11.

**Table 6: Judicial Service Groups by physical disabilities, regions and religious group**

| Category                | Division | Gender    | Judicial group | Percentage | Public Prosecut or Group | Percentage | Legal Group | Percentage | Total | Percentage |
|-------------------------|----------|-----------|----------------|------------|--------------------------|------------|-------------|------------|-------|------------|
| Persons with disability | with     | Male      | 11             | 0.5        | 6                        | 1.4        | 0           | 0.0        | 17    | 0.6        |
|                         |          | Female    | 0              | 0.0        | 0                        | 0.0        | 0           | 0.0        | 0     | 0.0        |
| Backward Districts      |          | Male      | 68             | 3.0        | 3                        | 0.7        | 0           | 0.0        | 71    | 2.5        |
|                         |          | Female    | 5              | 0.2        | 0                        | 0.0        | 0           | 0.0        | 5     | 0.2        |
| Religious Community     | Hindu    | Male      | 1942           | 87.8       | 362                      | 88.1       | 156         | 87.6       | 2460  | 87.9       |
|                         |          | Female    | 242            | 10.9       | 47                       | 11.4       | 22          | 12.4       | 311   | 11.1       |
|                         | Muslim   | Male      | 9              | 0.4        | 2                        | 0.5        | 0           | 0.0        | 11    | 0.4        |
|                         |          | Female    | 0              | 0.0        | 0                        | 0.0        | 0           | 0.0        | 0     | 0.0        |
|                         | Others   | Male      | 8              | 0.4        | 0                        | 0.0        | 0           | 0.0        | 8     | 0.3        |
|                         |          | Female    | 10             | 0.5        | 0                        | 0.0        | 0           | 0.0        | 10    | 0.3        |
| Total                   |          | Male      | 1959           | 88.7       | 364                      | 88.6       | 156         | 87.6       | 2479  | 88.6       |
|                         |          | Female    | 252            | 11.3       | 47                       | 11.4       | 22          | 12.4       | 321   | 11.4       |
| Total community         |          | Religious | 2211           | 100.0      | 411                      | 100.0      | 178         | 100.0      | 2800  | 100.0      |

\* Except Judges

### 3.2.4 Status of inclusion among judicial service by position level

While the judicial service is categorized in three service groups as stated above, it has also been clear that each group consists of first, second and third class gazetted positions and other non-gazetted positions. Besides, there are some special class positions which are not specifically associated with any service in a formal sense, but these position holders are posted in Courts, Attorney General's Office, Ministry of Law and Justice and other high offices.

Tables 7 and 8 present the representation status of women and excluded groups at different levels of position in all groups of Judicial Service. Accordingly, out of the nine special class officers, eight are from the B/C group. Of these eight, Hill B/Cs outnumber Terai B/C by 7:1. Hill Janajati have a lone representative in this elite group while Terai Janajati, Dalit, OBC and other caste/ethnic groups do not have a single representative in this position. The situation at the gazetted first class level consisting of decision making positions is not much different. Representation at this level is also highly dominated by male B/C group who account for 63 (96.9%) of the 65 officers in this category. The remaining two officers (3.1%) are Hill Janajati men. The domination of the Hill B/C men persists in second class level as well. Of the total 257 second class officers, 234



(91%) are Hill B/C men. They are followed by 15 (5.8%) Hill Janajati men and 4 (1.6%) Terai B/C men. Not a single person belonging to the Dalit, OBC and other caste/ethnic groups have made it to the second class level of the Judicial Service. Although majority of the third class officers are also from the same dominant groups, diversity, albeit small, is more pronounced at this level in comparison to senior positions. Of the total 511 officers of this level, 377 (73.8%) are hill B/C men. They are followed by 40 (7.8%) hill Janajati, 14 (2.7%) OBC, 10 (2.0%) Terai B/C men and 8 (1.6%) from other ethnic groups. Dalits occupy a meagre 4 positions (0.8%), comprising 2 men and 2 women.

**Table 7: Gazetted Officials of Judicial Service (all groups) by caste/ethnicity and sex**

| Level             |         |   | Special class | %  | 1st class | %    | 2nd class | %   | 3rd class | %   | Total | %    |
|-------------------|---------|---|---------------|----|-----------|------|-----------|-----|-----------|-----|-------|------|
| Brahmin / Chhetri | Hill    | M | 7             | 78 | 63        | 96.9 | 234       | 91  | 377       | 74  | 681   | 80.9 |
|                   |         | F | 0             | 0  | 0         | 0    | 4         | 1.6 | 35        | 6.8 | 39    | 4.6  |
|                   | Terai   | M | 1             | 11 | 0         | 0    | 4         | 1.6 | 10        | 2   | 15    | 1.8  |
|                   |         | F | 0             | 0  | 0         | 0    | 0         | 0   | 3         | 0.6 | 3     | 0.4  |
| Dalit             | Hill    | M | 0             | 0  | 0         | 0    | 0         | 0   | 2         | 0.4 | 2     | 0.2  |
|                   |         | F | 0             | 0  | 0         | 0    | 0         | 0   | 2         | 0.4 | 2     | 0.2  |
|                   | Terai   | M | 0             | 0  | 0         | 0    | 0         | 0   | 0         |     | 0     | 0    |
|                   |         | F | 0             |    | 0         | 0    | 0         | 0   | 0         |     | 0     | 0    |
| Janajati          | Hill    | M | 1             | 11 | 2         | 3.1  | 15        | 5.8 | 40        | 7.8 | 58    | 6.9  |
|                   |         | F | 0             | 0  | 0         | 0    | 0         | 0   | 13        | 2.5 | 13    | 1.5  |
|                   | Terai   | M | 0             | 0  | 0         | 0    | 0         | 0   | 4         | 0.8 | 4     | 0.5  |
|                   |         | F | 0             | 0  | 0         | 0    | 0         | 0   | 3         | 0.6 | 3     | 0.4  |
| OBC               | M       | 0 | 0             | 0  | 0         | 0    | 0         | 14  | 2.7       | 14  | 1.7   |      |
|                   | F       | 0 | 0             | 0  | 0         | 0    | 0         | 0   | 0         | 0   | 0     |      |
| Others            | M       | 0 | 0             | 0  | 0         | 0    | 0         | 8   | 1.6       | 8   | 0.9   |      |
|                   | F       | 0 | 0             | 0  | 0         | 0    |           | 0   | 0         | 0   | 0     |      |
| Total             | M       | 9 | 100           | 65 | 100       | 253  | 98.4      | 455 | 89        | 782 | 92.9  |      |
|                   | F       | 0 | 0             | 0  | 0         | 4    | 1.6       | 56  | 11        | 60  | 7.1   |      |
|                   | G.Total | 9 | 100           | 65 | 100       | 257  | 100       | 511 | 100       | 842 | 100   |      |

However, as the analysis of ethnic representation in overall shows, 96.9% of first class gazetted officers, 94.2% of second class officers and 83.2% of third class officers are from B/C only. The representation of women is very low across all caste ethnic groups (refer to Table 9 for status of women's representation)

As Table 8 shows, representation of PWD in judicial service is nominal with only 2 gazetted third class officers (0.2% of total gazetted officials). Similarly, the number of officials from the most backward districts is very small; only 8 of the 511 third class officers come from these districts (0.9% of total gazetted officials). A vast majority (99.5%) gazetted officials are Hindu while Muslims and other non-Hindus comprised 0.2% and 0.2 % respectively, though no data were available on religion status of 14 officials.

**Table 8:Gazetted officials of judicial service (all groups) by physical disabilities, regions and religious groups**

| Level               |          | Special class | First class | Second class | Third class | Total | Total % |      |
|---------------------|----------|---------------|-------------|--------------|-------------|-------|---------|------|
| Person disabilities | with M   | 0             | 0           | 0            | 2           | 2     | 0.2     |      |
|                     | F        | 0             | 0           | 0            | 0           | 0     | 0       |      |
| Backward regions    | M        | 0             | 0           | 0            | 8           | 8     | 0.9     |      |
|                     | F        | 0             | 0           | 0            | 0           | 0     | 0       |      |
| Religious group     | Hindu    | M             | 9           | 65           | 253         | 444   | 771     | 93.1 |
|                     |          | F             | 0           | 0            | 4           | 49    | 53      | 6.4  |
|                     | Muslim   | M             | 0           | 0            | 0           | 2     | 2       | 0.2  |
|                     |          | F             | 0           | 0            | 0           |       | 0       | 0    |
|                     | Others   | M             | 0           | 0            | 0           | 1     | 1       | 0.1  |
|                     |          | F             | 0           | 0            | 0           | 1     | 1       | 0.1  |
|                     | R. Total |               | 9           | 65           | 257         | 497   | 828     | 100  |

On service group-wise review of data by level, the overall representation patterns of judicial service do not change significantly across groups. Domination of male Hill B/C is seen across all service groups at gazetted officer levels, with increased representation of women and excluded groups in gazetted class three levels, with being much reflective of such situation in non-gazetted positions and other services (details in succeeding sections and related Annexes).

As the further analysis shows, all the special class officers working in the Judiciary and Attorney General's Office are from B/C. The only one special class officer from Janajati and remaining 94.7% first class officers of legal group are working in different ministries and offices other than the courts and offices of government attorneys. All the first class officers working in the Courts (judicial group) are from B/C, who also constitute 96% of such officers in public prosecutor group (working in government attorney offices) and 94.7% in legal group (in different

organizations). Likewise, of second class officers, most are represented by B/C; 93.1% in judicial group, 92.5% in public prosecutor group and 91.5% in legal group. Among the third class officers, 81.8% of judicial group, 82.6% of public prosecutor group and 72.2% legal group are from B/C.

All the special class, first class and second class officers and 99.2% of third class officers of judicial service are from Hindu religion (further details in Annex 12.1-15.2.)

### 3.2.5 Representation of women in Judicial Service

Representation of women is at the lowest at all levels and across all caste, ethnic, religious and regional groups. As Table 9 shows, women do not occupy the decision making levels - i.e. special and first class levels. Only 4 (1.5%) out of 257 gazetted second class officials are women belonging to the B/C caste group. Women's representation is better in third class officer group as they account for 56 (11%) of 511 officials in this category. However, in terms of caste/ethnicity, it is B/C women who occupy the highest share with 68% of the total third class judicial positions occupied by women. They are followed by Janajati women (28%) while Dalit women account for 2 (3.5%) of the 511 positions. Women belonging to the OBC groups, PWD group and backward regions are completely absent.

**Table 9: Class-wise representation of women in judicial service by caste/ethnicity, religion and region**

| Level         | Male (M) | Female (F) | B/C F | Dalit F | Janajati F | OB C F | Hindu F | PW D F | Non Hindu F | Backward districts F |
|---------------|----------|------------|-------|---------|------------|--------|---------|--------|-------------|----------------------|
| Special class | 9        | 0          | 0     | 0       | 0          | 0      | 0       | 0      | 0           | 0                    |
| %             | 100      | 0          | 0     | 0       | 0          | 0      | 0       | 0      | 0           | 0                    |
| First class   | 65       | 0          | 0     | 0       | 0          | 0      | 0       | 0      | 0           | 0                    |
| %             | 100      | 0          | 0     | 0       | 0          | 0      | 0       | 0      | 0           | 0                    |
| Second class  | 253      | 4          | 4     | 0       | 0          | 0      | 4       | 0      | 0           | 0                    |
| %             | 98.5     | 1.5%       | 100   | 0       | 0          | 0      | 100     | 0      | 0           | 0                    |
| Third class   | 455      | 56         | 38    | 2       | 16         | 0      | 49      | 0      | 1           | 0                    |
| %             | 89       | 11         | 68    | 3.5     | 28         | 0      | 87.5    | 0      | 1.8         | 0                    |

The Table 10 shows less representation of women in Public Prosecutor Group compared to Judicial Legal groups, which requires comparative higher technical skills.

**Table 10: Representation of women in different groups of Judicial Service**

| Service Groups           | Men | Women | Total | % of women |
|--------------------------|-----|-------|-------|------------|
| Judicial (Court Officer) | 427 | 37    | 464   | 8          |
| Public Prosecutor        | 213 | 11    | 224   | 5          |
| Legal (Legal officers)   | 142 | 12    | 154   | 8          |
| Total                    | 782 | 60    | 842   | 7.1        |

Women account for 7.1% (60) of the total 842 officers in various groups of the judicial service. This comprises 8% (37) of the total 464 court officers, 5% (11) of 224 public prosecutors and 8% (12) of 154 legal officers.

### 3.2.6 Status of inclusion among non-gazetted staff of Judicial Service

Unlike the gazetted officials, some diversity can be seen at the non-gazetted level. However, the same trend of domination of hill B/C men persists at this level as well. As shown in Table 11, 1299 (64%) of the total 2031 non-gazetted staffs are Hill B/C men, followed by the Hill B/C women, accounting for 236 (11.6%) of them. The representation of hill Janajati men and women is 153 (7.5%) and 44 (2.2%) respectively, which is greater than Terai B/C men and women at 113 (5.6%) and 19 (0.9%) respectively. Dalit representation is at the lowest with 25 men and only one woman.

**Table 11: Status of representation among non-gazetted officials by caste, ethnicity and sex**

| Level               |             |     | Non-gazetted I | Non-gazetted II | Total | %    | Cumulative % |
|---------------------|-------------|-----|----------------|-----------------|-------|------|--------------|
| Brahmin/C<br>hhetri | Hill        | M   | 576            | 723             | 1299  | 64.0 | 82.1         |
|                     |             | F   | 87             | 149             | 236   | 11.6 |              |
|                     | Terai       | M   | 39             | 74              | 113   | 5.6  |              |
|                     |             | F   | 6              | 13              | 19    | 0.9  |              |
| Dalit               | Hill        | M   | 11             | 14              | 25    | 1.2  | 1.6          |
|                     |             | F   | 1              | 0               | 1     | 0.1  |              |
|                     | Terai       | M   | 2              | 4               | 6     | 0.3  |              |
|                     |             | F   | 0              | 0               | 0     | 0    |              |
| Janajati            | Hill        | M   | 65             | 88              | 153   | 7.5  | 11.2         |
|                     |             | F   | 14             | 30              | 44    | 2.2  |              |
|                     | Terai       | M   | 4              | 24              | 28    | 1.4  |              |
|                     |             | F   | 1              | 2               | 3     | 0.1  |              |
| OBC                 | M           | 21  | 60             | 81              | 4     | 4.1  |              |
|                     | F           | 1   | 0              | 1               | 0.1   |      |              |
| Others              | M           | 6   | 13             | 19              | 0.9   | 1.0  |              |
|                     | F           | 0   | 3              | 3               | 0.1   |      |              |
| Total               | M           | 724 | 1000           | 1724            | 84.9  | 84.9 |              |
|                     | F           | 110 | 197            | 307             | 15.1  | 15.1 |              |
|                     | Grand Total | 834 | 1197           | 2031            | 100%  | 100% |              |

**Table 12: Status of representation among non-gazetted officials by physical, regions and religious groups**

| Level                    |        | Non-gazetted | Non-gazetted | Total | Total % |      |
|--------------------------|--------|--------------|--------------|-------|---------|------|
| Person with disabilities | M      | 11           | 4            | 15    | 0.7     |      |
|                          | F      | 0            | 0            | 0     | 0       |      |
| Backward regions         | M      | 16           | 47           | 63    | 3.1     |      |
|                          | F      | 0            | 5            | 5     | 0.2     |      |
| Religious group          | Hindu  | M            | 714          | 975   | 1689    | 85.6 |
|                          |        | F            | 96           | 162   | 258     | 13.1 |
|                          | Muslim | M            | 1            | 8     | 9       | 0.5  |
|                          |        | F            | 0            | 0     | 0       | 0    |
|                          | Others | M            | 7            | -     | 7       | 0.3  |
|                          |        | F            | 0            | 9     | 9       | 0.5  |
| <b>G. Total</b>          |        | 816          | 1154         | 1972  | 100     |      |

As shown in Table 12, with Hindus accounting for 98.7% (85.6% male and 13.1% female) of the non-gazetted officials, the representation of other religious groups is nominal (Muslim 0.5% and others 0.8%). PWD (all men) comprise 15 (0.7%) of the 2031 non-gazetted officials. Backward regions account for 3.3% (male 3.1% and female 0.2%) of these positions. Women belonging to the OBC groups, PWD group and backward regions are completely absent.

### *3.2.7 Inclusion status in other services and class-less positions in judicial sector*

The other service refers to those staffs who are working within judiciary to support the judicial system but not recruited under the judicial service. These support staff members comprise accountants, computer operators and other technicians belonging to other civil services. As the Table 13 shows, of the total 524 support staff, the representations of men and women are 76.3% (400) and 23.7% (124) respectively. Hill B/Cs (32.4%) have the largest representation. They are followed by Terai B/C men (18.9%), Hill Janajati men (13.5%), OBC men (7.2%) and Terai Janajati men (1.7%). Of the total 524 staff, only 13 (2%) are Dalit comprising Hill (1.8%) and Terai (0.4%) group. Similarly, there are only two Dalit women among the entire staff group. The same trend holds true in the case of Hill B/C women and Terai B/C women (accounting for 15.3% and 08%, respectively) of the total support staff. They are followed by Janajati women with 6.9% while the other women groups account for less than 1 %.

**Table 13: Status of representation among staffs from other services and class-less group in judiciary by caste, ethnicity and sex**

| Level               |             | Others Service | %   | Class-less | %    | Total | %    | Total % |      |
|---------------------|-------------|----------------|-----|------------|------|-------|------|---------|------|
| Brahmin/<br>Chhetri | Hill        | M              | 170 | 32.4       | 687  | 53.8  | 857  | 47.6    | 66.6 |
|                     |             | F              | 80  | 15.3       | 108  | 8.4   | 188  | 10.4    |      |
|                     | Terai       | M              | 99  | 18.9       | 46   | 3.5   | 145  | 8       |      |
|                     |             | F              | 4   | 0.8        | 7    | 0.5   | 11   | 0.6     |      |
| Dalit               | Hill        | M              | 9   | 1.7        | 15   | 1.2   | 24   | 1.3     | 3.3  |
|                     |             | F              | 1   | 0.1        | 11   | 0.9   | 12   | 0.7     |      |
|                     | Terai       | M              | 2   | 0.3        | 14   | 1.1   | 16   | 0.9     |      |
|                     |             | F              | 1   | 0.1        | 7    | 0.5   | 8    | 0.4     |      |
| Janajati            | Hill        | M              | 71  | 13.5       | 170  | 13.3  | 241  | 13.4    | 21.3 |
|                     |             | F              | 35  | 6.6        | 40   | 3.1   | 75   | 4.2     |      |
|                     | Terai       | M              | 9   | 1.7        | 52   | 4.6   | 61   | 3.4     |      |
|                     |             | F              | 2   | 0.3        | 4    | 0.3   | 6    | 0.3     |      |
| OBC                 | M           |                | 38  | 7.2        | 97   | 7.5   | 135  | 7.5     | 7.7  |
|                     | F           |                | 0   | 0          | 3    |       | 3    | 0.2     |      |
| Others              | M           |                | 2   | 0.3        | 15   | 1.2   | 17   | 0.9     | 1.1  |
|                     | F           |                | 1   |            | 2    |       | 3    | 0.2     |      |
| Total               | M           |                | 400 | 76.3       | 1096 | 85.8  | 1496 | 83.0    | 83   |
|                     | F           |                | 124 | 23.7       | 182  | 14.2  | 306  | 17.0    | 17   |
|                     | Grand Total |                | 524 | 100        | 1278 | 100   | 1802 | 100     | 100  |

Class-less service groups, within the judiciary, refer to support staff positions (e.g. drivers, messengers, sweepers, etc.) below the non-gazetted third class officers. There are 1278 staff members in this group comprising 1096 (85.8%) men and 182 (14.2%) women. Majority of the staff in this position are Hill B/C men.

Of the total number of staff, Hill B/C men are 687 (53.8%) followed by Hill Janajati men 170 (13.3%) and OBC men 97 (7.5%), Terai Janajati 52 (4.6%) and Terai B/C 46 (3.5%). Likewise, there are altogether 47 Dalits in these positions which constitute 3.7% of the staff. This comprises 1.2% Dalit men from the Hill and 1.1% Dalit men from the Terai. Similarly, there are 18 (1.4%) Dalit women from both hill and Terai areas. Hill and Terai B/C women account for 8.9% of the total staff in these positions. They are followed by Janajati women (3.4%) while there is no representation of women from the OBC and other groups.

**Table 14: Status of representation among staff from other services and class less group in judiciary by physical disabilities, regions and religious groups**

| Level               |          | Others Service | Percent | Class-less | Percent | Total | Percent |     |
|---------------------|----------|----------------|---------|------------|---------|-------|---------|-----|
| Person disabilities | with M   | 2              | 0.4     | 0          | 0       | 2     | 0.1     |     |
|                     | F        | 0              | 0       | 1          | 0.1     | 1     | 0.1     |     |
| Backward regions    |          | M              | 7       | 1.3        | 59      | 66    | 3.7     |     |
|                     |          | F              | 10      | 1.9        | 8       | 0.6   | 18      | 1   |
| Religious group     | Hindu    | M              | 324     | 73.0       | 1027    | 1351  | 81.5    |     |
|                     |          | F              | 105     | 23.6       | 154     | 259   | 15.6    |     |
|                     | Muslim   | M              | 6       | 1.3        | 13      | 19    | 1.1     |     |
|                     |          | F              | 0       | 0          | 0       | 0     | 0       |     |
|                     | Others   | M              | 1       | 0.2        | 18      | 19    | 1.1     |     |
|                     |          | F              | 8       | 1.8        | 2       | 10    | 0.6     |     |
|                     | G. Total |                | 444     | 100        | 1214    | 100   | 1658    | 100 |

As Table 14 shows, there are only 2 male PWDs in the other service category while 7 men and 10 women are represented from the backward regions. Hindus are the dominant group with 96.6% followed by 2% other religious group and 1.3% Muslims. One female PWD is represented in the class-less group, while 59 (4.6%) men and 8 (0.6%) women are represented from the backward regions. Like in all other categories of staff, Hindu are the dominant group in this category as well. Class-less group comprises 97.2% Hindu followed by 1.7 % belonging to other religion and 1.1% Muslims.

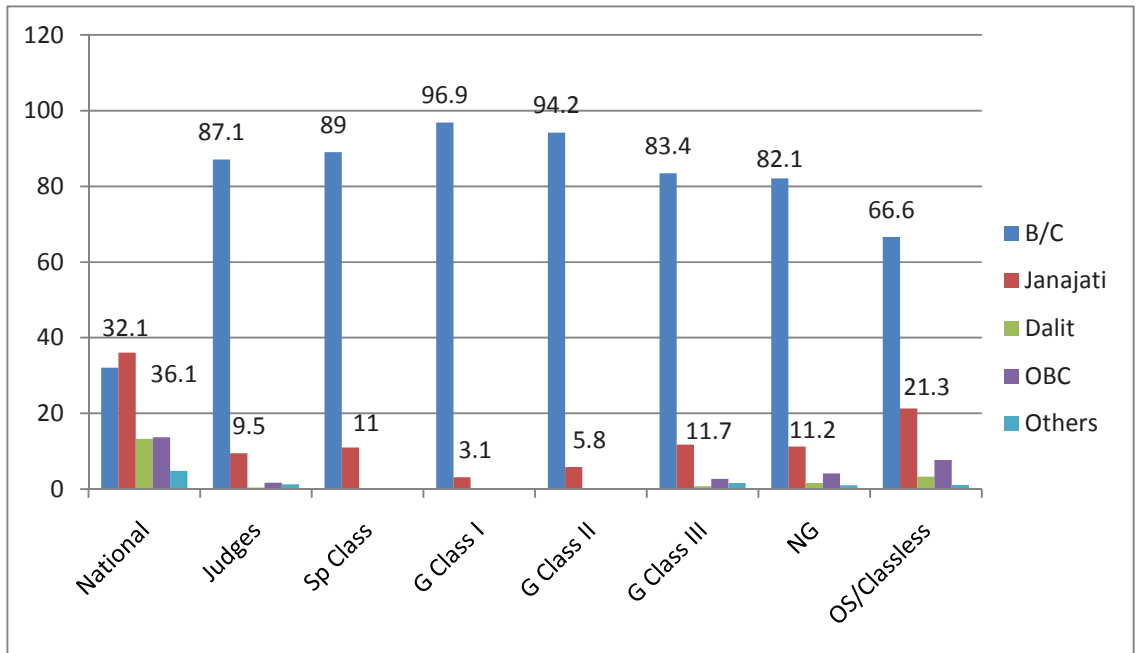
### 3.2.8 Overall diversities in judicial sector and national population

The diversity among judges, officials and other staff working in judiciary and related organizations (judicial sector) is reflective of further exclusion when it is compared with available data on diversity in national population (Fig. 6)

Women, constituting 51.5% of the population of the country, are poorly represented by 13.9% in the judicial sector. There are 3% women among judges while not even a single woman is found in the special and first class positions. Women comprise only 1.6% of the judicial group at the second class level while their representation at the third class level is 11%.

B/Cs account for 77.6% of total staffs of judicial sector, which is 2.24 times more than their share of 32.1% in the national population. The representation of Janajati in the judicial sector is only 14.5% despite they constitute 36.1% of total

population of the country. Similarly, OBC and Dalit representation is 4.8% and 2% in the judicial sector, who occupy 13.76% and 13.26% of national population.



**Figure 6: Representations Compared with population size and position level**

Although religious groups other than Hinduism comprise over 18.7% of the national population, they are represented poorly by less than 5%. The dominance of Hindu is naturally due to Hindu B/C group being the dominant caste group in the judicial sector.

Persons with disabilities, who account for 1.94% of the total population, are also poorly represented in the judicial sector as they make up only 0.4% of the judges and other officials. This is mainly due to less priority accorded by the education sector to cater to the special needs of PWD. Only a few PWD seek admission in legal education institutions and subsequently into judicial service.

The concentration of B/C is high in higher positions, while there is relative increase in representation of people from other caste and ethnic groups in lower positions. Among the judges and Special class officials, such concentration does not feature clearly as the total number is very low and single representation makes vast difference in percentage.



### 3.3 Gender and Social Representation in the Judiciary-related Organizations

#### 3.3.1 *Number of Lawyers*

The total number of lawyers in the country as recorded in the Nepal Bar Council (NBC) is slightly different from the one received from different Bar units of the Nepal Bar Association (NBA). According to the Council (as of July 30, 2012), there are 8549 lawyers (76 Senior Advocates, 7701 Advocates, 772 Pleaders and 40 Agents) in Nepal. However, the record received from different units of NBA counts altogether 9095 lawyers in the country (as of December 2012). Among them, 74 are Senior Advocates, 7601 Advocates, 984 Pleaders and 436 Legal Agents.

For the purpose of this study, the list of lawyers received from all the Bar Units of the country is chosen since this gives a closer picture of practicing lawyers compared to the record of the Nepal Bar Council. The reasons for variation, as explained by the Council authority, are that many lawyers who had received license before the establishment of NBC and are yet to be registered in the record of NBC and many who are registered as lawyer in NBC have not been the member of any Unit of NBA.

#### 3.3.2 *State of inclusion among Lawyers*

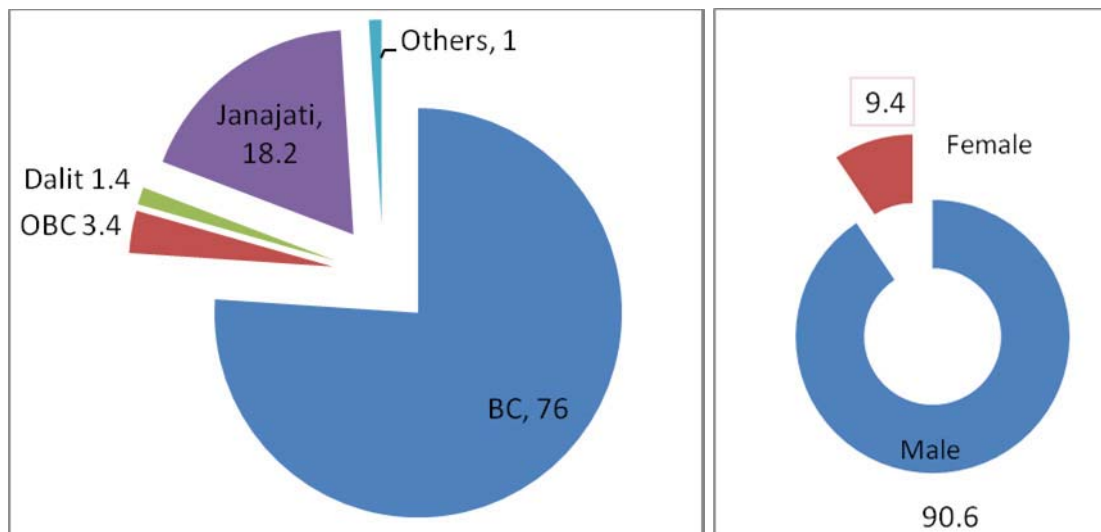
As discussed earlier, there is no reservation or special consideration for excluded groups in issuing the license of law practitioners. Legal profession, not being a remunerated public service, can be taken upon one's interest after fulfilling required qualification and proving certain competency in the examination of the Nepal Bar Council.

According to the Interim Constitution of Nepal 2007 (2063 BS), every citizen has freedom to practice any profession, carry on any occupation, industry and trade [Article 13(3)(f)]. Similarly, the constitution guarantees every person's rights against forced labor under rights against exploitation [Article 28(4)]. Therefore, entry into legal profession is solely based on person's interest and capacity and the profession runs with one's hard work and client's trust in his/her capacity.

As shown in Table 15, of the total 9095 lawyers of Nepal, 6913 (76.1%) are Brahman/Chhetri (B/C) belonging to Pahadi and Madhesi communities, 1660 (18.3 %) are Adibasi/Janajatis belonging to Pahadi and Madhesi community, 125 (1.4 %) are Dalit of Pahadi and Madhesi community, 305 (3.3%) are from OBC (Madhesi only) and 92 (1%) from "Others" category.

Table 15: Distribution of lawyers from different gender and social groups

| Category                     | Division   | Gender             | Sr. Adv.  | Advocate    | Pleader    | Agents     | Total       | %           |
|------------------------------|------------|--------------------|-----------|-------------|------------|------------|-------------|-------------|
| (A)<br>Brahmin/<br>Chhetri   | Hill       | Male               | 44        | 4438        | 498        | 292        | 5272        | 58.0        |
|                              |            | Female             | 1         | 383         | 29         | 19         | 432         | 4.7         |
|                              | Terai      | Male               | 17        | 904         | 146        | 16         | 1083        | 12.0        |
|                              |            | Female             | 0         | 110         | 12         | 4          | 126         | 1.4         |
| OBC Madhesi (B)              |            | Male               | 3         | 242         | 45         | 6          | 296         | 3.3         |
|                              |            | Female             | 0         | 5           | 3          | 1          | 9           | 0.1         |
| Dalit (C)                    | Hill       | Male               | 0         | 42          | 22         | 2          | 66          | 0.7         |
|                              |            | Female             | 0         | 7           | 8          | 0          | 15          | 0.2         |
|                              | Terai      | Male               | 0         | 22          | 19         | 1          | 42          | 0.5         |
|                              |            | Female             | 0         | 1           | 1          | 0          | 2           | 0.02        |
| Janajati<br>(D)              | Hill       | Male               | 8         | 810         | 113        | 53         | 984         | 10.8        |
|                              |            | Female             | 0         | 169         | 16         | 4          | 189         | 2.1         |
|                              | Terai      | Male               | 0         | 334         | 47         | 28         | 409         | 4.5         |
|                              |            | Female             | 0         | 61          | 13         | 4          | 78          | 0.9         |
| Others (Except A-D)          |            | Male               | 1         | 71          | 11         | 6          | 89          | 1.1         |
|                              |            | Female             | 0         | 2           | 1          | 0          | 3           | 0.03        |
| Total Number of<br>Lawyers   |            | <i>Male</i>        | <i>73</i> | <i>6863</i> | <i>901</i> | <i>404</i> | <i>8241</i> | <i>90.6</i> |
|                              |            | <i>Female</i>      | <i>1</i>  | <i>738</i>  | <i>83</i>  | <i>32</i>  | <i>854</i>  | <i>9.4</i>  |
|                              |            | <b>Grand Total</b> | <b>74</b> | <b>7601</b> | <b>984</b> | <b>436</b> | <b>9095</b> | <b>100%</b> |
| Persons with<br>disabilities |            | Male               | 0         | 7           | 2          | 1          | 10          | 0.1         |
|                              |            | Female             | 0         | 0           | 0          | 0          | 0           | 0           |
| Backward Districts           |            | Male               | 0         | 70          | 14         | 3          | 87          | 1.0         |
|                              |            | Female             | 0         | 0           | 0          | 0          | 0           | 0           |
| Religious<br>Communi<br>ty   | Hindu      | Male               | 69        | 5030        | 628        | 381        | 6108        | 90.9        |
|                              |            | Female             | 1         | 402         | 40         | 27         | 470         | 7.0         |
|                              | Musli<br>m | Male               | 0         | 48          | 10         | 3          | 61          | 0.9         |
|                              |            | Female             | 0         | 1           | 0          | 0          | 1           | 0.01        |
|                              | Others     | Male               | 0         | 54          | 7          | 3          | 64          | 1.0         |
|                              |            | Female             | 0         | 15          | 3          | 0          | 18          | 0.3         |



**Figure 7 Representation in legal profession by caste / ethnic groups and sex**

To see it differently, total 76.5% lawyers come from Pahadi, 22.5% from Madhesi Community and rest 1% are from 'others' who are not categorically termed as Madhesi, such as Bengali, Marwadi etc. The numbers of female lawyers, lawyers coming from backward areas and lawyers having disability are negligible. Only 9.4 % of lawyers are female, 1% lawyers come from backward areas and 0.1% of the lawyers are from people with disability. While 97.9% of total lawyers are Hindu, only 0.09% are Muslims and 1.3% belong to other religious groups. Data provided for Hindu seems even lower than the percentage of B/C lawyers because only “Muslims” and “others” were marked in many of the data collection forms provided and Hindu was not mentioned in many of the forms.

Seeing at the type of lawyers, total 83.8% of Senior Advocates come from B/C group, out of which 27.4% are Madhesi and 72.6% are Pahadi. In further analysis, total Madhesi lawyers having recognized as Senior Advocate are 27% % compared to Pahadi 71.6%. Remaining 1.3% of Sr. Advocate (one in number) comes from 'Others' category. Only one female was honoured as Senior Advocate by the time of data collection, and she came from B/C. Only 8 Janajatis (10.8%) are recognized as Sr. Advocate. They are all from Pahadi community. There are no Sr. Advocates from Dalit Community.

### ***3.3.3 Inclusion status in Nepal Bar Council***

The Council being chaired by the Attorney General and represented by the Nepal Bar Association, the Supreme Court, Dean (Institute of Law Tribhuvan University) and senior advocates/advocates who are both elected from among the

legal practitioners and nominated by Nepal Bar Association<sup>105</sup> has little chance of being inclusive as most of its members are of ex-officio nature. It can be made inclusive only to some extent when lawyers from excluded groups are nominated in its two seats by Nepal Bar Association. As shown in Table 16, the current Council has 12 members, out of which one is female from B/C, one each from Madhesi, Janajati and 'Others' and remaining are from B/C community. There is no one from Dalit community in the Council.

### 3.3.4 Inclusion status in Nepal Bar Association

Registered lawyers are formally organized under the umbrella of Nepal Bar Association (NBA), which is a federal organization of practicing lawyers, The membership of the organization is voluntary to a registered lawyer, who can be a member of any of its Bar Unit upon his/her choice and convenience. Taking the membership of any Bar unit does not have any implication in their status privileges or authority. However, inclusiveness in leadership of Nepal Bar Association can help improving leadership and profile of the practitioner and hence inclusiveness in NBA can have implication in grooming of lawyers from excluded groups.

**Table 16: Composition of Board of Nepal Bar Council**

|                              |                  |               |           |
|------------------------------|------------------|---------------|-----------|
| <b>(A) Brahman/ Chhetri</b>  | <b>Hill (9)</b>  | <b>Male</b>   | <b>8</b>  |
|                              |                  | <b>Female</b> | <b>1</b>  |
|                              | <b>Terai (0)</b> | <b>Male</b>   | <b>-</b>  |
|                              |                  | <b>Female</b> | <b>-</b>  |
| <b>OBC Madhesi (B)</b>       | <b>(1)</b>       | <b>Male</b>   | <b>1</b>  |
|                              |                  | <b>Female</b> | <b>-</b>  |
| <b>Dalit (C)</b>             | <b>Hill (0)</b>  | <b>Male</b>   | <b>-</b>  |
|                              |                  | <b>Female</b> | <b>-</b>  |
|                              | <b>Terai (0)</b> | <b>Male</b>   | <b>-</b>  |
|                              |                  | <b>Female</b> | <b>-</b>  |
| <b>Janajati (D)</b>          | <b>Hill (1)</b>  | <b>Male</b>   | <b>1</b>  |
|                              |                  | <b>Female</b> | <b>-</b>  |
|                              | <b>Terai (0)</b> | <b>Male</b>   | <b>-</b>  |
|                              |                  | <b>Female</b> | <b>-</b>  |
| <b>Others, Except A-D(E)</b> | <b>(1)</b>       | <b>Male</b>   | <b>1</b>  |
|                              |                  | <b>Female</b> | <b>-</b>  |
| <b>Total</b>                 | <b>(12)</b>      |               | <b>12</b> |

NBA, consisting of 81 independent bar units comprising of District Court Bar Associations, Appellate Court Bar Associations and Supreme Court Bar Association has Central Executive Committee and Executive Council elected from among the members of all Bar units and likewise each Bar unit has its own

<sup>105</sup> Nepal Bar Council Act 1993 (2050 BS), Section 4(1)

executive committees elected from among their members. For the present study, only the diversity in composition of the Central Executive Committee of NBA is analyzed because this committee is recognized by different laws such as Nepal Bar Council Act, National Judicial Academy Act and Legal Aid Act and Mediation Act in performing some public works. It is also asked in practice by the Judicial Council to recommend the names of eligible lawyers to become judges of different courts. The inclusiveness in other Bar units is not analyzed as they have no significant impact in public decision-making and they are not required to be inclusive by any law of the country or by the statute of the organization. However, it is seen that lawyers are conscious of inclusion and have been proposing inclusive lists of candidates by different panels. Considering inclusiveness as demand of the time, NBA has created different 'concern committees' to promote the interests of excluded groups including indigenous nationalities/ Janajatis, Dalits, women, people with disability, Madhesi, lawyers of remote areas, etc.

The 17-member Central Committee of NBA is found to have been inclusive in different ways. In both immediate past and present committees, the number of Pahadi B/C members is 11 (64.71%). The number of Madhesi members in the present EC is only one, but it was 4 in the past EC. Similarly, the number of female lawyers in the past EC was only 2 whereas the present EC has 5 female members. The representation of Janajati in the present EC is 5, who are from Pahadi community (2 men and 3 women), whereas the number of Janajati was only 3 in the previous EC, including 2 from Pahadi (1 male and 1 female) and 1 male from Madhesi Janajati (details in Table 17).

**Table 17: Inclusiveness in Central Executive Committee of Nepal Bar Association**

| Classification       | Most Recent CEC led by Sr. Advocate Hari Krishna Karki |   |   | Immediate Past CEC led by Sr. Advocate Prem Bahadur Khadka |    |    |
|----------------------|--|---|---|--|----|----|
| Brahaman/<br>Chhetri | Hill   | M | 9 | 11   | 10 | 11 |
|                      |  | F | 2 |  | 1  |    |
|                      | Terai  | M | 0 | -  | 2  | 2  |
|                      |  | F | 0 |  | 0  |    |
| Adibasi/<br>Janajati | Hill   | M | 2 | 5  | 1  | 2  |
|                      |  | F | 3 |  | 1  |    |
|                      | Terai  | M | - | -  | 1  | 1  |
|                      |  | F | - |  | 0  |    |
| OBC Madhesi          |  | M | 1 | 1  | 1  | 1  |
|                      |  | F | - |  | -  |    |
| Dalit                | Terai  | M | - | -  | -  | -  |
|                      |  | F | - |  | -  |    |
|                      | Teari  | M | - | -  | -  | -  |
|                      |  | F | - |  | -  |    |

|                         |   |   |    |    |   |
|-------------------------|---|---|----|----|---|
| Persons with disability | M |   | -  | -  | - |
|                         | F |   |    | -  |   |
| Total Members           |   |   | 17 | 17 |   |
| Total Female members    |   | 5 |    | 2  |   |
| Total Terai             |   | 1 |    | 4  |   |

### 3.4 Assessment of status of Gender and Social Representation and level of diversity in students pursuing Law Education in Nepal

#### 3.4.1 Coverage of students

Initially, attempts were made to study GESI among law students by considering the enrolments of all the law students of a batch following from first year to the final year until the final result to find out diversity in enrolments, drop-outs and pass-outs so that one can see who are not being able to continue their education and how many of excluded groups including women are potentially available to enter into judicial service and other legal professions. However, because of the difficulty in getting the student records from the colleges even after a request from Dean's office and following up from NJA, it was not possible to find all the required information timely. Similarly, it was known from the discussions with college authorities and law students that enrolment in law, unlike other discipline, is done as a fashion by most of the students to earn additional degree after graduation and many of them leave the study after getting a job which does not require law education. The preliminary data analysis also showed the same pattern.

Though it was not possible to find the whole data of the law students being admitted to LL.B. program, it was found that 1261 students had enrolled in Tribhuvan University's 2008-Batch of LL.B. in Nepal Law Campus located in Kathmandu. Moreover, not all students were found to have filled up the form to sit in the examination. There was no possibility to relate the dropout rate to exclusion or poverty, hence the idea to trace dropout rate was dropped. Likewise, attempt was made only to see the diversity in enrolment in one batch of LL.B. in the first year in Nepal Law Campus as sample and analyze the pass out results of the same batch from the whole students enrolled in TU independent of the enrolments.

For this study, the students enrolled in 2008-batch of 3-year-LL.B (TU) were selected and their first year results in 2009, second year results in 2010 and third year results in 2011 were studied. Similarly, one batch of five-year LL.B. students enrolled in Kathmandu School of Law (KSL) for 2006-11 was taken as sample for study, because only Kathmandu School of Law (KSL) affiliated to Purbanchal University has been able to produce law graduates by now, which is also far costlier than LL.B. in T.U. Moreover, the results of T.U. for only LL.B. 3rd year

of the same batch are also studied considering them the total students coming to the market. However, many of them might still have to pass some papers in first or second year examination.

### 3.4.2 *Enrolment*

As shown in Table 18, among 1261 students enrolled in Nepal Law Campus in LL.B. first year (2008), 968 (76.8%) were male and 293 (23.2%) were female. Because of scant information available for students, it was not possible to see the caste diversity among all these students and the study of caste diversity was limited to 973 students only. As many as 812 (83.4%) of the students were from the caste group of Brahman/Chhetri belonging to Pahadi and Madhesi communities. Among them, 185 (19%) are female. In a separate analysis of Pahadi and Madhesi students, 287 (29.5%) were from Madhesi community that includes male and female students from BC, Dalit and Janajati belonging to Madhesi community. Out of 973 students, 142 (14.6%) were found from Janajatis. Among Janajatis, 90 (60 men and 30 women) constituting 63% were from Pahadi community and 52 (36 men and 16 women) or 37% were from Madhesi community. Only 36.6% of total Janajatis enrolled are from Terai origin. Similarly, only 6 male students were found to be from communities other than specified above.

Only 7 students out of 973 were from Dalit community (4 Pahadi and 3 Madhesi) and only 1 of them was female from Madhesi Community. Altogether 28 students were from backward areas and only 1 was female, but their pass out results could not be traced.

### 3.4.3 *Passed out students*

The results presented here are the results of whole students appearing in T.U's LL.B. examination, not limiting to those of the Nepal Law Campus. It shows that only 59 students, who were enrolled in LL.B. first year in 2008 all over the country, were able to pass all yearly examinations in 2011. According to the results, only 140 students had passed first-year examination in 2009, 160 had passed 2nd year examination in 2010 and 236 could pass 3rd year examination in 2011. The result of first year is exclusively the result of 2008 batch, whereas those of 2nd and 3rd year include the students of other batches too who were not able to pass those examinations before.

**Table 18: Enrolment status 2008 in Nepal Law Campus**

|                  |       |        |     |       |       |       |
|------------------|-------|--------|-----|-------|-------|-------|
| Brahman/ Chhetri | Hill  | Male   | 443 | 45.5% | 59.6% | 83.4% |
|                  |       | Female | 137 | 14.1% |       |       |
|                  | Terai | Male   | 184 | 18.9% | 23.8% |       |
|                  |       | Female | 48  | 4.9%  |       |       |

|                                |              |               |            |             |             |             |
|--------------------------------|--------------|---------------|------------|-------------|-------------|-------------|
| <b>OBC Madhesi (B)</b>         |              | <b>Male</b>   | 5          | 0.5%        | 0.6%        | 0.6%        |
|                                |              | <b>Female</b> | 1          | 0.1%        |             |             |
| <b>Dalit (C)</b>               | <b>Hill</b>  | <b>Male</b>   | 4          | 0.4%        | 0.4%        | 0.7%        |
|                                |              | <b>Female</b> | 0          | 0%          |             |             |
|                                | <b>Terai</b> | <b>Male</b>   | 2          | 0.2%        | 0.3%        |             |
|                                |              | <b>Female</b> | 1          | 0.1%        |             |             |
| <b>Janajati (D)</b>            | <b>Hill</b>  | <b>Male</b>   | 60         | 6.2%        | 9.3%        | 14.6%       |
|                                |              | <b>Female</b> | 30         | 3.1%        |             |             |
|                                | <b>Terai</b> | <b>Male</b>   | 36         | 3.7%        | 5.3%        |             |
|                                |              | <b>Female</b> | 16         | 1.6%        |             |             |
| <b>Others, Except A-D(E)</b>   |              | <b>Male</b>   | 6          | 0.6%        | 0.6%        | 0.6%        |
|                                |              | <b>Female</b> | 0          | 0%          |             |             |
| <b>Total</b>                   |              |               | <b>973</b> | <b>100%</b> | <b>100%</b> | <b>100%</b> |
| <b>Persons with disability</b> |              | <b>Male</b>   | -          |             |             |             |
|                                |              | <b>Female</b> | -          |             |             |             |
| <b>Backward Area</b>           |              | <b>Male</b>   | 27         | 2.7         | 2.8%        | 2.8%        |
|                                |              | <b>Female</b> | 1          | 0.1         |             |             |

Therefore, an attempt was made to examine the diversity of caste and sex in the results of 1st year and 3rd year examinations and the number of regular students passing all three yearly examinations. It is supposed that while the result of 1st year shows the pattern of screening of students against the enrolments, the result of 3rd year shows a trend of maximum possible number of students going to job market, though all those passing the 3rd year examination might not have cleared other previous first or second year examinations. It is only the result of regular students passing without failing any examination that indicate how many graduates enter into the job market in a year. The diversity of students passing different yearly examinations is further presented below.

#### *a) First Year Result (2009)*

Out of 140 students passing the LL.B. first year examination, 78.6% are found to be from BC and 15% from Janajati. Dalit, Muslim. The students from 'other' category have not been able to pass the examination, however it is not known whether any student from these communities could have appeared in the examination.

Total Madhesi students passing the examination count 10%, including Madhesi male and female coming from Brahman/ Chhetri, OBC and Madhesi Janajati. Total percentage of female passing the examination is 27.1%. Among them, 18.5% belong to B/C and 8.5% are from Janajati. Only one was from Madhesi origin belonging to Adibasi/Janajati. It was not possible to find the number of students who came from backward area and the disability status of the students.



**Table 19: Detailed inclusion status of first year result (2009)**

|                                 |              |                 |               |       |       |       |     |
|---------------------------------|--------------|-----------------|---------------|-------|-------|-------|-----|
| <b>(A) Brahmin/<br/>Chhetri</b> | <b>Hill</b>  | <b>Male</b>     | 79            | 56.4  | 75%   | 78.6% |     |
|                                 |              | <b>Female</b>   | 26            | 18.6% |       |       |     |
|                                 | <b>Terai</b> | <b>Male</b>     | 5             | 3.6%  | 3.6%  |       |     |
|                                 |              | <b>Female</b>   | 0             | 0%    |       |       |     |
| <b>OBC Madhesi (B)</b>          |              | <b>Male</b>     | 8             | 5.7%  | 5.7%  | 5.7%  |     |
|                                 |              | <b>Female</b>   | 0             | 0%    |       |       |     |
| <b>Dalit (C)</b>                |              | <b>Hill</b>     | <b>Male</b>   | 0     | 0%    | 0%    |     |
|                                 |              |                 | <b>Female</b> | 0     | 0%    |       |     |
|                                 |              | <b>Terai</b>    | <b>Male</b>   | 0     | 0%    |       | 0%  |
|                                 |              |                 | <b>Female</b> | 0     | 0%    |       |     |
| <b>Janajati (D)</b>             |              | <b>Hill</b>     | <b>Male</b>   | 9     | 6.4%  | 14.3% | 15% |
|                                 |              |                 | <b>Female</b> | 11    | 7.9%  |       |     |
|                                 |              | <b>Terai</b>    | <b>Male</b>   | 0     | 0%    | 0.7%  |     |
|                                 |              |                 | <b>Female</b> | 1     | 0.7%  |       |     |
| <b>Others (Except A-D)</b>      |              | <b>Male</b>     | 0             | 0%    | 0%    | 0     |     |
|                                 |              | <b>Female</b>   | 0             | 0%    |       |       |     |
| <b>Unidentified</b>             |              | <b>Male</b>     | 1             | 0.7%  | 0.7%  | 0.71% |     |
| <b>Total</b>                    |              | <b>Male</b>     | 102           | 72.9% | 72.9% | 72.9% |     |
|                                 |              | <b>Female</b>   | 38            | 27.1% | 27.1% | 27.1% |     |
|                                 |              | <b>Grand T.</b> | <b>140</b>    | 100%  | 100%  | 100%  |     |
| <b>Persons with disability</b>  |              | <b>Male</b>     | N/A           |       |       |       |     |
|                                 |              | <b>Female</b>   | N/A           |       |       |       |     |
| <b>Total</b>                    |              |                 | 140           |       |       |       |     |

***b) Third Year Result (2011)***

As Table 20 shows, a total of 224 Students, including the regular students who had started in 2008 and others who had started before that, had passed the third year examination in 2011. Among the students passing 3rd year examination, 76.3% were B/C (male and female from Pahadi and Madhesi community), 18.7% were Janajatis and one person from Muslim community. Among Janajatis, all came from Pahadi community. There was no result for Dalits.

Among B/Cs, only 2.34% were from Madhesi community and they all were male. The portion of total Madhesi students including male and female B/C and OBC passing 3rd year examination is only 5.83%. Students from Madhesi Janajati or Madhesi Dalit are not seen in the result.

***c) Students passing all yearly examinations***

After the analysis of 1st, 2nd and 3rd year examinations of 2009, 2010 and 2011 respectively, it was found that only 59 regular students, admitted in 2008, had passed all three year examinations of LLB of TU. This is too little even if we

compared it to the number of students enrolled in Nepal Law Campus only, which was 1261 in 2008.

**Table 20: Diversity in the result of 3rd Year (2011), LL.B. (T.U.)**

|                         |       |        |     |       |       |       |
|-------------------------|-------|--------|-----|-------|-------|-------|
| Brahmin/<br>Chhetri     | Hill  | Male   | 116 | 518%  | 74.6% | 76.3% |
|                         |       | Female | 51  | 22.8% |       |       |
|                         | Terai | Male   | 4   | 1.8%  | 1.8%  |       |
|                         |       | Female | 0   | 0%    |       |       |
| OBC Madhesi (B)         |       | Male   | 9   | 4.02% | 4.57% | 4.5%  |
|                         |       | Female | 1   | 0.4%  |       |       |
| Dalit (C)               | Hill  | Male   | 0   | 0%    | 0%    | 0%    |
|                         |       | Female | 0   | 0%    |       |       |
|                         | Terai | Male   | 0   | 0%    | 0%    |       |
|                         |       | Female | 0   | 0%    |       |       |
| Janajati (D)            | Hill  | Male   | 24  | 10.7% | 18.7% | 18.7% |
|                         |       | Female | 18  | 8.03% |       |       |
|                         | Terai | Male   | 0   | 0%    | 0%    |       |
|                         |       | Female | 0   | 0%    |       |       |
| Others (Except A-D)     |       | Male   | 1   | 0.4%  | 0.4%  | 0.4%  |
|                         |       | Female | 0   | 0%    |       |       |
| Total                   |       | Male   | 154 | 68.7% |       |       |
|                         |       | Female | 70  | 31.2% |       |       |
| Grand Total             |       |        | 224 | 100%  | 100%  | 100%  |
| Persons with disability |       | Male   | -   |       |       |       |
|                         |       | Female | -   |       |       |       |
| Muslim                  |       | Male   | 1   |       |       |       |
|                         |       | Female | 0   | 0%    |       |       |

As Table 21 shows, out of 59 students passing LL.B. examinations completely, 84.7% (35 male and 15 female) were from Pahadi B/C, 11.9% (5 male and 2 female) were from Pahadi Janajati and two male students (3.4%) were from OBC Madhesi. The total number of female passing the LL.B. examination from the 2008-batch was 17 (28.8%).

**Table 21: Inclusion status of students completing LL.B. (2008-2011 Batch)**

|                     |       |        |    |       |       |       |
|---------------------|-------|--------|----|-------|-------|-------|
| Brahman/<br>Chhetri | Hill  | Male   | 35 | 59.3% | 84.7% | 84.7% |
|                     |       | Female | 15 | 25.4% |       |       |
|                     | Terai | Male   | 0  | 0%    | 0%    |       |
|                     |       | Female | 0  | 0%    |       |       |
| OBC Madhesi (B)     |       | Male   | 2  | 3.4%  | 3.4%  | 3.4%  |
|                     |       | Female | 0  | 0%    |       |       |
| Dalit (C)           | Hill  | Male   | 0  | 0%    | 0%    | 0%    |
|                     |       | Female | 0  | 0%    |       |       |
|                     | Terai | Male   | 0  | 0%    | 0%    |       |
|                     |       | Female | 0  | 0%    |       |       |
| Janajati (D)        | Hill  | Male   | 5  | 8.5%  | 11.9% | 11.9% |

|                         |       |        |    |      |      |      |
|-------------------------|-------|--------|----|------|------|------|
|                         | Terai | Female | 2  | 3.4% | 0%   |      |
|                         |       | Male   | 0  | 0%   |      |      |
|                         |       | Female | 0  | 0%   |      |      |
| Others (Except A-D)     |       | Male   | 0  | 0%   | 0%   | 0%   |
|                         |       | Female | 0  | 0%   |      |      |
| Persons with disability |       | Male   | -  | -    | -    | -    |
|                         |       | Female | -  | -    | -    | -    |
| Total                   |       | Male   | 42 | 71.2 | -    | 71.2 |
|                         |       | Female | 17 | 28.8 | -    | 28.8 |
| Grand Total             |       |        | 59 | 100  | 100% | 100% |

In the sample batch, no students from Madhesi Brahman/Chhetri, Madhesi Dalit or Madhesi Janajati were found to have passed the LL.B. completely, nor any students from communities other than BC, OBC (Madhesi), Dalit and Janajati could have passed it. The data of students with physical disability could not be traced.

#### 3.4.4 Analysis of findings on educational pursuit

The data and findings presented above can be further analysed. The number of students from women and excluded groups pursuing law education is substantially low right from the enrolment phase. The pass out rate is even lower among most of the excluded groups. As per the enrolment report of Nepal Law Campus for 2008, the percentage of enrolment of Pahadi students was 70% whereas that of Madhesi students was only 30%. On gender-wise analysis, the enrolment of female student was found to be 23.2 % against 74.7 % male. According to caste group, the enrolment rate of B/C was found to be 83.4% and that of Janajati was 14.6%. Only 0.7% Dalit and 0.6% each of OBC and 'Others' were found to have enrolled for LL.B. in 2008 in Nepal Law Campus. In view of the result showing only 59 students from the whole country passing LL.B. examination of T.U (out of 1261 students enrolled Nepal Law Campus alone in 2008), a large number of students including those from excluded groups and others seems to have either left the study for some reasons or failed the examinations. The total number of admission in law colleges outside Kathmandu valley is less than half of what is enrolled in Nepal Law Campus, as provided by campus authority.

Though the percentage of female students passing LL.B. of TU completely in 2011 (who were enrolled in 2008) was 28.81%, the percentage of female students passing the 3<sup>rd</sup> year examination in 2011 was 33.25 %. None of the regular Dalit students (enrolled in 2008) had passed LL.B. examinations in 2011 from TU. Neither any Dalit student had passed the final year examination in 2011 which indicates that no Dalit student even enrolled earlier had passed LL.B. examination in 2011. The percentage of regular Janajati students passing LL.B. is 11.9%, of

which the result for Terai Janajati is zero. But, the result of Janajati in 3<sup>rd</sup> year only is 18.7% which indicates slightly higher number of pass outs in year 2011.

Only 0.6% of the students enrolled in LL.B. 2008-batch were from OBC, but their pass out rate in the aggregate results of regular students (2008-11) was 3.4%. The reason for this could be higher number of enrolment of OBC in colleges other than in Nepal Law Campus or their commitment, capability and ability to continue the education.

### ***3.4.5 Diversities in law students and legal professional and national population***

It was not possible to get data of all the law schools of the country, but the enrolment in LL.B. (T.U.) in Nepal Law Campus in 2008 showed 83.4% students from B/Cs, who constitute 32.1% of national population. B/Cs also accounted for 84.7% of passed-out students in overall result of LL.B-2008-11batch. The ratio of involvement of B/Cs seemed very high compared to their share in national population.

The enrolment of Janajati in law education was found to be 14.6%, which is less than half of their share of 36.1% in national population. Only 11.87% of Janajati could pass out all examinations from the 2008-11 batch. The enrolment of Dalit, OBC and Others in law education is less than 1% for each group, whereas the share of Dalit and OBC in national population is 13.3 and 13.7%, respectively.

The share of women, comprising 51.5% of national population, was found to be 23.9% only during the enrolment. Among the enrolled, 97.9% were Hindus, no Muslim and 1.3% were from other religions while the national population is represented by 81.3% of Hindu, 4.4% of Muslim and 14.3% of 8 other religious groups. Only 3% of enrolments were from backward areas while no data could be found for persons with disability.

Among 9095 Lawyers, only 9.4% are women sharing more than a half of the national population. There is only one female senior advocate out of 74; and 10.7% of total advocates, 9.2% of total pleaders and 7.9% of total agents are women.

BCs, comprising 32.1% of total population, account for 76% of total lawyers, among which 83.8% of total senior advocates, 76.8% of advocates, 69.6% of pleaders and 75.9% of agents. The second largest group Janajatis, making 36.1% of national population, account for 18.3% of total lawyers, with proportion of 10.8% of senior advocates, 18.1% of advocates, 19.2% of pleaders and 20.4% of agents.

The percentage of Madhesi lawyers including OBC and others, making 27.6% of national population, is 22.5%. However, the percentage of OBC (Madhesi) lawyers is only 3.4% compared to their share of 13.7% in national population. Only 1.4% of total lawyers are from Dalit community despite making 13.3% of total population and there are only one Advocate and one pleader from Dalit women.

Hindu comprises 97.9% of total lawyers, whereas Muslims and other religious groups count hardly 2% of lawyers, though they share 18.7% of national population.

As the analyses show, the inclusion status in judicial sector is very much imbalanced with the composition patterns of different caste, ethnic and other social groups in the national population.

### **3.5 Highlights of Inclusion Status in Judicial Sector and Related Organizations**

#### ***3.5.1 Summary of inclusion status in judicial sector***

The existing staffing size of judicial sector is 4908 consisting of those of Judicial service and other services working as: a) judges, court officials and staff in different courts; b) public prosecutors and other staff in offices of government attorneys; and c) legal officers and staff in central ministries and government departments. The following are the major highlights of findings on GESI analysis of data on staffing size and diversity in Judicial sector.

- a) The existing staffing in Judicial Sector is predominantly male (86.1%), and hence all kinds of positions are represented mostly by the males: 97% judges, 92.9% gazetted officers, 84% non-gazetted staff and 83% staff from other services and class-less positions. Only 3% of total judges are women, among which 1 Judge (7.1%) in the Supreme Court, 4 judges (4.82%) in the Appellate Courts, and 1 (0.8%) in District Courts. The male dominance is high across all service groups and all levels of positions.
- b) The total staffing by caste and ethnic classification consists of mostly Brahman/Chhetri (77.6%), followed by Janajati, (14.5%), OBC-Madhesi (4.8%), Dalit (2%) and others (1.1%) others. By religious groups, 4610 (98.3%) are Hindu, 32 (0.7%) are Muslim and 48 (1%) are others. Likewise, 165 (3.4%) come from backward areas and 20 (0.4%) represent persons with disabilities (PWD).
- c) Brahman/Chhetri constitute 87.1% of judges, 87.6 of gazetted officers, 82.1% of non-gazetted staff and 66.6% of staff from other services or class-less positions. This is followed Janajati group which (9.4% of total judges),

- 9.3% of gazetted officers, 11.2% of non-gazetted staff, 21.3% of other services. OBC-Madhesi group represent 1.7% of both total judges and total gazetted officers, 4% of non-gazetted staff and 7.7% of those from the other services.
- d) The classification of judges and other officials and staff in judicial sector by religion is featured by predominance of Hindu (98.3%), which constitute 98.7% of total 233 judges, 99.5% of total gazetted officers, 98.7% of non-gazetted staff and 97.1% staff from other services. The representation of backwards areas is very small in all position categories, i.e., 4 judges (1.7%), 9 gazetted officers (1.1%), 68 non-gazetted staff (3.3%) and 84 from other service (4.7%). These positions are insignificantly represented by Dalit and persons with disabilities.
- e) Among judges, while B/C has the largest representation of 87.1%, Janajatis account only for 9.4% followed by 1.7% OBC and 0.4% Dalit. However, the representation of total Madhesi (including Terai BC and OBC) among judges is 10.3%. There is no judge from Terai Janajati and Terai Dalit. B/Cs in total are represented more in Special Courts (89.9%) and District Courts (89.7%) and then in the Supreme Court (85.7%) and in Appellate Court (84.3%). None of the judges is a person with disability though 1.7% of them (2 in Appellate courts and 2 in district courts) were from backward area.
- f) As the judge positions are dominantly occupied by males, Brahman/Chhetri and Hindu, it is so seen in all three groups of judicial service like Judicial, Public Prosecutor and Legal. Male staff have dominant presence in all service groups, i.e., 87% in Judicial, 88.2% in Public Prosecutor, and 87.9% in legal. Each of service groups is dominantly represented by Brahman/Chhetri, i.e., 82.7 % in Judicial Group, 88.1 in Public Prosecutor group and 86.3% in Legal group. This is followed by Janajati representing 11.1%, 9% and 9.3% in the three groups respectively. However, Brahman/Chhetri, Janajati and Dalit from Hill are dominant compared to those from Terai. By religion, Hindus dominate not only all service groups but also all position categories and level of positions within each service group.
- g) Higher the position, the pattern of concentration of B/C is also higher. Only one from Janajati is represented in nine special class positions and the rest come from B/C. Likewise, 96.9% of first class gazetted officers, 94.2% of second class officers and 83.2% of third class officers are from B/C only, each with predominance of Hill B/C male. All the special class, first class and second class officers and 99.2% of third class officers of judicial service are Hindu. Only 0.4% of the third class gazetted officers are persons with disability.

- h) Among non-gazetted officers, the concentration of B/C seems relatively low though it is still 82.1% in average, accounting 84.9% non-gazetted first class and 80.1% non-gazetted second class. Of the total 2031 non-gazetted staff, 1299 (63.9%) are Hill B/C men while 236 (11.6%) are Hill B/C women. Representation of Hill Janajati male and female is 153 (7.5%) and 44 (2.2%) respectively. Dalit representation is at the lowest with 25 males and only one female. As the Hindus account for 98.7% of the non-gazetted officials, the representation of other religious groups is nominal.
- i) The diversity is relatively more visible among 1802 people who either come from other services or are holding classless positions since B/C account for only 66% in this group. Among 524 staff from other services, Hill B/C men have the largest representation (32.4%), followed by Terai B/C men (18.9%), Hill Janajati men (13.5%). Hill B/C women account for 15.3% followed by Janajati women (6.9%). Of 1278 staff in class-less services, Hill B/C men are 687 (53.8%) followed by Hill Janajati men 170 (13%) and OBC men 97 (7.5%), Terai Janajati 52 (4%) and Terai B/C 46 (3.5%). Only 0.2% staffs represent persons with disability.
- j) When compared with available data on diversity in national population, the social diversity among judges, officials and other staff working in judicial sector reflects different dimension of social exclusion in the country.

### 3.5.2 *Summary of inclusion status among Lawyers and Law Students*

The following are the highlights of GESI analysis of lawyers and law students:

- a) While there are 9095 lawyers in the country, only 74 (9.4%) of them are women. There is only one female senior advocate. Moreover, only 10.7% of total advocates, 9.2% of total pleaders and 7.9% of total agents are women. Madhesi women lawyers comprise 10.5% of total Madhesi lawyers. There are only one female Advocate and one pleader from Dalit women.
- b) Among lawyers, 76% are B/C (Hill and Terai); 83.8% of total senior advocates, 76.8% of advocates, 69.6% of pleaders and 75.9% of agents. The share of Janajati among total lawyers is 18.3%. Likewise, 10.8% of total senior advocates, 18.1% of advocates, 19.2% of pleaders and 20.4% of agents are from Janajati. The percentage of Madhesi lawyers including OBC and others is 22.5% though it is only 3.4% for OBC (Madhesi).
- c) Dalits are least included among lawyers as they account for 1.4% of total lawyers with 0.9% of total advocates, 5.1% of total pleaders and 0.7% of total agents. Likewise, there are only 10 (0.11%) lawyers from those with physical disability.
- d) Among the students enrolled in L.LB first year in 2008 in Nepal Law Campus, 83.4% were found from B/C followed by 14.6% of Janajati.

Dalits account only for 0.7% and OBC and 'Others' comprise only 0.6% each. The share of women during the enrolment was found to be 23.9%.

- e) As the result of TU-LL.B. regular students (2008-11 batch) completing the whole course shows, the share of B/C was the highest with 84.7%, followed by Janajati with 11.9% and OBC with 3.4%. Others were not able to pass in the examination that year. The share of women in the result was 27.8%.
- f) When compared with the compositions pattern of different caste, ethnic and other social groups in the national population, the inclusion status in both law education and legal profession is very much imbalanced.

While B/C are traditionally attracted to the legal profession and law education more than any other groups, the share of women in them is relatively low compared to men.

### ***3.5.3 Critical observations on the inclusive status***

A number of critical observations can be made on the present imbalanced inclusion status of the judicial sector, covering judiciary and other related organizations, as presented below:

- a) Though the range of diversity in Nepal is quite wide with no single caste and ethnic groups having a clear dominant representation in national population, B/C have continued to play dominant roles in the governance and administration of the modern Nepalese state. For long time, this group had enjoyed relatively better access to the State's services and resources, including access to education and control of the State's administrative functions. Social and political environments continued to be favourable for this group even after the restoration of multi-party democracy in 1990 with other groups largely being unable to gain a firm foothold in the power structures. Since the state institutions have been primarily led by the male B/Cs, it is argued that their dominance also have a disempowering impact on woman and other socially excluded Dalit and ethnic or religious minority groups. Besides, with Nepali, the official language of Nepal, being the mother tongue of B/C, the linguistic environment in the legal education and occupation was highly favourable for this group.
- b) Since the representation of B/C at the senior levels is even higher (occupying 88.9% of the special class and 96.9% of the first class level positions which can be reached only after 15 to 20 years of service), it is less likely that excluded groups (barring a few) will make it to the top level positions of judicial sector in the near future. Moreover, with only a few qualified candidates competing and succeeding to get entry into judicial



services as third class officers under the reservation quota, this situation is not likely to improve significantly in foreseeable future.

- c) Members of caste/ethnic groups other than B/C entered less into the law education as well as legal profession on account of the factors like poverty, lack of awareness, traditional social cultural practices and related economic and professional challenges. It is clearly reflected in low enrolment of Janajati, Dalits and other minority groups in legal education. Similar low representation is observed in legal profession. Diversities in persuasion of law education as well as legal profession are also pre-conditions for improving diversity in judiciary. So, in the prevailing situation, the likelihood of increased representations of women and socially excluded groups in the judiciary is understood to remain low for some time to come.

A vibrant debate is going on whether justice delivery is being impacted on account of a non inclusive judiciary. This is a subject which cannot be discussed objectively without research evidence on impact of GESI in justice delivery. However, attempts have been made in the succeeding chapter to highlight the relevancy of GESI in judicial sector from different perspectives with identification of helping and hindering factors for making inclusive judiciary.



## Chapter 4

### Assessments of Relevance and Enabling Factors and Barriers to Promotion of GESI in Judiciary

#### 4.1 Relevance of Inclusiveness in Judiciary in Nepal

The Judiciary has completed 60 years of its existence and has made significant contributions to the governance system in Nepal. It has played a vital role in interpreting the constitution, acts and regulations of the country and in facilitating coordination between different organs of the state. There is not any social, economic or political area of governance that has not been influenced directly or indirectly by the judiciary.

The Judiciary does not participate in political or policy making activities as these spheres fall under the domain of the legislative and the executive organs of the state. However, of late, some landmark rulings, which have profound influence on Nepalese politics and policies, have been made by the Judiciary. These, among others, included the ruling on the extension of the Constituent Assembly and issuance of directives to the Government to formulate policies, acts and regulations in alignment with the existing legal provisions and to uphold international legal obligations and instruments as Nepal has been a signatory to various international conventions. It is playing a decisive role in defending democracy and promoting social justice by ensuring that: i) political parties uphold democratic values in line with constitutional provisions; and ii) the government abides by its legal commitments to provide social security and justice to the people at large.

##### *4.1.1 Expanded roles and influences of judiciary*

The courts have become more sensitive to the evolving socio-economic and political milieu of the country and their attention has also been increasingly drawn towards issues related to the rights of women, children and other disadvantaged groups. The Judiciary has taken a more proactive approach towards social justice by not only limiting its role to interpretation and implementation of existing laws but also promoting laws to uphold social justice. The contributions made by the Judiciary for the protection of and access to fundamental rights of women can be validated by a number of its decisions delivered while interpreting laws and the constitution<sup>106</sup>.

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<sup>106</sup> Fifteen landmark judgments rendered by the Supreme Court are included in “Landmark Decisions of The Supreme Court, Nepal on Gender Justice”, National Judicial Academy,

Endowed with exclusive rights to interpret the constitution and laws of the state, courts' interpretation can be vital in promoting gender equality and social inclusion. The Judiciary can be a powerful agent for social change when it works to support gender equality and social inclusion, as its verdicts, which carry the backing of the State, are enforceable and become precedents or norms to be followed across the country. As a result, the influence of the court goes beyond those who come into direct contact with them. In this respect, mainstreaming GESI approach in the Judiciary gains prime significance in order to ensure good governance, democracy and social justice.

#### ***4.1.2 Increasing trust upon judiciary***

Although justice is provided on the basis of legal provisions and evidences irrespective of who sits as the presiding judge, majority of the stakeholders tend to hold the view that the person on the bench will have an impact on the outcome of a case. A judiciary which is represented predominantly by particular social groups is likely to be seen with suspicion that it can lose its insights and perspectives of different kinds of experiences, needs and dynamics of other social groups. Further, a non-inclusive Judiciary can create mistrust on the justice system among excluded groups who are unable to identify with one of their own, speak in their own language or even feel comfortable enough to speak openly, especially if a woman does not get an opportunity to share her issues with another woman. Though inclusive representation in the judiciary by itself cannot guarantee that justice will be better delivered, it will ensure that the representation of women and disadvantaged groups in the judiciary will be an important indicator of their participation in decision-making of one important state organ. Inclusiveness and diversity will help generate faith and trust among all sections of the society towards Judiciary as the last place to receive Justice, which is in fact a solid foundation for existence of such institution of the state. Moreover, the diversity helps judiciary hear cases not only in emphatic ways but also to analyze and understand the problems objectively from a broader perspective. It is therefore imperative to make the judiciary, judicial service and legal profession diverse so that justice can be delivered and perceived through a wider horizon

#### ***4.1.3 Increasing access to judiciary***

In the absence of a justice system which is perceived fair, impartial and representative of the diversity of those who are being judged, people from excluded groups might hesitate to approach the judiciary. This was validated by the following opinion of one honorable judge of the Supreme Court interviewed in the course of this study: *“Inclusion in the judiciary increases perception of justice and access to the courts because judges are seen as mirror of group identification”*. Access to justice transcends beyond just making use of the justice systems. It also encompasses negotiations for equitable rules and processes and empowerment of

disadvantaged groups to challenge inequalities. Thus, it is important to create an enabling environment which contributes towards making the judiciary accessible to all section of the society.

Diversity in legal profession also helps build confidence of excluded groups and reduce conflicts among different groups though power balance between the various groups. Inclusiveness in legal profession is also important because it is a pool from where Judges are nominated. It also helps easing the communication between the client and the lawyer of the same community where language or culture is a barrier

#### ***4.1.4 Contributing towards the advent of affirmative legislations and actions***

Inclusiveness in judiciary is desirable for making a just society by providing special attention to the legal need of the people belonging to a particular community or gender. Representation of women and men of different socio-economic groups on the bench – as well as in other administrative functions – can have an impact on the GESI responsiveness of the courts. There are many empirical evidences from around the world suggesting that increased representation of women and other minority groups on the bench has had a direct and significant impact on their lives.

Increased representation of women in the judiciary has positively contributed towards the advent of affirmative legislations and actions related to physical and sexual violence against women, access to safe abortion, pay equity and harassment in the workplace. Thus, inclusive representation on the bench and in legal profession is not only a symbolic recognition and corrective action of the historical injustices suffered by women and excluded groups but also an effective aid to bring positive GESI friendly changes in legal provisions.

## **4.2 Enabling factors to promote GESI in judiciary of Nepal**

Promotion of GESI in judiciary has been a subject of attraction for all major actors of the state reform in recent years. This is further supported by the empowerment of members of the society in all segments. In Nepal, the major factors that enable promotion of GESI in judiciary are briefly described below:

### ***4.2.1 Political change***

The establishment of multi-party democracy in 1990 provided space to diverse groups to express their views openly and to assert their identities and rights as equal citizens. Deep-rooted exclusion, uneven geographical development and poor governance in Nepal led to socio-political conflict and violence for over a decade. There was historic people's Movement (II) in 2006 which resulted in the

abolition of monarchy and signing of the Comprehensive Peace Accord (CPA) between the CPN-M and the other mainstream political parties. Nepal was formally declared a multi-ethnic, multicultural and multi-lingual secular federal democratic republican state by the Interim Constitution of Nepal, 2007. This was a reflection of state's responses and concern to the regional, cultural, ethnic and gender-based discriminations and inequalities. This has also encouraged people now to make more demand for more access to the state machinery and offices, including the political, legislative, judicial and executive bodies of the government.

Nepal, which began a peace process in June 2006, is in a post-conflict transitional period of rehabilitation, reconciliation and reconstruction of a society that has suffered centuries of discrimination and inequality. This has provided both huge opportunities and challenges to set up new systems and build new institutions to reduce inequalities and exclusion. Inclusion of women and other disadvantaged groups in the development agenda and institutional mechanisms of the state has been at the centre of the political and social discourse. Various schemes and programs for women and other marginalized groups, endorsed by and implemented through various development plans, are indicative of the political commitment to bring about change in the social and economic status of women and other disadvantaged groups

#### ***4.2.2 Institution and policy reforms***

The changing socio-political environments in the country with new progressive legal arrangements and the commitments made by the Government in international conventions on equality, inclusion and human rights have contributed towards the formulation of policies on gender equality and social inclusion. The Interim Constitution of Nepal (2007) provides an interim legal framework for the government to promote gender equality and social inclusion through inclusive state restructuring and ensure fundamental rights to women and socially excluded groups. It has provisioned separate articles for women's fundamental rights (Article 20) and it refers to the need for all groups to be proportionately represented in the state structure (Article 21) and the right to education in one's mother tongue (Article 17). It also authorizes the State to implement measures for the "protection, empowerment and advancement of women, Dalits, indigenous nationalities, and Madhesis" (Article 13).

Social inclusion gained prominence in development planning and public discourse in Nepal primarily after it was included as one of four pillars of the Poverty Reduction Strategy Paper (PRSP) in 2002, which was also Nepal's Tenth Plan (2002-2007). The PRSP sought to devise various inclusion-oriented policies by identifying ethnic and caste-based disadvantaged groups as deprived communities. The next two consecutive Three Year Plans (2007/08-2009/10 and 2010/11-

2012/13) also recognized the need to adopt an inclusive development process for ensuring increased access of excluded groups to public services and economic opportunities.

There have been several policy actions to increase the representation of women and excluded groups in political institutions and civil service. The Constituent Assembly Member Election Act allocates seats to women, Dalits, ethnic groups, Madhesis and persons with disabilities (PWD) under the proportional electoral system. Similarly, as stated earlier, the 2007 amendment to the Civil Service Act reserves 45% of vacant positions for excluded groups. A relatively increased diversity among the gazetted III class and non-gazetted I class staff in recent years can be attributed to this reservation provision. Nepal has also undertaken several international commitments to address exclusion and inequality. Because of reforms in policies and institutional areas Nepal has been ranked 36th out of 86 non-OECD countries in the Social Institutions and Gender Index (SIGI) of 2012, whereas it was ranked 65th out of 102 countries in the SIGI of 2009. (THT 2012)

However, significant progress on the effective implementation and achievement of the goals of these statutes are yet to be seen given the state of political turmoil and bureaucratic inefficiency.

#### ***4.2.3 Right-based movement***

Representatives of women and disadvantaged groups and activists are also raising their voices through social activism. Supported by the international community, many civil society organizations take up the issues of women and disadvantaged groups to develop a vibrant civil society advocating for their causes. The increasing demands for and pressures created by the civil society at the local, national and international levels for gender equality and social inclusion have drawn the attention of all three organs of the state to be responsive to GESI concerns. Civil society organizations have also been playing an active role in inviting the interference of the judiciary when the state intrudes and violates the rights of the poor and the weak. Moreover, through public interest litigation and individual initiations numbers of writs have also been filed in the Supreme Court against non-inclusive recruitment in public offices<sup>107</sup>.

#### ***Box 1:***

##### Sunil Ranjan Singh and Dipendra Jha Vs Tribhuban University:

In response to a writ petition filed by advocate Sunil Ranjan Singh and Dipendra Jha, the Supreme Court issued a stay order (2012/09/18) on Tribhuban University's appointment process of 49 professors and 57 assistant professors in

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<sup>107</sup> This was reported during consultation in the Supreme Court.

the open competition category. Advocate Singh and Jha filed the writ saying that the appointment advertisement for those posts published by the University has breached the inclusive policy of the country and TU's Law of Employees Terms of Service 1993. Citing article 13 (3) of the Interim Constitution which mentions that the state will not make any discrimination against citizens based on class, gender, religion, and languages, the petitioners have asked the Supreme Court to scrap the advertisement.

During the FGD, a representative from the excluded group opined “*Agenda of inclusion has been firmly established in political and bureaucratic levels. Strong voice will be raised whenever these institutions will show exclusionary behaviour*” This belief among excluded group shows a growing hope and confidence to enter into the state machineries where they were not before.

#### ***4.2.4 Enhanced understanding of GESI within the judiciary***

The Strategic Plan documents of the Supreme Court (SC) as well as the Nepal Bar Association (NBA) cite inclusiveness and representation as one of the core values they aim to promote in the Nepali Judiciary. The NBA has legal aid support and professional development training programs for women lawyers and lawyers from disadvantaged groups. It has also conducted a need assessment study to identify barriers faced by woman for their entry into the legal profession<sup>108</sup>. To increase women's participation in legal profession, the study has made a number of recommendations to the government, universities and law schools, Nepal Bar Council, NBA and the Judiciary. Majority of the stakeholders within the judiciary were also found aware of the emerging issues of GESI. Under- representations of women and disadvantaged groups are acknowledged by all the stakeholders consulted who expressed that inclusion would be highly appreciated in the judiciary.

For the judicial system to be competent and effective, human resources involved in administration of justice also need to be competent. For this, National judicial Academy, which was established under the National Judicial Academy Act, 2006<sup>109</sup>, has been carrying out its activities in imparting training, undertaking research activities and bringing out its publications meant to enhance knowledge and capacity of human resources working for the judiciary. It has conducted trainings related to overall professional capacity enhancement for Judges, government attorneys, officers under judicial services, lawyers and other officials working under quasi-judicial institutions.

<sup>108</sup> Ringing the Equality Bell, The role of women lawyer in promoting gender equality in Nepal, Nepal Bar Association 2009

<sup>109</sup> Actually, it was established in 2004 by the National Judicial Academy Ordinance, later it was substituted by the Act of Parliament, the National Judicial Academy Act, 2006.



**Table 22: Percentage of GESI-related training programs conducted by NJA during 2009/10 to 2011/12**

| Year    | Total number of seminar/workshop and | Number of training related to GESI <sup>110</sup> | Percentage of GESI related |
|---------|--------------------------------------|---|----------------------------|
| 2009/10 | 62                                   | 8   | 13                         |
| 2010/11 | 82                                   | 14  | 17                         |
| 2011/12 | 82                                   | 19  | 23                         |
| Total   | 226                                  | 41  | 18                         |

NJA's total number of workshops, seminars and training programs related to GESI has increased from 13 percent of total programs in 2009/10 to 23 percent in 2011/12, indicating increased realization and sensitivity on GESI issues in the judiciary which can open opportunity and doors for inclusion. In addition, it has conducted a number of research activities in different areas of law and justice. Its major areas of training, research and publications include commercial law, mediation, human rights, combating trafficking of women and children, juvenile justice, gender justice and rights of marginalized people. Majority of the stakeholders consulted were of opinion that NJA's efforts have drawn more attention on GESI issue in the judiciary.

### **4.3 Barriers faced by women and excluded groups for participation and representation in the judiciary**

Despite notable progress in terms of policy reform initiatives that promote gender equality and social inclusion in different structures of the State, statistical evidences indicate that women and disadvantaged groups are poorly represented in the judiciary (details in chapter 3.2). This can be primarily attributed to legal, social, cultural, economic and institutional barriers that inhibit their entry into the legal education, legal profession and judicial services. As part of the present research study, various activities like interviews, interactions and focus group discussions were organized for intensive consultations with wider group of stakeholders including judges, lawyers, and experts and representatives of the excluded groups to assess these barriers. This section highlights the main barriers of women and excluded groups to enter into the judiciary as well as to pursue law education and legal professions.

<sup>110</sup> Gender issues and gender justice, Gender Based violence, juvenile justice

### ***4.3.1 Barrier to enter the judicial service***

The barriers to enter the judicial service are many, ranging from legal and procedural to institutional, as highlighted below:

#### ***a) Legal and procedural constraints:***

Only a small portion of legal practitioners are found in judicial services (government attorneys, judges and officials in legal services of the government). As reported in chapter 3, the total number of people working in judicial sector of Nepal is 4908, which includes 232 Judges, 2873 staff members in the different professional groups of the judicial service and 1802 staff members belonging to different positions of other services and class-less positions. The absorption rate for public services in the state's institutions is low. In an estimate, the judicial service seems to have offered only 40 vacancies every year on an average<sup>111</sup>. For this, candidates must get through the Public Service Commission's written examinations and interviews (after passing the written tests) and both tests are conducted in some specific locations in different geographic regions. Prior to the examination, it is also considered an advantage to attend the customary preparatory classes to be more competitive. A sizable cost is required to partake in these activities for the people coming from remote area. As a result, a qualified candidate belonging to poor and excluded communities is not only in a disadvantaged position to compete with his peers, but is also de-motivated to apply due to long process and associated cost.

#### ***b) Inadequate proactive measures:***

In spite of the rhetoric and the commitments to make the judiciary inclusive, decision makers in the bureaucracy and the judicial sector appear less willing to initiate proactive measures to develop human resources and facilitate their supply into the judicial service for the promotion of an inclusive judiciary. Many of the reserved positions are not filled up as candidates fail the entrance examinations<sup>112</sup>. This is apparent in terms of inadequate institutional willingness and provisions to apply a GESI sensitive approach for the development of human resources and professionalism in the judicial sector by relevant agencies such as the Judicial Council, Nepal Bar Council, NJA, educational institutions, education policy-making authorities, etc. For instance: i) NJA's human resource development initiative limits itself to the current stock of judicial officials and legal practitioners and does not target prospective practitioners; ii) Judicial Council has not prepared a long term plan for development of diverse human resources for judicial sector.

<sup>111</sup> Based on stakeholder's consultation

<sup>112</sup> Two seats for Dalit's for Government Attorney remained vacant in 2012

***c) Lack of GESI-friendly institutional structure:***

Most of the institutions in the judicial sector are devoid of GESI units to specifically deal with GESI issues. In institutions, where gender focal points have been designated, the core responsibility of such designated officials primarily lies in other functions with the gender focal point being a mere add on. In such circumstances, their role as the gender focal point is not accorded priority and is mainly limited to ritual participations and/or representations in gender related events and activities.

In recent times, women attorneys are reportedly organized and engaged in making a crucial difference in promoting women's issues and formulation of legal provision for women's rights. The International Association of Women Judges (IJWA) was formed in 1991 with the objective of encouraging women to consider careers in the judicial system and to advocate governments to select and promote women as judges. The Nepal Chapter of the IJWA was formed in 2000, but it has remained mostly inactive except for participating in international conference and meetings called by IJWA. It has yet to succeed in creating institutional structures that are favorable for women's entry into the judicial systems as lawyers and judges.

Though NBA has conducted some professional development training targeting women and disadvantaged groups, these are not regular programs. Since these programs are conducted only on an *ad hoc* basis depending upon availability of resource and sponsor, any institutional structure to support entry of women and disadvantaged groups into the judiciary and legal profession has hardly existed. Likewise, despite NJA's increased workshops, seminars and training programs on GESI, capacity building of those women and excluded groups working inside and outside judiciary remain to be far from being adequate.

The reservation of vacant position can promote the entry of women and excluded groups into judicial service to some extent, but the support system to develop their professionalism is largely inadequate during both pre-service and in-service phase to make judiciary inclusive without compromising quality of service.

#### ***4.3.2 Barriers to become Judges***

Becoming a judge is one important career goal for many legal professionals. Inclusiveness in judiciary has also been reflected by the type diversity that exists among judges. Various barriers are observed to become judges, which also explain why the current judiciary has low diversity as reported in earlier in chapter 3.2. Such barriers are briefly identified below:

### *a) Constitutional provisions:*

In the current socio-economic context, constitutional provisions for the appointment of judges in the Supreme, Appellate and Districts courts (as presented in box 2) can become a barrier for the entry of women and excluded groups in post of honorable judges as these are not differentially supportive for such groups. As these provisions, on the one hand, do ensure that merit is not compromised in the appointments of judges, they, on the other hand, are likely to pose as barriers for the entry of women and excluded people into the judicial service as women and excluded groups possessing the required experience and qualifications are comparatively less. However, the judge appointment standards recently enforced by the Judicial Council have made some provision for acknowledging the need for inclusiveness in appointment of judges.

#### **Box no 2:**

According to the Interim Constitution 2007: i) Any person who has worked as a Judge of an Appellate Court or in any equivalent post of the Judicial Service for at least seven years or has practiced law for at least fifteen years as a law graduate advocate or senior advocate or who is a distinguished jurist who has worked at least fifteen years in the judicial or legal field is eligible for appointment as a Judge of the Supreme Court (Article 103); ii) Any person having a Bachelor's Degree in law and has worked as a District Judge or worked in any other equivalent post of the Judicial Service for at least seven years or has practiced law for at least ten years as a law graduate advocate or senior advocate or who is a distinguished jurist who has worked at least ten years in the judicial or legal field is eligible for appointment as a Chief Judge and Judge of the Appellate Court (Article 109/2); iii) Any person having Bachelor's Degree in law and has worked as a second class officer of the Judicial Service for at least three years or has practiced law for at least eight years as a law graduate advocate is eligible for appointment as a Judge of the District Court (Article 109/3).

### **b) Judges appointment process**

At present, the judiciary is one of the least inclusive institutions as only seven out of the total 232 judges are women while the number of judges representing disadvantaged communities and castes is also very low (details in chapter 3.2). As argued by those interviewed during this research, the appointment process for judges does not seem to have followed a democratic, inclusive and representative practice in line with the Supreme Court Strategic Plan 2009-14. Although the Civil Service Act reserves 45% of vacant posts for excluded groups, this does not apply for appointment of judges. The Judicial Council is solely responsible for making recommendations for the appointment, transfer, disciplinary action and dismissal of judges. The Judge Appointment Standards 2012 has just given a consideration to inclusion but has not made inclusion mandatory in the recruitment of judges. A

writ petition was filed at the Supreme Court (Nov 4, 2012) challenging the appointment procedures as being unconstitutional. This challenge against the Judicial Council's appointment procedures has generated a debate on relevancy of inclusion in the judiciary.

JC's current initiatives to appoint judges of Appellate and Districts courts through free competition by developing and enforcing required standards and procedures are worth appreciating to make the appointment participative, fair and transparent. During the consultation in the Judicial Council, it was revealed that they also have recently drafted a bill on inclusion and open competition in the judiciary in consultation with Nepal Bar Association and justices of the Supreme Court, and forwarded it to the Ministry of Law and Justice for cabinet approval. The draft bill has proposed a quota system for the inclusion of women, Janajatis, Madhesis and Dalits and other backward communities while appointing judges. The bill was prepared in the wake of the new inclusion policies adopted by the government as well as popular demand for competition and transparency while appointing judges at different levels. The bill makes inclusion mandatory in the appointment of judges at the district courts, which is the entry level. This provision, if approved, will be a major departure from the current practice of appointing judges as it, coupled with continuation of free-competition based appointment, will do away the problems that can emerge from appointment on the basis of a roster prepared by the JC secretariat or discretion of the JC.

### ***4.3.3 Barriers for pursuing Law Education***

Pursuing law education can be taken as preparation to enter into legal profession or judicial service. Most of them are attracted to law education to earn additional degree and enhance their capacity and understanding of law and analytical skills, not necessarily to become legal practitioners or enter into judicial service, so that they could do better in the areas of their work such as in administration and business. It is essential to complete at least LL.B. in order to become a lawyer or to become a gazetted officer in judicial service. Admission into a law college is the first rudimentary step for a person aspiring to be a legal practitioner. However, for women and disadvantaged groups, this is where their predicament begins. Women and people from excluded groups, most of whom are economically challenged too, find difficulty in pursuing legal education for various reasons.

As observed from the focused group discussions and personal interviews with law students and people representing coming from the excluded groups, the following are found as the major hindrances in pursuing law education.

**a) Law education system**

Lack of knowledge and scope of law education among the parents and students is one of the barriers to enrol into law education. Unavailability of basic knowledge about law in secondary and higher secondary levels is also the root cause of such lacking. The lowest level of education available in the academia is 3-year LL.B. Since LL.B. can be joined only after the Bachelor's Degree in any discipline, many of students do not want to join the LL.B. as it is again nearly equivalent time consuming and also being equivalent to Bachelor's Degree only whereas one can earn Master's Degree in 2 years after the Bachelor's Degree. This is another point of deterrence for joining law education to the students coming from excluded groups, who are not well known to the scope of law. The phase-out of Proficiency Certificate in Law, which was accessible after passing the School Leaving Certificate (10 year schooling), with introduction of LL.B. course has limited excluded people's access to law education affecting their access to legal profession or to judicial service.

**b) Limited and centralised colleges**

Law education is available only in some major cities of the country. Most of the good colleges are centralized in capital city only. Currently, there are eleven law colleges, comprising public and private colleges, in the country. Of this, six colleges are located in Kathmandu and the remaining colleges are located in the district headquarters or large municipalities - Dharan, Rajbiraj, Butwal, Pokhara and Nepalgunj - where the cost of living is quite high. Besides making students of excluded groups unaware of law education, this has also limited the access of many students who wish to pursue law education but are not in a position to go to such distant places because of their economic condition or social conditions.

**c) Associated economic cost and inadequate support**

Expensive Law Education: Law education, as said above, is seen comparatively costlier than many other subjects of humanities and social sciences. On the top of that one has to study at least for 5 years after +2 (higher secondary) to earn LL.B. from Purbanchal University or B.A.LL.B. from Tribhuvan University. But the fees are at least double than the regular LL.B. course offered by T.U. that requires 3 years after completing bachelor's degree in any other disciplines. Students from excluded group with weaker economic conditions are hardly attracted to study law.

For majority of the Nepalese people, who live in the semi urban and rural areas, the cost of college education works out dearer than for their urban counterparts as they have to migrate to urban areas for higher education. Migrant students from rural areas have to bear high living expenses in the cities, which works out to

as high as 10 times more than the tuition fees in a public college<sup>113</sup>. Migrant students belonging to the lower income strata cannot afford to enrol in private colleges where the standard of education and the regularity of classes are considered comparatively much better than public colleges. This situation is more severe in the case of law colleges with only five cities, excluding Kathmandu, offering law education. In this respect, the situation in the far-western region, which has the lowest human development index in comparison to other regions, is the most severe as the entire region is bereft of a law college. With about 19.81 million of the 26 million population of the country falling in the lower middle class and below categories<sup>114</sup> (i.e. daily earning of less than 500 rupees), law education is generally out of the reach of a vast majority of youths in the country as they are least likely to have the financial means to pay for college fees and their upkeep in the expensive urban areas where the law colleges are located. As a result, women, Dalit janajati and Madhesi (who have higher poverty incidence) are most likely to be denied education in the few centralized law colleges. The scholarship schemes in legal education for women and excluded groups do not cover living expenses.

***Limited reserved seats and lack of scholarships:*** There are unlimited seats available to the students willing to join three year LL.B., but the seats are limited for other courses such as LL.B. in KSL or BA.LL.B. in Nepal Law Campus or LL.M. anywhere. Although, few seats are reserved for people coming from excluded groups in Nepal Law Campus, they are not sufficient and do not guarantee scholarship. Lack of sufficient scholarships aiming at excluded groups in law education also deprive many from studying law. Limited scholarships in law are available in some colleges like Nepal Law Campus or Kathmandu School of Law, but most of them are provided only on a merit basis. Thus it is seen that no substantial measures are adopted to include people from excluded groups into legal education. The government does not seem to have any plans and incentives to attract people from excluded groups in legal education.

***Lack of hotel facilities in law colleges:*** Lack of hostel facility with affordable price is another factor that limits the opportunity to study law for those constrained by economic condition and willing to stay safe. Renting out a room in urban area is beyond the capacity of many of the students coming from excluded groups. The parents of female students prefer hostel rather than renting a separate room for them, if they don't have their kin in the town.

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<sup>113</sup> As indicated by stakeholders during the focus group discussions

<sup>114</sup> Bhattarai U K, Intrepid middle class Backbone of stability, peace and development, Himalaya Times 01/07/2012

**d) Traditional societal values and perceptions:**

While both women and men face challenges (such as physical distance from law schools and high costs, ignorance about the scope, and social perception) in accessing law education, women often experience additional barriers. Where law colleges are distant from communities, people are less willing to send their daughters for education for economic as well as social and security reasons.

In Nepal, cultural “carriers” reinforce traditional societal values and stereotype perceptions. The ancient value of caste-based working is still somehow prevalent. Moreover, people find it easy to follow the area where their predecessors have worked. For example, Madhesi are much interested in technical subjects like MBBS, forestry and agriculture whereas Janjatis are much interested in joining British army, Indian army or Nepali Army. As remarked by one interviewee, “Only highly intelligent, articulate and respected people are suitable to become lawyers and judges” has been a fine example of a typical societal mindset in Nepal. The example is often implicitly and explicitly related to upper caste features that are perceived to have been possessed by Braham Chhetri. Such mindsets have for long discouraged women and disadvantaged communities from venturing into the legal profession.

Generally people like to adopt a profession that is known to them and pursue their education accordingly. Since the excluded groups have mostly been doing their traditional business or occupations, they have very limited Interest in law education and they are rarely aware of its scope. Legal profession or career in Judicial Service is also a relatively new field for most of them. Moreover law educators are focused just on theoretical knowledge without considering the need of practical knowledge (THT, 2013).

Obviously, family and societal background in general have a strong influence in shaping the occupational choice of young people. Right from a young age, a role model from the family or the community they live in often have a profound influence in shaping their occupational choice. As children of disadvantaged groups seldom see their elders in the judiciary, they are least likely to have a role model from their community to emulate. It is said that the students of excluded groups do not even dream of being a lawyer, legal officer or a judge, as their forefathers had not worked in the field. So it is less likely for anybody to invest substantial time and money in an unknown field where they don't see any role model of their community and hence very limited chances of support and success and less likely to be motivated to opt for this profession.



**Box 3**

This perception of "role model" was illustrated by an honorable judge from the Janajati community of a district court in the Eastern Region who had become the only person in his village to have a law degree. *"Despite constant discouragement by family and friends for venturing into an arena where no one from the community had entered into, I was determined to prove them wrong. Now that I have become a judge, I am accorded high respect by my family and the community. I am confident more children from our community will be encouraged to opt for the legal profession."*

**e) Inherent demands of courses of studies**

Law education is viewed among such education streams which require study of relatively more subjects and demand extra labour to understand theories, provisions and practice of laws. Most of the students from excluded groups, who do not have a tradition of reading and writing and women who need to spare plenty of time to serve the family members would not prefer or are not encouraged to join law education. Though, parents have been aware to a large extent to avail higher education to their daughters, they would prefer sending them to study Humanities and Social Sciences with easier subjects where they can get a university degree while supporting in household chores side by side. And also such studies are far cheaper than studying laws.

Law education has been low priority and less attractive for many reasons as stated above, especially for those staying outside Kathmandu. The colleges being run outside Kathmandu valley are facing scarcity of students to study law. Six colleges running outside the valley are already closed. As explained by a Nepal Law Campus authority, the number of students being enrolled in law classes is significantly low in colleges out of Kathmandu, and the students appearing the exams are even lower than the rate of enrolment.

**4.3.4 Barriers faced by women and excluded groups in pursuing Legal Profession**

Based on the focused group discussions and the interviews conducted with women lawyers and lawyers from excluded groups, it was known that women and other candidates of excluded groups face various barriers in pursuing legal profession even after having completed bachelor's degree in law. It was also shared that women had to face additional difficulties other than the ones common to other excluded groups.

Different kinds of barriers appear right from the phase of starting up the profession and while continuing the profession. As observed during interviewees

and focus group discussions, the following are considered as major challenges in pursuing legal profession.

**a) Professional challenges:**

If a candidate passes the Bar examination and gets registered as a legal practitioner, s/he just becomes eligible for entering into legal profession. The main struggle starts soon after the decision to start the profession. They either have to work as apprentice with senior or experienced advocates or set-up their own law firm taking a risk.

Legal profession in Nepal is still in evolving phase, and the profession has not been well organized yet. Many established lawyers do not like to guide and provide opportunity to handle cases to the new lawyers. They also allegedly fear losing of cases or taking away of their business by such practitioners after they are trained. In order to get accepted by a good lawyer as an apprentice, one often needs to be recommended by others or has to convince the senior of his/her commitment, honesty and hard work. Getting proper apprenticeship is another hurdle for all wishful legal practitioners irrespective of race, caste, religion, physical integrity or gender. New lawyers from excluded group may lack these opportunities and fail to enter into the profession.

If one chooses to set up one's own law firm alone or in partnership, then s/he will face difficulty in getting jobs, as the clients would not prefer to go to a fresh lawyer who does not have enough experience. One has to have support from experienced lawyers to suggest them when they face difficulty in handling cases. Excluded groups, not having their kin or supporter in the profession, often hesitate going to the seniors again and again for their support and also give up the idea of running a law firm.

As the legal profession also generally requires continuous study, hard labour and investment of extra time, it is not like some other jobs which are over after certain fixed office hours. Since legal profession requires extra patience and hard work to be successful, people from poor and marginalized groups should have been unable to invest required time and money for such profession.

**b) Economic challenges:**

New comers in this profession can experience severe financial problems if they rely entirely on the profession for their livelihood. A long gestation period (2 to 5 years) for establishment and a similar time span for recognition along with highly unpredictable earnings until establishment can dissuade a fresh law graduate from taking up private legal practice. This phenomenon was validated by an established lawyer who had this to say: *"It is not possible to be a legal practitioner without an*

*alternative source for the upkeep of the family.*” This statement may not be conclusive but is definitely indicative of how financial constraints can easily inhibit lower middle class and poor income groups and women from entering private law practices.

Even if they get engaged in a senior's law firm, the hard day is not over. Working in other's law firm is not like a job, where one gets a fixed and standard salary. This is perceived as voluntary work to learn the skill, where s/he may or may not get remuneration. For those, whose family members expect regular salary from their graduated fellow, it is next to impossible to sustain in the profession. Similarly, having one's own law firm alone or in partnership is even difficult. Investing the establishment cost and maintenance cost could be very difficult for the people coming from excluded groups in our context where majority of Dalits, people coming from backward areas and marginalized indigenous peoples are economically weaker.

Many people from excluded group may even face difficulty in appearing the Bar Examinations because such examinations are held only in the capital city for pleaders and in certain cities only for advocates. Even after learning basic skills and knowledge, pursuing legal profession is still difficult, because the lawyers working in other's law firm rarely get permanent job with attractive salary. And there are less chances of getting sufficient cases for new lawyers who have not earned name and fame. So the lawyers coming from excluded groups generally find harshness in entering and continuing the profession.

### **c) Social challenges:**

While the excluded peoples such as Dalits, indigenous peoples, people from backward areas or backward communities, persons with disability and women etc have been discriminated for long in the Nepalese society, there has also been a tradition of adopting a family profession that has created a kind of mindset among the excluded groups as well as among others about who is good at what. Many people, even after completing law education, hesitate to enter into or continue the profession because they feel that they lack core knowledge and linkage required to be successful in the profession which their counterparts have been induced with their traditional engagement in the profession. Since they do not see many people from their community in the profession, they feel that they have no or low support, if they need consultation regarding their work. Because of apprehension of lack of support too, they lack the confidence to enter into or continue the profession.

**d) Entrenched gender roles:**

Women face further difficulties as their gender role limits their entry into legal profession which demands long and uncertain working hours. Some of them, living in rural area, would not be allowed to go out alone to take professional examinations if they do not have any relative in the city; others are even suggested not to take such difficult profession that requires extra time and efforts allowing minimal time for home. Some unmarried woman lawyers find difficulty in getting approval from their parents if they wish to set up their own law firm, because their parents would like them to decide on such matter only after they get married. The parents think that she may have to leave the city after the marriage or her husband would not like her to continue the profession. Many married woman too may not be encouraged to enter into or continue the profession, as if they are expected to give more attention to household chores. While legal profession requires more time than in any other jobs, income is not guaranteed in the beginning.

Majority of the women lawyers interacted were of the opinion that they have faced greater difficulties in giving priority to their work due to their subordinated position and the prescribed responsibilities in the household. Another key difficulty is inadequate access to professional networks, contacts, and client development. Women, who have household responsibilities, are generally unable to participate in social events that promote professional opportunities. Thus, women remain out of the loop of career development. The JC, the JSC and the Bar do not have policies and adequate programmes supporting women professionals in line with their needs.

Majority of the women and the representatives from excluded groups who had entered judicial service or become judges stated that they were motivated to pursue law education and the profession mainly due to a strong influence of some family members or close relatives who had entered the judiciary. Another motivating factor cited was that becoming a judge or government attorney is often associated with respect and prestige in the society. All of them said that though the legal profession demands extra hours of working time due to heavy work burden, they continue with this profession because of their specialized education background and function which limits their option for other occupations. Women judges and lawyers interacted were of the opinion that it would be virtually impossible for them to work if they did not have full support from their family members. Thus, in their case, the attitude and mindset of family members play crucial roles in the success of their profession.

Despite formal commitments for equality and inclusion, informal barriers create a glass ceiling. Majority of the women lawyer consulted were of the opinion that

they have to work harder than men for the same results. A women representative from the Bar opined that: *“When a woman lawyer loses a case, it is perceived that this was due to the fact that a woman was the lawyer. Nobody gives a second thought about the nature of the case and its associated weaknesses. However, such perception does not apply in case of male lawyers.”* As only 9.4% lawyers are female, heavily outnumbered by their male counterparts, they felt that their performance is closely and critically inspected by men.

**Box 4:**

*“In a recent survey of large law firms, several women noted with resentment that when male colleagues wanted time off in the middle of the day for family reasons, they were thought “caring and devoted” or “cute and endearing,” but when women left for similar reasons, they were typed as unreliable and uncommitted”*

--Rhode. D. L. , The Unfinished Agenda, ABA Commission for women in Profession, 2001

Although, society has started accepting and encouraging women to go out and take jobs in the offices and elsewhere, but the patriarchal mindset requires them to do all household chores before going and after coming from the office. They are discouraged from taking a profession that requires longer engagement every day. Many women are bound to prefer government jobs or other jobs that has job guarantee, fixed income, maximum holidays and minimum working hours so that they could give more time to their home. Therefore there is a little chance for women to get permission and economic support during the firm registration process.

#### **4.3.5 Allegation of Discrimination in the Bar and Bench**

Though most of the participants of the FGDs and interviews did not report any kind of discrimination in profession by the Bench and the Bar, but a few of them expressed that people from excluded communities and women feel discriminated or dominated by the senior colleagues or by the bench. They also tend to feel ignored or not heard properly. One of the participants of focused group in Kathmandu expressed that the pleading of Madhesi lawyer is not heard seriously and they find hard to win the cases. The court represented by Pahadi Judge was also alleged by some participants to have decided in favor of Pahadi client where the opponent was Madhesi whereas some other participants flatly denied both kinds of allegations. It should however be noted here that due to researchers' specified mandate and limitation naturally it is unnecessary and futile too to verify whether the case was weak or that was decided against just on the ground of being Madhesi.

#### **4.4 Needs of Women and Socially Excluded Groups to Enhance their Participation and Representation in Judiciary**

As it is apparent from the presentation in the preceding sections, women and disadvantaged groups have very low representation in judiciary service and they face several barriers for their entry into the judicial services. Unless these barriers are addressed through policy reforms and specific planned interventions for a protracted period of time, their representation in the judiciary will not be enhanced significantly. Thus, it is imperative that their needs be identified so that policies and programs can be devised to ensure they can be empowered to make equitable representation in judiciary without affecting the quality of services. The needs of the women and disadvantaged groups are presented hereunder:

##### **a) Awareness and sensitization**

Many disadvantaged groups have remained out of legal services because they are not aware of the scope of law education. Majority of the representatives of women and disadvantages groups consulted expressed that most of the people in their communities are not aware of the processes for entry into the judiciary, nor do they have required level of understanding of the significance of their representation in the judiciary. Students too tend to be less aware of the scope of legal profession and the processes and incentives for entry into law education institutions. Without such information, they are less likely to choose legal education as a stepping stone for a career in the legal profession. The judiciary is perceived by disadvantaged groups as an exclusive domain of the 'elite' group. This stigma of perceiving the position of 'judges' and 'attorneys' as being an unreachable destination not meant for them has discouraged the excluded groups from pursuing legal education. The FGD participants also shared incidents of how youths from excluded groups had been discouraged from their family when they want to venture into legal education.

People in general and women and disadvantaged groups in particular therefore need to know that they can be a part of the judiciary and participate in justice delivery. Sensitization is needed not only at the students' level but also at the community level in order to change their attitudes towards both law education and legal profession.

Nepal Bar Association, through its legal literacy program at community level could play a role of catalyst in motivating possible students and parents towards law education and legal profession. Similarly, law colleges could also play role in publicizing the need and benefits of law education and legal profession. Nepal Bar Association/ Lawyer's Academy and NJA can further create interest among potential students and their guardians through creating opportunities for new

lawyers and legal professionals by organizing preparatory training and publicity thereof.

**b) Adequate scholarship provisions**

Since entry into judicial service, being a specialized profession, is not possible without legal education, it is necessary that diversity in terms of caste, ethnicity, religion and geography is encouraged in pursuing law education for improving the level of inclusiveness in judiciary sector. This also requires support mechanism for excluded groups to enrol in law education. Provision of mere scholarship in the form of tuition fee will not suffice as the costs for upkeep and living expenses are even higher. Deserving students from excluded groups and women need scholarship schemes that cover tuition as well as living expenses.

**c) Capacity development support:**

The provision of 45% reservation for women and disadvantaged groups is an important measure for ensuring their entry into the civil service including in the judicial service. However, in view of many reserved positions being remained vacant due to not only low applications and but also low success rate of candidates to qualify through the examinations, some provisions are needed to ensure that candidates belonging to excluded groups have adequate preparations for PCS examinations. Extensive programs targeting women and excluded groups to prepare for examinations into judicial service will help them to become more competitive in the selection process.

Moreover, considering the sceptical views expressed both within and outside judiciary sector that the reservation of entry positions in the name of inclusion will risk to result into compromise with meritocracy of the judiciary, such capacity building programs will have to be tailored at different levels even in the post selection phase. There can be separate pre-service training programs for those who pass out examinations for reserved positions, while both training and educational courses supplemented by confidence-building on the job assignments can be tailored to such groups to help them demonstrate superior performance on the job after entry. Likewise, it is important that women and excluded groups are provided with incentives and opportunities to enhance their capacity and ultimately overcome such beliefs.

**d) Changes in related process and criteria of recruitment of judges:**

Judges are important positions in the judiciary. As inclusive provision does not apply in the recruitment of judges, women and disadvantaged groups, who face barriers to educational and service entry opportunities as stated earlier, are less likely to have opportunity to occupy such positions. The present recruitment processes of judges therefore need to be revised to make them more inclusive.

Similarly, as only few women and representatives of disadvantaged groups are entering into judicial service recently, due consideration is to be given to the need for their fast-track entry into the positions of judges. In this context, the constitutional provisions of qualifications of judges of District, Appellate and Supreme Court (refer to Box no. 2) too need revision not to leave women and disadvantaged group far behind in the race by ensuring maintenance of meritocracy to hold such important positions at the same time.

**e) Policy planning with strategic approach:**

It is the judiciary which is in better position to understand what reforms are needed to promote inclusiveness in judicial sector and help contribute to develop people's trust and faith on judiciary and its justice systems. For this, it should articulate the areas of policy reforms and other institutional, systemic and procedural reforms, covering not only judiciary service but also legal profession as well as law education as sources of capable human resources. This will also require development of a plan of actions, either as part of its institutional strategic plan or a separate special plan, which can be presented to government for necessary initiatives and support. Such plan of action should include policy, legal and institutional measures ranging from enhancing participation of women and people of excluded groups in law education to enhancing their capacity to become effective professional lawyers and judges and ensuring representations in the judicial sector.

Though the needs of women and socially excluded groups for promoting inclusiveness in judiciary are of different types and magnitudes, these needs are to be addressed with different time perspectives.

**4.5 Major Highlights of Review and Assessments in the Chapter**

There is no social or economic or political area of governance that has not been influenced directly or indirectly by the judiciary. The mainstreaming of GESI approach in the judiciary gains prime significance in order to ensure good governance, democracy and social justice. The relevance of inclusiveness in judiciary can be explained and justified by: judiciary's expanded role and influence not only in interpretation of existing laws but also in promoting laws to uphold social justice as powerful agency for social change; need to increase people's faith upon judiciary and access to judicial services and justice; and emerging voices and pressures for the advent of affirmative legislations and enforcing actions. Several enabling factors exist to promote GESI in judiciary being a subject of attraction for all major actors of the state reform in recent years. Among them include evolving socio-political context, constitutional provision, policy reforms, right-based movements and the enhanced GESI sensitivity within the judiciary.



However, despite notable progress towards taking policy reform initiatives to promote GESI in different structures of the State, research evidence indicates that women and disadvantaged groups are poorly represented in the judiciary, which can be primarily attributed to social, cultural, economic and institutional barriers that inhibit their entry into the legal education as well as the legal profession and judicial service. The barriers to enter the judicial service are related to: legal and procedural provisions, inadequate proactive measures to fill-up reserved public positions and execute GESI sensitivity approach for development of human resources and professionalism in the judicial sector by relevant agencies such as Judicial Council, Bar Council, NJA and educational institutes and inadequate GESI-friendly institutional structure. Moreover, the constitutional provisions and related laws and processes (standards) for appointing judges too are not differentially supportive for women and socially excluded groups to become judges. The law education is basic requirement to enter and engage in legal profession and judicial service, but there are barriers even to pursue such education due to existing law education system, limited law colleges, associated economic cost and inadequate support provisions and traditional socio-cultural values. Likewise, many barriers exist for women and socially excluded people for pursuing legal profession, which also constitutes a pool of candidates for various judicial positions. Such barriers can be broadly clustered as professional, economic and social challenges apart from having entrenched gender roles as additional barrier for women to pursue legal carrier.

As women and disadvantaged groups face several barriers for their entry into the judicial service, it is imperative that their needs be identified so that policies and programs can be devised to make equitable representation in judiciary. The need of the women and disadvantaged groups are related to launching various awareness and sensitization programs to make law education attractive, making adequate scholarship provisions, organizing support programs for capacity-building to enter legal and judicial service and grow in the sector and improving process and criteria of appointment of judges. Moreover, there is a need for policy planning with strategic framework for enhancing participation of women and excluded groups in law education and their increased representations in legal profession and judicial service.



## Chapter 5

### Policy Reforms for Promotion of Inclusiveness in Nepali Judiciary

#### 5.1 Summary of Observations on Inclusion Status of Judicial Sector

The major observations on the present inclusion status in Nepali judiciary covering coverage of judicial sector as a whole and other related organizations, as revealed from the research, are summarised below:

##### **a) Policy and legal arrangements:**

Various institutional arrangements in terms of policy, laws and organization set-up exist to direct and regulate activities pertaining to recruitment and development of human resources required in the judicial sector. As the Interim Constitution, Civil Service Act and Judge Appointment Standards have been the major policy mandates, the institutions like JC, JSC, SC, PSC, MoLJPA, MoGA, BC, NJA and other law colleges have engaged in activities relating to both acquisition and development of human resources for the sector. However, these institutional arrangements have hardly been specific, adequate, and effective for promotion of GESI in judicial sector, nor are any new specific initiatives taken focussing on the nature and needs of this sector.

In realisation of relevance of GESI in structuring and running state affairs, different attempts have been made with some degree of successes in increasing diversity in judiciaries in western countries too like France, the UK and the US. Lessons can be learned from the policies and the approaches pursued in these countries in articulating policy measures for promoting inclusiveness in Nepali judiciary.

##### **b) Inclusion - representation status:**

In judicial sector in Nepal, right from the beginning of entrance into legal education to legal profession, judicial service and judiciary itself, the predominance of a few social, geographic and religious groups labelled as male, Brahman/Chhetri (B/C), Hill and Hindu is seen almost consistent across all position categories and all service groups, including Judicial group of Judicial service which combined with judges constitute core judiciary. Janajati is the second largest group in Judiciary, but they comprise less than a fourth of B/C in all sectors ranging from enrollment in law education to legal profession, judicial service and Judiciary. The other excluded groups are represented negligibly in judicial sector as well as in legal profession and legal education.

The concentration of B/C is high in higher positions involving the job areas which are of more technical nature requiring specific knowledge, skills, experiences and other competencies. However, such predominance of a few groups is relatively low in non-gazetted positions and other service groups. The relative increase in representation of women and people from the caste and ethnic groups other than B/C in lower positions can be attributed to impact of the government's newly introduced inclusion policy and growing consciousness among women and people of other caste and ethnic groups.

The low level of inclusion of women, Madhesi and Janjati in law education and legal profession and dominance of Hill B/C dominance in field right from the beginning of entry level of law education to the peak of legal profession has also affected their entry into judicial service and core judiciary.

The inclusion status of judiciary sector is imbalanced with the composition patterns of national population by gender, different caste, ethnic and other social groups. Women's representation in total human resource base of judicial sector is only 13.9% despite making 51.5% of the national population. On the other hand, Brahman/Chhetris, constituting 32.1% of national population, account for 77.6% of total officials and staff in judicial sector while the representation of Janajati in the judicial sector is only 14.5% even if they constitute 36.1% of total population. The population-size based disparity is seen even among all lawyers and law students. Such a comparative review is reflective of different dimension of social exclusion in Nepal.

### **c) Relevance of inclusive judiciary:**

The relevance of inclusive judiciary for ensuring empowerment of all sections of society, having expanded roles and influences in both interpreting existing laws and promoting laws to uphold social justice, increasing access to judicial service, dealing with pressures for creating and enforcing affirmative legislations and fostering faith of excluded groups on justice delivery has not been debatable.

Though inclusive representation in the judiciary by itself cannot guarantee that justice will be better delivered, it will be an important indicator of increased participation of women and socially excluded groups in decision-making of one important state organ. Moreover, the diversity helps judiciary hear cases not only in emphatic ways but also to analyse and understand the problems objectively from a broader perspective. Most importantly, inclusiveness and diversity will help generate faith and trust among all sections of the society towards judiciary as the last place to receive justice. However, the idea of inclusiveness at the cost of indifference towards competency of judicial officials, staff and professionals in

selecting and developing them for their employment and delivery of merit of cases have widely been rejected.

**d) Supportive factors for inclusive judiciary:**

The unfolding situations in Nepal such as political change of 2006, new legal and policy reforms, profound right-based movement and enhanced GESI sensitivity within and outside judiciary have become helping factors for promotion of GESI in judiciary, but there is still a low level of diversity of persons not only in judiciary but also in whole legal profession consisting lawyers and legal officials working for judicial sector and among those pursuing law education.

**e) Barriers to inclusive judiciary:**

The situation of low diversity has been attributable to barriers faced by women and excluded groups to enter the judicial service, to become judges, to pursue law education and to enter and grow in legal profession. The barriers are originated from legal and administrative procedures, inadequate proactive measures to fill-up reserved public positions and execute GESI sensitivity approach for the development of human resources and professionalism in the judicial sector, education system and limited law colleges, associated economic hardship and inadequacy related support supports, professional challenges, including entrenched gender roles and socio-cultural beliefs, values and practices that prevail for such women and socially excluded groups.

**f) Needs of women and socially excluded groups for enhanced inclusion in judicial sector:**

The needs of women and social excluded groups to be fulfilled for ensuring their due representation in the judicial sector are many and complex. However, these needs are related to creation of awareness and sensitization on the part of policy makers, women and socially excluded groups and their facilitators to make law education attractive, provisioning adequate scholarship to pursue education, pre-service and in-service capacity building support and changing legal and administrative provisions as well as criteria of appointment of judges. Nevertheless, there is a need for a major shift in public policy and strategic focus to ensure more inclusive judiciary without sacrificing the quality of justice delivery.

All these call widespread reforms in not only policy areas but also institutional, systemic and procedural aspects of law education, legal profession and judiciary service. However, in view of the limited scope of present research project as well as the significance of the need for promoting inclusiveness in Judiciary, judicial service, legal profession and law education, this chapter focuses on

recommending mainly major options of policy reforms for consideration of Judiciary and other agencies which have stake on such reforms.

The policy options are recommended below to enhance inclusion in judicial sector and related organizations through: a) improvements in policy mandates, HR planning, special provisions for recruitment and legal reforms; b) creation of enabling environment; and c) designation of responsible institutions and their capacity building.

## 5.2 Policy Reform Options

In order to make judiciary inclusive, with coverage of judicial sector as a whole and related organizations, the following 10 policy options are suggested for consideration of all concerned reform actors.

- 1) Making inclusive judiciary service as the explicit policy with action plan in line with the strategic planning of the Judiciary.
- 2) Making special provisions for appointing judges from women and socially excluded groups
- 3) Amending the provision of reservation in the Civil Service Act and rules for wider representation
- 4) Developing an enlarged pool of capable candidates for judicial appointments
- 5) Continue launching mass awareness campaign against discrimination in general in society
- 6) Creating more opportunities for excluded groups to pursue law education
- 7) Ensuring inclusiveness in composition of recruiting / appointing agencies
- 8) Creating / building institutional mechanisms for effective drive towards inclusive judiciary
- 9) Creating and maintaining diversity / representation data base on staffing in judicial sector
- 10) Launching research / case studies to generate new knowledge for informed reform efforts

Each of the policy options has been recommended with a number of policy measures to be adopted, including related activities to be undertaken, as follows.

**Policy option 1:** Making inclusive judiciary service as the explicit policy with action plan in line with the current and future strategic plan of the Nepali Judiciary

Judiciary bodies should make the mainstreaming of inclusion approach in acquiring, developing and utilizing their human resource as a policy mandate.

**Recommended measures:** The following measures are recommended under this policy option.

- a) Identify JC and JSC as key actors responsible for setting necessary policies, ensuring and facilitating improvements in inclusiveness of Judiciary in coordination with the Government (OPMCM/MoGA/MoLJPA), PSC and NJA
- b) Devise a strategic human resource plan for the whole judicial sector, at least for judiciary bodies to begin with, for ensuring availability of right kind of person for right kind of job at right time by assessing their present institutional functions and future plans, existing and desired human competencies, gaps between supply and demand of human resources and identifying the measures to meet the gap in human competencies.
- c) Articulate explicit purpose and policy of inclusiveness in Judiciary in line with its strategic plan, focussing on its HR demands in terms of number, diversity and competency requirements
- d) Set desired targets of enhancing inclusiveness in judicial service in terms of service as a whole, service groups and position level on the basis of current data base on representation patterns by gender, different caste / ethnic and socially selected groups and availability of the persons meeting minimum criteria in specific timeline
- d) Create collaboration between JC/JSC and Government (MoLJPA/MoGA/MoF) in consultation with PSC, in preparing an action plan with budgetary provisions in consideration of desired targets for promoting inclusive judiciary
- e) Improve and extend specific guidelines or rules through JC and JSC in order to make judiciary inclusive with reviews of existing guidelines and standards for appointing and building careers of judicial officials, including judges.
- f) Incorporate a policy of capacity-building into the appointment / recruitment policy to ensure that the prospective candidates of judges and other judicial officials and staff are not only attracted to Judiciary service but also get opportunity once selected to build basic capacity before holding the job in coordination with NJA.

**Policy option 2:** Making special provisions for appointing judges from women and socially excluded group

A few special provisions would be required to promote inclusiveness in Judiciary at least for some specific period of time.

***Recommended measures:***

JC in consultation with PSC, if necessary, should consider making changes in its current judge appointment guidelines (standard) and execute them in appointing judges in Judiciary accordingly as suggested below:

- a) The length of experience required for appointment of judges should be reduced for excluded groups. Instead, emphasis should be given to undertaking of rigorous judicial training for them since the experience provision creates a vicious circle that hinders the entrance of excluded groups into the judiciary.
- b) Learning from the practices of civil law jurisdiction (e.g. as in France) can be useful for improving diversity in judiciary. A provision should be made for entry of a mix of experienced legal practitioners and some fresh women candidates and those from excluded groups into the District Courts after they go through competency test, rigorous training and internship for some time.
- c) Development as well as periodic updating of a roster of candidates with social diversity for appointment in judiciary would be necessary to ensure inclusiveness in both higher and lower echelons of judiciary.
- d) The provision of part-time judge, as practiced in England and Wales, should be piloted in selected districts targeting qualified women and socially excluded groups as priority candidates.

**Policy Option 3:** Amending the provision of reservation in the Civil Service Act and rules for wider representation

The existing provision of reservation for women and excluded groups in judicial service should be further improved by bringing clarity on allocation of vacant positions for different groups and specifying who really belong to the excluded groups.

***Recommended measures:***

The following should be considered to improve the existing legal provisions of reservation of vacant positions for women and socially excluded groups.

- a) Reservation made for women should be further divided among women of different caste/ethnic groups to avoid the repeated inclusion of one caste or ethnic group.
- b) Clear criteria should be explored and developed to benefit the real excluded candidates, with priority accorded to the person who does not have any body employed in his/her family or who does not have certain areas of land/farm/ or certain level income etc.
- c) The provision for cancelling the reserved vacant positions in the case of non-availability of candidates should be repealed by adopting



alternative measures for increasing the number of candidates with required capacity for the prospective positions in the judicial service. In stead, such positions should be borrowed for some time to other similar socially excluded group who have necessary candidates for such positions and next time such borrowed position(s) can be returned to the same group when it has required number of candidates.

**Policy Option 4:** Developing an enlarged pool of capable candidates for judicial appointments:

All officials working under the Judicial Service, private lawyers and law academicians should constitute the pool of candidates from where judges and other judicial officials are pulled into different positions of judiciary. The pool itself is required to be inclusive to ensure not only inclusiveness within the judicial service but also to promote empathy and impartiality in providing legal services by lawyers to their clients of diverse social groups.

***Recommended measures:***

A number of measures are recommended below for developing a pool of candidates for their appointment to judiciary or other related organizations.

- a) *Identifying recruitment sources and having collaboration:* The institutions mandated for ensuring management of human resources in Judiciary like JC and JSC should identify the sources of recruitment like internal (promotion / transfer) and external sources (NBA / educational / training institutions and other professional and stakeholder organizations) in line with the strategic HR plan. While doing so, they also need to collaborate with educational training and professional institutions with policy and resource backup for persuading them to develop human resources, ensuring that available human resources possess the qualities of being both competent and inclusive.
- b) *Preparing women and excluded groups for entry in the judicial sector:* Both Government and non-government organizations (like National Dalit Commission, Nation Women Commission, National Foundation for Upliftment of Aadibasi-Janjati and similar agencies established for the welfare of backward groups or communities and organizations of women and excluded groups) should conduct preparatory classes for women and people from excluded groups for facilitating their entry into judicial services and legal profession at faster rate.
- c) *Conducting special capacity building program for the capacity of the staffs recruited under reservation:* In order to ensure that the persons recruited under reservation do not differ from those recruited through free competition in job performance and the low performance, if any, is not construed as

uselessness of reservation provisions, NJA will need to take lead in designing and conducting a series of special capacity-building programs by assessing the needs of the recruits of inclusive positions both before and after joining the job.

- d) *Arranging practical training for development of private practicing lawyers:* Privately practicing lawyers need attention for making judiciary inclusive not only because they are source of human resource for judiciary but also because they offer services to all social groups, including socially excluded groups. The whole legal profession needs to be inclusive. For this, the following measures will have to be adopted:
- Special attention is to be given on capacity development of women private lawyers and other private lawyers belonging to excluded groups and their retention in the profession. All concerned institutions like Nepal Bar Association, Nepal Bar Council or law institutes should offer rigorous practical training and arrange internships or apprenticeships for the students willing to take up legal profession, with certain stipend to selected number of women and people from excluded groups for certain period of time. Such training should cover different areas such as general skill training to become a lawyer and specific training to develop specialization in different areas like civil law, criminal law, commercial law, etc. and to produce company secretaries, mediators etc. so that the trainees could easily be consumed in the job markets.
  - Nepal Bar Association should make a mandatory provision for Senior Advocates to be accompanied by an apprentice during their pleading as part of professional development with fulfillment of social responsibility so that new lawyers too could be trained properly. Women students and students coming from excluded groups should be given special consideration for such apprenticeship. A senior advocate should be understood as a lawyer who has practiced law for certain period and has been dealing with good number of cases as identified by Nepal Bar Association or Nepal Bar Council.
- e) *Offering professional training to students willing to become a lawyer:* BC/NBA should design and offer special professional courses on a model basis in collaboration with NJA for students willing to join legal profession targeting the women and people from excluded groups should also be encouraged to join the courses by providing necessary stipend.

**Policy Option 5:** Continue launching mass awareness campaign against discrimination in general in society

Exclusion has both cause and effect relationships with discrimination, which is also deeply rooted in culturally derived attitudes, values and underlying assumptions. The promotion of inclusiveness in Nepali judiciary is not possible unless and until there is massive strike on the collective mindsets of different sections of society, including both who discriminate and who are discriminated, to form their attitudes against discrimination.

***Recommended measures:***

All concerned institutions like Government, National Human Rights Commission, NJA, National Women Commission, National Dalit Commission, NEFIN, NBA, law institutes and non-government organizations should extend support and launch necessary programs for raising awareness among policy makers, administrators, including the other elite groups, and common people to eliminate all forms of discrimination against women and socially excluded groups in society and promotion of inclusiveness in judiciary sector. This should create a favorable environment and patience for positive discrimination to prevail for some time. The awareness campaign should also target more women and people from excluded groups to motivate them in pursuing law education and legal profession and helping themselves and others to get rid of discrimination.

**Policy Option 6:** Creating opportunities for excluded groups to pursue law education

Law education is the foundation for entry into judiciary, judicial service or legal profession. Therefore, it is necessary that as many as possible women and people from excluded groups are attracted to pursuit of law education.

***Recommended measures:***

- a) JC/JSC should take necessary initiatives, with support from NJA, to work with related academic institutions for promotion of law education among women and excluded groups through measures stated below:
  - Inform the existence and scopes of law education to the prospective students from women and excluded groups so that they are encouraged to join law education, by organizing seminars in rural places and using mass media as a short term measure to serve the purpose.
  - Re-introduce law education at the higher secondary level as a separate stream like science, humanities or management, etc. - this is essential to help students of the excluded groups in having easier access and exposure to legal education.

- Offer a choice to students passing the higher secondary level in law to enter into legal profession by joining 5 year LL.B. or BA-LLB or to study Bachelor's Degree in other subjects if they do not want to pursue legal profession - this will also help in producing professional and efficient clerks to work in judicial services, quasi judicial bodies, law firms or general administration, etc (The education system in the U.K. also offers law education at A-level and opens a door to study LLB and students having bachelor's degree in other faculty can also join Graduate Diploma in Law (GDL) or Graduate Entry LLB (GE LLB)).
  - Avail admission and stipend to specified number of women and people from excluded groups who are marginally represented in law education and legal profession - certain level of merit test/competition can be arranged among the groups to check whether they can pursue the education so that the investment does not go in vain.
- b) Although the Scholarship Rule of the government has provisioned allocation of scholarship for women and people coming from excluded groups, they are useless for law students as no scholarships are available for them. Scholarships are not available for general law students other than for the government officers. Therefore, the Government should declare Law as priority discipline of education with a view to making judiciary inclusive and promoting access to justice and arrange plenty of scholarships for women and people coming from excluded groups.
- a) Government should make arrangements for providing soft loan to all willful students coming from marginalized groups and excluded communities not only for their studies but also for the establishment of their law firm.
- d) Law colleges should arrange hostel facility for such needy students. Even if the colleges cannot run their own hostel, they can arrange it for the needy students coordinating with other boys or girls hostels available in the city areas.

**Policy Option 7:** Ensuring inclusiveness in composition of recruiting/appointing agencies

Many people from excluded groups seem to have relatively low faith in fairness of the court compared to the persons of the mainstream groups. On this basis, it can be argued that one may expect little about the chance of inclusive appointments by a non-inclusive appointing body due to culturally derived apprehension that

the overwhelming majority of members of the same clan do not see the potential in others and they are biased in the appointment of people from other clan.

***Recommended measures:***

All constitutive bodies and those engaged in making constitution and other laws will have to ensure that there are adequate and clear legal provisions for promoting GESI at the decision-making levels of appointing bodies and advisory bodies (like PSC, JC, JSC) responsible for the appointment of judges and other officials in Judicial Service and also these are executed as provisioned.

**Policy Option 8:** Creating/building institutional mechanisms for effective drive towards promoting inclusive judiciary

No policy measures can be put in effect with necessary preparations in the absence of necessary institutional mechanisms. The promotion of inclusive judiciary has a number of stakeholders, but there is a need for a few reliable and competent institutions that can take care of the issue of inclusion in judiciary as part of state reform agenda.

***Recommended measures:***

It is important to address the following needs for provisioning and building institutional mechanisms to ensure inclusive judiciary in Nepal.

- a) Judiciary Council will have to be given mandate, if the present one is not enough, to take necessary reform initiatives for ensuring and extending inclusiveness in Judiciary by developing required HR data base and national human resource policy for the Judicial sector. For this purpose, it will be logical to designate JC as the lead agency to take necessary steps for having ownership of the data base generated from the present research and adopting the policy measures with a strategic framework as recommended in this report.
- b) NJA needs to be designated as the central agency for coordinating efforts of designing and undertaking capacity building programs, in association with JC, for promoting inclusiveness in the Judiciary without compromising quality justice delivery and public image of judicial institutions. The role of NJA and Judicial Training Centre should clearly be delineated to avoid duplication in work and use of resources.
- c) Both JC and NJA will need to be strengthened through various institutional capacity building programs addressing their needs for human resources and other technological and physical facilities to mainstream GESI in the judicial sector. Such capacity building support will have to be extended even to other concerned GOs, NGOs and educational and

training institutions which are working for enhanced inclusion in the Judiciary.

**Policy Option 9:** Creating and maintaining data base on diversity / representation of staffing and professional membership in Judicial sector and related organizations

In order to promote diversity in judiciary, both collection of baseline diversity information and its periodic monitoring are required. The current records of staffing availed in JSC, Civil Service Record Department and other administrative units of -related offices contain only name / surname, home-address, gender and religion of their permanent staffs. This cannot serve the need of information required for monitoring diversity as mentioned in the Civil Service Acts and Rules.

***Recommended measures:***

The measures recommended under this policy option are:

- JSC and Civil Service Record Department should take initiatives to make mandatory for them and other related offices to supply and maintain all required information of staff covering disability status (with classification such as physical disability of type A/B etc), ethnic origin (e.g. Jatjati or Janjati), caste (e.g. Brahmin, Dalit, etc), geo-cultural group (e.g. Madhesi/Pahadi) and additional information if one is from other backward community, etc. Similar records should be maintained for Judges and temporary staffs working in the judiciary.
- JC should also maintain the records of existing judges and eligible candidates to become a judge (including the Supreme Court Justice) in a manner that diversity of potential judges can easily be analysed.

**Policy Option 10:** Launching research /case studies to generate new knowledge for informed reform initiatives

The idea of promoting inclusiveness in all state bodies has not yet made long history in Nepal. It has just taking shape slowly, which needs to be supported by new knowledge and information in judicial sector too. For this, research studies are needed to learn from experiences and generate new ideas and concepts.

***Recommended measures:***

The institutions like JC and NJA should design and launch jointly or separately various research and case studies that help learn from experiences, test prospects of new ideas and find new ways for promoting inclusiveness in judicial sector and

other related organizations. Such studies can cover the areas like: a) impact of inclusiveness policies in Judiciary; b) differences in the court verdicts on cases which involve judges and case parties coming from same background and those which involve judges and case-parties from different backgrounds; c) differences in job performance levels of officials recruited through open competition and inclusiveness quota; d) impact of capacity-building programs on promoting inclusive entry into judiciary and improving job performance, etc.

NJA can take lead to execute such research and case studies by mobilising policy support from JC/JSC and other supports from government or donors.

All the policy options recommended above will have to be widely deliberated and evaluated. These options, once selected, will need to be adjusted with the strategic plan framework suggested in this report.

### 5.3 Strategic Framework

The proposed strategic plan framework consists of articulation of expected outcomes, outputs, objectives and 10 key result areas, each having goal, actions, targets and responsible actors, for taking necessary initiatives towards promotion of inclusiveness in judicial sector, particularly for core judiciary, and other related organizations.

Accordingly, the expected outcomes and outputs from the proposed strategic plan framework are articulated as follows:

- a) **Expected Outcome:** Enhanced public faith on delivery of justice from the Nepali Judiciary with increased access of women and excluded groups to judicial services
- b) **Expected Outputs:**
  - i. Representation of women and socially excluded groups is increased in judicial sector
  - ii. An enabling environment is created with development of capacity of women and socially excluded groups to compete for joining and growing in the judicial sector and legal profession and to pursue legal education
  - iii. Necessary institutional arrangements are made by designating institutes with clarity in their mandates and roles and provisions for building their capacity to promote inclusion in judicial sector.

**c) Objectives:**

The plan will seek to help responsible institutions, particularly JC/JSC and NJA, to achieve the following objectives:

- i. Devising HR plan for Judiciary in particular and judicial sector in general, with necessary policy mandates, articulation of purpose of inclusive judiciary and setting of targets for increasing representation of women and excluded groups.
- ii. Creating enabling environment through policy and legal reforms and maintenance of regularly updated representation data base for enhancing wider representation of women and socially inclusiveness in judiciary.
- iii. Building capacity of women and excluded group for improving their competitiveness and job performance in judiciary in particular and judicial sector in general.
- iv. Developing capacity of institutions responsible for promoting inclusion in the judicial sector.

**d) Key Result Areas**

The expected outcomes, outputs and objectives are to be achieved by undertaking a number of actions in 10 key result areas (KRA) emerged from the proposed policy options. Each of these KRAs consists of goal, actions to be undertaken, targets with time frame and identification responsible actors.

The first three KRAs are related to Output 1, while the second four KRAs are meant to be instrumental to Output 2. The last three KRAs will contribute to achieve Output 3.

Further details of the proposed strategic framework for promoting inclusiveness in judiciary covering judicial sector as a whole and other related organizations are in Table 23 with elaboration of key result areas.

**5.4 Way Forward**

The proposed strategic framework is merely an outline strategic plan for enhancing inclusiveness in judicial sector and this has been developed in light of the assessments of existing institutional arrangements, generated representation data base, identification of helping and hindering factors and the needs of women and socially excluded groups. It is recommended that the proposed plan framework be expanded into a detailed strategic plan, with action plan for execution by JC/JSC, NJA and other responsible agencies within a given time framework ranging from three to five years.



Table 23

**Strategic Plan Framework for Promoting GESI in Nepali Judiciary**  
**Related Output 1: Representation of women and socially excluded groups is increased in judicial sector**

| Key Result Areas   | Goals   | Actions   | Targets  | Lead Actors      |
|--|---|---|----------|------------------|
| 1.1 )Adoption of well articulated explicit policy for improved inclusiveness in Nepali judiciary | Making Nepali Judiciary representative of all sections of society with improved capacity to deliver judicial services | a) Identify JC/JSC as key actors responsible for setting necessary policies   | 6 months | JC with NJA      |
|  |   | b) Devise a strategic human resource plan for the whole judicial sector by assessing existing and desired human competencies considering demands of the Judiciary | 6 months | JC/JSC with NJA  |
|  |   | c) Articulate explicit purpose and policy of inclusiveness in Judiciary in line with strategic plan of the Judiciary  | 6 months | JC               |
|  |   | d) Set desired targets of inclusiveness in judicial   | 3 months | JC               |
|  |   | e) Create collaboration between JC and Government (MoLJ/MoGA) in consultation with PSC in finalising policies and with action plan                                | 3 months | JC / MoLJ / MoGA |
|  |   | f) Improve and extend specific standards/guidelines for   | 3 months | JC               |

| Key Result Areas  | Goals  | Actions  | Targets                                    | Lead Actors                      |
|---|--|--|--|----------------------------------|
|   |  | <p>appointment and career development in judiciary to make it inclusive</p> <p>g) Incorporate a policy of capacity-building into appointment procedures</p>  | 3 months                                   | JC/NJA                           |
| 1.2) Design of special provisions for appointing judges from women and socially excluded groups | Attracting candidates from wider sections of women and excluded groups to join judiciary | <p>a) Reduce length of experience for appointment to judicial posts with rigorous tests</p> <p>b) Make provision for entry of a mix of experienced legal practitioners and some fresh candidates</p> <p>c) Develop / update a roster of prospective candidates from diverse groups of society for appointments</p> <p>d) Make provision for part-time judge on a pilot basis targeting women and excluded groups</p> | 3 months<br>6 months<br>6 months + Regular | JC / JSC<br>JC / JSC<br>JC / JSC |
| 1.3) Improved legal provisions for enhanced inclusiveness in judiciary                          | Promoting inclusion of wider sections of women and excluded groups in judicial sector    | <p>a) Making amendments in civil service law:-</p> <ul style="list-style-type: none"> <li>• Divide reservation quota for women further to avoid the inclusion of women of the same caste only</li> <li>• Explore and develop clear criteria</li> </ul>   | 6 months<br>6 months                       | JC / JSC<br>JC / MoLJPA          |

| Key Result Areas | Goals | Actions   | Targets | Lead Actors |
|------------------|-------|---|---------|-------------|
|                  |       | <p>to benefit the candidates from really excluded groups <del>and</del></p> <ul style="list-style-type: none"> <li>Change the provision for cancellation of the reserved vacancies in case of non-availability of candidate by shifting the reserve quota to other needy excluded groups</li> </ul> |         |             |

**Related output 2:** An enabling environment is created with development of capacity of women and socially excluded groups to compete for joining and growing in the judicial sector and legal profession and to pursue legal education

| Key Result Areas   | Goals  | Actions   | Targets   | Lead Actors   |
|--|--|---|---|---|
| 2.1) Creation of enlarged pool of candidates for judicial appointments | Selecting qualified candidates for judiciary positions | <p>a) Identify recruitment sources, with HR plan, and collaborate with HRD agencies, with policy supports</p> <p>b) Prepare women and excluded groups for entry in the judicial sector</p> <p>c) Conduct special capacity building programs for the staffs recruited under reservation as per needs</p> | <p>6 months</p> <p>6 months for planning (Continuous execution)</p> <p>6m for planning (Continuous execution)</p> | <p>JC</p> <p>Professional organizations (NBA, NDC, NWC, NEFIN, etc.)</p> <p>NJA /NASC</p> |

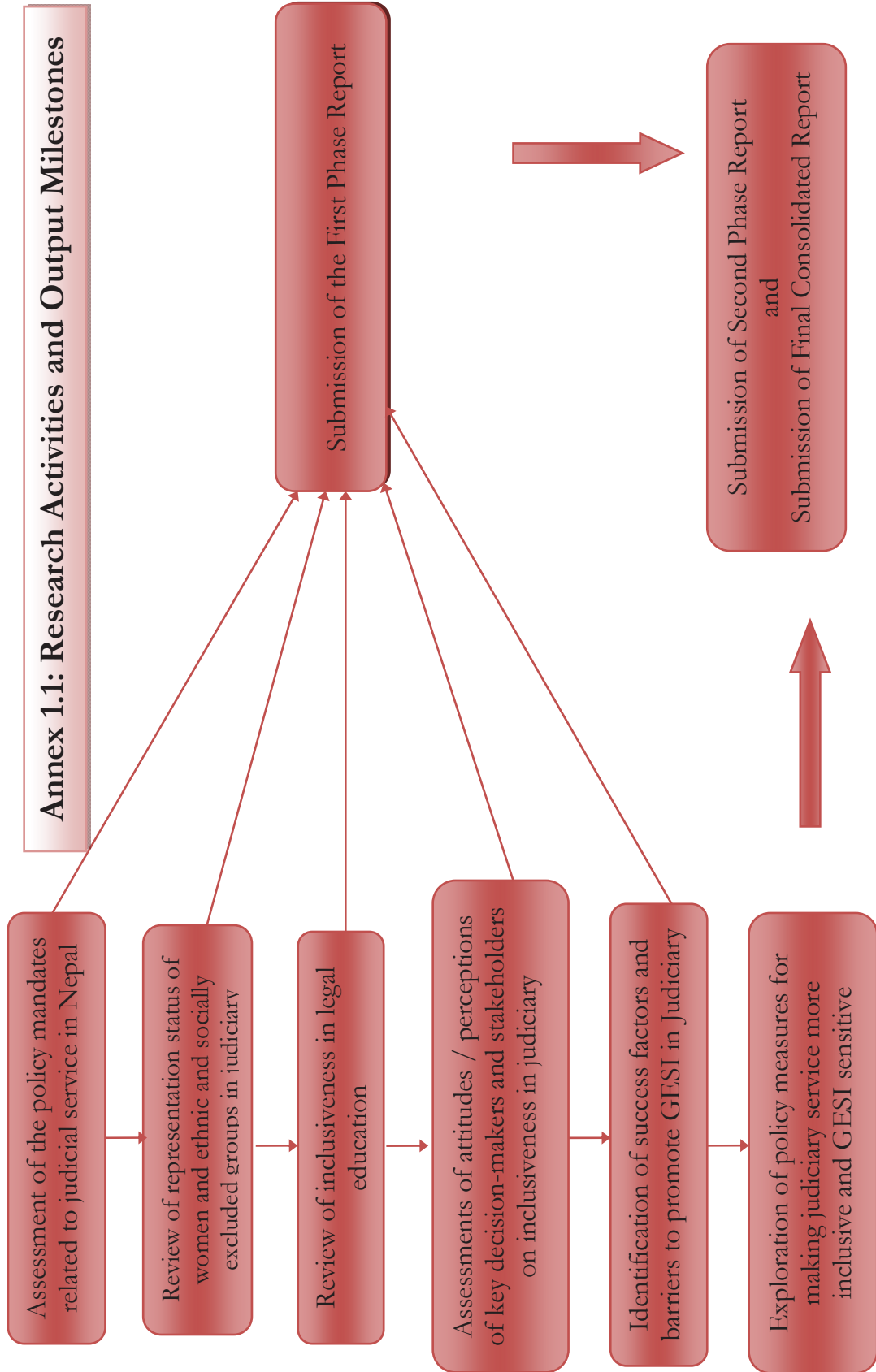
| Key Result Areas  | Goals  | Actions  | Targets   | Lead Actors  |
|---|--|--|---|--|
|   |  | <p>d) Arrange training programs, with internships or assistanceships targeting women and excluded groups</p> <p>e) Offer courses to prospective lawyers from women an excluded groups for facilitating their entry into legal profession</p>   | <p>6m for planning (Continuous execution)</p> <p>6m for planning (Continuous execution)</p> | NBA<br><br>BC/NBA with NJA   |
| 2.2) Improved public awareness against discrimination in general in society                   | Changing mindsets of key stakeholders as root cause for social exclusion | a) Extend new support towards launching mass awareness campaign against discrimination of any kind in society, with focus on Judiciary   | 1 year  | NJA with GOs and NGOs / donors   |
| 2.3) Creation of extended opportunities for women and excluded groups to pursue law education | Building basic conditions for choosing legal service profession          | <p>a) Take initiatives to work with related academic institutions for promoting law education with enhanced inclusiveness –introduce law education at Plus 2 level, reserve admission with stipend for excluded groups</p> <p>b) Arrange plenty of scholarships for women and excluded groups - declaring “law education” as priority sector</p> <p>c) Arrange soft loan for all the willful students coming from marginalized and excluded groups</p> | <p>6 months</p> <p>6 months</p> <p>1 year</p>   | <p>JC/ JSC with support from NJA<br/>Govt (MoE)</p> <p>Govt (MoE)</p> <p>Educational / training institutes</p> |

| Key Result Areas   | Goals   | Actions   | Targets | Lead Actors   |
|--|---|---|---------|---|
|  |   | d) Arrange hostel facility for needy students.  | 1 year  | Educational institutes  |
| 2.4) Enhanced inclusiveness of composition / recruiting agencies appointing agencies | Ensuring public faith in selection decisions for filling-up judiciary positions | a) Making adequate and clear legal provisions for promoting GESI at decision-making levels of appointing bodies and advisory bodies (like PSC, JC, JSC) | 1 year  | All constitutive bodies and those engaged in making constitution and other laws |

**Related to Output 3:** Necessary institutional arrangements are made by designating institutes with clarity in their mandates and roles and provisions for building their capacity to promote inclusion in judicial sector.

| Key Result Areas   | Goals   | Actions  | Targets | Lead Actors  |
|--|---|--|---------|--|
| 3.1) Building institutional mechanisms for effective drive towards inclusive judiciary | Institutionalizing and ensuring continuity of reform promoting inclusiveness in judicial sector | a) Give mandate to JC for preparing HR policy, ensuring inclusiveness, and initiate actions in line with recommended measures and produced data base of the report<br>b) Designate NJA as central agency for designing and undertaking capacity building programs<br>c) Build institutional capacities of JC/NJA and other supporting agencies | 1 year  | JC/SC  |
| 3.2) Creation and updating of data base  | Developing benchmark data base for planning and monitoring                                      | a) Make mandatory provisions that ensure supply and maintenance of all required information of officials / staff / members covering disability status, ethnic origin, caste, geo-cultural group and additional   | 1 year  | JC/SC/NJA<br>JSC and Civil Service Record Department |

| Key Result Areas                                    | Goals  | Actions  | Targets                 | Lead Actors   |
|---|--|--|-------------------------|---|
| 3.3) Creation of new knowledge and information base | actions promoting inclusive judiciary                                | information, if one is from other backward communities, etc  |                         |   |
|   | Making informed reform initiatives for promoting inclusive judiciary | a) Design research / case studies on subjects related to impact of exclusion / inclusiveness in judiciary and future needs<br>b) Launch chosen research and case studies | 6 months<br><br>Regular | NJA with support from JC/JSC<br>NJJA with support from JC/JSC |



**Annex 1.2**  
**Action Plan for Research Team**

| Phases                | Work Packages                                       | Activities List   |
|-----------------------|---|---|
| <p><b>PHASE I</b></p> | <p>WP1 - Desk Review</p>                            | <p>Review of the policy documents of MoGA, MoLJPA, MoE, PSC, JSC, JC &amp; BC to identify what policy mandates exist for GESI issues in Nepal</p> <p>Review of relevant policies / institutional reform measures for GESI in judiciary in selective countries using secondary literature in cooperation with NJA</p> <p>Review of existing data and information on current status of representation and inclusiveness in upper echelon of civil service (secretary level), cabinet, the Constituent Assembly and the judiciary</p> <p>Review of functions of the different judicial bodies to identify who has responsibility to ensure mainstreaming of GESI</p> |
|                       | <p>WP2 - Development of Methodology &amp; Tools</p> | <p>Draft methodology and tools</p> <p>Team orientation (including GESI) and pre-test of tools</p> <p>Refinement of methodology and tools</p> <p>Conduct sharing session of the research methodology to NJA members and relevant ESP/DFID officials</p> <p>Finalization of methodology and tools</p>   |
|                       | <p>WP3 - Collection of Baseline Data</p>            | <p>Collect baseline data on inclusiveness in legal undergraduate course (Bachelor of Law) of legal educational institutions in Nepal in terms of enrolment, dropout rates and completion with a selective methodological approach in cooperation with NJA</p> <p>Collect national level data base from the GESI perspective of registered lawyers in the NBA, officers with legal educational degree in MoLJPA, members of the JSC and of judges and judicial staff in all District, Appellate and other Special courts in cooperation with NJA – covering as many regions and districts as feasible to generate national data</p>                                |



|                 |  |  |  |
|-----------------|--|--|--|
| <b>PHASE II</b> | <p>WP4 - Interviews, Interactions and Focus Group Discussions</p>                          | <p>Conduct 3-5 total Focus Group Discussions with selected officials of the NJA, NBA, and appellate and district court judges of different regions, including representatives of selective women and socially excluded groups in cooperation with NJA</p> <p>Conduct standardized open-ended interviews targeting selected present and past key decision makers of the judicial system</p> <p>Conduct standardized open-ended interviews targeting relevant stakeholders (e.g., justices of the Supreme Court, MoGA, selected development agencies, selected NBA central committee members, selected special, appellate and district court judges)</p> <p>Conduct standardized open-ended interviews targeting representatives of selective excluded groups (e.g. NBA members belonging to excluded groups, prominent women lawyers, representatives of NEFIN, National Dalit Network, organizations of Madhesi, disabled, etc.)</p> |  |
|                 | <p>WP5 - First Phase Report Preparation and Submission</p>                                 | <p>Review and analysis of findings</p> <p>Draft First Phase report preparation &amp; submission</p>  |  |
|                 | <p>WP6 - Draft Report Sharing Workshop and Incorporation of Feedback into final report</p> | <p>Prepare for and conduct the draft report sharing workshop</p> <p>Incorporate feedback into final draft of the First Phase report</p>  |  |
|                 | <p>WP7 - Policy Options Analysis</p>   | <p>Identification of appropriate policy options for Nepal to address the barriers to inclusive judiciary</p> <p>Formulation of recommendations including solution statements and a framework for strategic plan covering major judicial bodies</p>   |  |
|                 |  |  |  |
|                 |  |  |  |
|                 |  |  |  |

|                  |   |  |
|------------------|---|--|
|                  | WP8 - Second Phase Report Preparation & Submission                | Review of the findings of the analysis, preparation and submission of the draft Second Phase report  |
|                  | WP9 - Draft Report Sharing & Workshop & Incorporation of Feedback | Prepare for and conduct the draft report sharing workshop<br>Incorporate feedback into final draft of the Second Phase report  |
|                  | WP10 - Preparation & Submission of Consolidated Report            | Prepare a summary of reports of first and second phases by compiling them into one report and submit it to NJA as the final consolidated project report  |
| <b>PHASE III</b> | WP11 - Dissemination of the Consolidated Report                   | Prepare for and conduct a national level dissemination session of the entire research targeting key stakeholders (including policy makers, legal practitioners, media and donors) and distribute copies of the research in cooperation with NJA. |

**Note:** In case data gathering activities, especially those involving interviews and focus group discussions, can not take place due to office holidays, due attempt will be made to manage them either by pre-ponement or post-ponement.

**Abbreviations:**

|        |  |
|--------|--|
| BC     | Bar Council                                  |
| ESP    | Enabling State Program                       |
| GESI   | Gender Equity and Social Inclusion           |
| JSC    | Judicial Service Commission                  |
| JC     | Judicial Council                             |
| MoE    | Ministry of Education                        |
| MoGA   | Ministry of General administration           |
| MoLJPA | Ministry of Law and Justice                  |
| NJA    | National Judicial Academy, Nepal             |
| NEFIN  | Nepal Federation of Indigenous Nationalities |
| OAG    | Office of Attorney General                   |
| PMC    | Project Management Committee                 |
| PMU    | Project Management Unit                      |
| PSC    | Project Steering Committee                   |
| PSC    | Public Service Commission                    |
| RA     | Research Associate                           |
| S      | Statistician                                 |
| SC     | Senior Consultant                            |
| TL     | Team Leader                                  |
| WP     | Work package                                 |

## Annex 2

## Organizations Visited / Contacted for Information Collection

| S.N. | List of Organizations Visited                      | Contacted Person and Designation  |
|------|--|---|
| 1    | The Supreme Court of Nepal                         | Mr. Bipul Neupane (Jt. Registrar) / Mr. Devendra Poudel (Jt. Secretary) |
| 2    | The Office of Attorney General                     | Deputy Attorney General, Mr. Puspa Koirala                              |
| 3    | The Bar Council Nepal                              | Mr. Suresh Maharjan (Computer)  |
| 4    | Nepal Bar Association                              | Mr. Prem Bahadur Kahadka, President                                     |
| 5    | Ministry of Law, Justice and Parliamentary Affairs | Mr. Koshal Chandra Subedi (Under Secretary)/                            |
| 6    | Ministry of Education                              | Ms. Rama Aryal (U.Secretary)/ Mr. Navaraj Rijal (Section Officer)       |
| 7    | Ministry of General Administration                 | Mr. Begendra Poudyal (Jt. Secretary)                                    |
| 8    | Nepal Law Commission                               | Mr. Rajendra Thapa (Under Secretary)                                    |
| 9    | Judicial Service Training Center                   | Mr. Kiran Maharjan (Section Officer)                                    |
| 10   | National Judicial Academy                          | Mr. Rajan Kumar K.C.  |
| 11.  | Nepal Law Campus                                   | Mr. Govinda Gautam (Campus Chief)                                       |

## Annex 3

## Persons / Officials Interviewed

| S.N. | Name of Interviewee                 | Designation  |
|------|-------------------------------------|--|
| 1    | Hon'ble Ms. Sushila Karki           | Justice, Supreme Court of Nepal                          |
| 2    | Hon'ble Mr. Girish Chandra Lal      | Justice, Supreme Court of Nepal                          |
| 3    | Hon'ble Mr. Upendra Keshari Neupane | Member, Judicial Council                                 |
| 4    | Hon'ble Mr. Khem Narayan Dhungana   | Member, Judicial Council                                 |
| 5    | Hon'ble Mr. Tap Bahadur Magar       | Ex Justice, Supreme Court of Nepal                       |
| 6    | Hon'ble Ms Sharada Shrestha         | Ex Justice, Supreme Court of Nepal                       |
| 7    | Mr. Jeewan Hari Adhikari            | Secretary, Judicial Council/ Judicial Service Commission |
| 8    | Mr. Prem Bahadur Khadka             | Then President, Nepal Bar Association                    |
| 9    | Mr. Kayo Devi Yami                  | Acting Chairperson, Public Service Commission            |
| 10   | Mr. Hari Dutta Pandey               | Jt. Secretary, Public Service Commission                 |
| 11.  | Mr. Madhu Nidhi Tiwari              | Ex Member, Public Service Commission                     |
| 12.  | Hon'ble Til Prasad Shrestha         | Faculty/Judge, National Judicial Academy                 |
| 13.  | Mr. Pushpa Raj Koirala              | Deputy Attorney General                                  |

|     |                        |   |
|-----|------------------------|---|
| 14. | Mr. Krishna Giri       | Jt. Registrar, Judicial Council Secretariat           |
| 15. | Mr Radheshyam Adhikari | Sr. Advocate , Former Member of Constitution Assembly |

### Annex 4.1

#### Brief Description of FGD in Kathmandu

Date: 29 November, 2012

**Targeted Participant Group:** Representatives of Nepal Bar Association and Private Lawyers

Themes for Discussions:

Theme I: Need of promoting GESI in judiciary;

Theme II: Reasons for non-inclusive judiciary;

Theme III: Policy options for promoting GESI in judiciary

| S. N. | Name of the participants  | Organization                  |
|-------|---------------------------|-------------------------------|
| 1     | Mr. Hira Sharma Gautam    | Medhawi Kanuni Sewa           |
| 2     | Ms. Rama Shrestha         | R.S. Law Chamber              |
| 3     | Mr. Nirmala Suwal         | World Vision Law Firm         |
| 4     | Mr. Durga P. Chimariya    | Appellate Court Bar           |
| 5     | Mr. Mohamaddin Ali        | Appellate Court Bar           |
| 6     | Ms. Kamala Chhetri Upreti | Upreti Law Firm               |
| 7     | Mr. Dhiraj Kumar Yadav    | District Court Bar            |
| 8     | Mr. Tej B. Rai            | Supreme Court Bar             |
| 9     | Mr. Udhab Chandra Ghimire | Nepal Bar Association         |
| 10    | Mr. Arvinda Kumar Singh   | Supreme Court Bar             |
| 11.   | Mr. Krishna Kumari Gurung | Legal Consultancy Center      |
| 12.   | Mr. Jay Narayan Faujdar   | Legal Service Center          |
| 13.   | Mr. Ramesh Kumar Maharjan | Sahayogi Legal Service Center |

## Annex 4.2

### Brief Description of FGD in Kathmandu

Date: 30 November, 2012

**Targeted Participant Group:** Judges and officials representing appeal and district courts and public attorneys

Themes for Discussions:

Theme I: Need of promoting GESI in judiciary

Theme II: Reasons for non inclusive judiciary

Theme III: Policy options for promoting GESI in judiciary

| S. No. | Name of the participants   | Organization                                       |
|--------|----------------------------|--|
| 1      | Hon'ble Sushmalata Mathema | Appellate Court, Patan                             |
| 2.     | Hon'ble Balkrishna Upreti  | Kathmandu District Court                           |
| 3.     | Hon'ble Rishikesh Wagle    | Lalitpur District Court                            |
| 4.     | Hon'bel Ram Prasad Oli     | Bhaktapur District Court                           |
| 5      | Mr. Bharat Lamsal          | Kathmandu District Court                           |
| 6      | Mr. Subash Babu Puri       | Appellate Court, Patan                             |
| 7      | Mr. Dilip Raj Pant         | Bhaktapur District Court                           |
| 8      | Mr. Dev Kumar Shrestha     | Lalitpur District Court                            |
| 9      | Mr. Iswari Prasad Banjade  | District Govt. Attorney Office, Bhaktapur          |
| 10     | Mr. Shambhu Gautam         | Appellate Court Attorney Office                    |
| 11     | Ms. Pratima Kumar Pokharel | District Govt. Attorney Office, Lalitpur           |
| 12     | Mr. Sita Ram Aryal         | District Govt. Attorney Office, Kathmandu          |
| 13     | Mr. Basudev Neupane        | Ministry of Law, Justice and Parliamentary Affairs |

## Annex 4.3

### Brief Description of FGD in Kathmandu

Date: 2 December, 2012

**Targeted Participant Group:** Representatives of civil society and socially excluded groups

Themes for Discussions:

Theme I: Need of promoting GESI in judiciary

Theme II: Reasons for non inclusive judiciary

Theme III: Policy options for promoting GESI in judiciary

| S. N. | Name of the participants | Organization |
|-------|--------------------------|--------------|
| 1     | Ms. Sarina Gurung        | NFDIN        |
| 2     | Mr. Ram Maden            | NFDIN        |
| 3     | Mr. Mukunda Dahal        | NFDN         |
| 4     | Ms. Kamala Biswokarma    | FEDO         |
| 5     | Ms. Khem Maya Siwa       | RDN          |

#### Annex 4.4

#### Brief Description of FGD in Kathmandu

Date: 5 December, 2012

**Targeted Participant Group:** Law students

Themes for Discussions:

Theme I: Need of promoting GESI in judiciary;

Theme II: Reasons for non inclusive judiciary;

Theme III: Policy options for promoting GESI in judiciary

| S. N. | Name of the participants | Organization             |
|-------|--------------------------|--------------------------|
| 1     | Ms. Maina Majhi          | Nepal Law Campus         |
| 2     | Ms. Nisha Phuyal         | Nepal Law Campus         |
| 3     | Ms. Bindu Aryal          | Nepal Law Campus         |
| 4     | Ms. Aushree Thapa        | Nepal Law Campus         |
| 5     | Ms. Roshana Dolma Lama   | Nepal Law Campus         |
| 6     | Mr. Manoj Jyakhwo        | Nepal Law Campus         |
| 7     | Ms. Sharda Aryal         | Nepal Law Campus         |
| 8     | Ms. Sangita dhimal       | Nepal Law Campus         |
| 9     | Ms. Rita Ashikari        | Nepal Law Campus         |
| 10    | Mr. Binay Deshar         | Nepal Law Campus         |
| 11    | Mr. Birendra Raj Karki   | Nepal Law Campus         |
| 12    | Mr. Aman Maharjan        | Nepal Law Campus         |
| 13    | Mr. Aashish Sigdel       | Nepal Law Campus         |
| 14    | Mr. Neetij Rai           | Kathmandu School of Law  |
| 15    | Ms. Prakash Neupane      | Kathmandu School of Law  |
| 16    | Mr. R. C. Gautam         | Kathmandu School of Law  |
| 17    | Ms. Hemkala Kattel       | Kathmandu School of Law  |
| 18    | Mr. Ramesh Dhital        | Chakrabarti Habi College |

### Annex 5.1

#### Brief Description of FGD in Dhangadhi

Date: 17 December 2012

**Targeted Participant Group:** Civil Society and socially excluded group

Themes for Discussions:

Theme I: Need of promoting GESI in judiciary

Theme II: Reasons for non inclusive judiciary

Theme III: Policy options for promoting GESI in judiciary

:

| S. N. | Name of the participants   | Organization           |
|-------|----------------------------|------------------------|
| 1     | Ms. Bimala S.K.            | Rastriya Dalit Network |
| 2.    | Ms. Samikshya K.C.         | FAYA Nepal             |
| 3     | Ms. Shrada Ghimire         | FAYA Nepal             |
| 4     | Mr. Chhatra Bahadur Tailor | NNDSWO                 |
| 5     | Mr. Md. Juber              | Muslim Sewa Samaj      |
| 6     | Mr. Suman Sharma           | WHR                    |
| 7     | Ms. Bhagawati Hamal        | WHR                    |
| 8     | Mr. Mahee Nigar Ansari     | Muslim Sewa Samaj      |
| 9     | Ms. Nirmala Gahatraj       | NNDSWO                 |
| 10    | Mr. Madhav Chaudhari       | Tharu Kalyankari Sabha |
| 11    | Mr. Lahu Ram Chaudhari     | NIFIN                  |
| 12    | Mr. Ishwor Lama            | Tamang Ghedung Sangh   |
| 13    | Mr. Dal B. Gharti Magar    | NEFIN                  |

### Annex 5.2

#### Brief Description of FGD in Dhangadhi

Date: 18 December 2012

**Targeted Participant Group:** Judges, court officers, Govt Attorneys, members of Bar Association and private lawyers

Themes for Discussions:

Theme I: Need of promoting GESI in judiciary

Theme II: Reasons for non inclusive judiciary

Theme III: Policy options for promoting GESI in judiciary



| S. N. | Name of the participants  | Organization                               |
|-------|---------------------------|--|
| 1     | Hon'ble. Bishnu Subedi    | Kailali District Court                     |
| 2     | Hon'ble Umesh Raj Poudyal | Kanchanpur District Court                  |
| 3     | Mr. Bhubaneshwar Paudel   | Appellate Court, Mahendranagar             |
| 4     | Mr. Daman Singh Bista     | District Govt. Attorney Office, Kanchanpur |
| 5     | Mr. Sanat Chandra Lawat   | Appellate Court, Mahendranagar             |
| 6     | Mr. Harendra Raj Bist     | Kanchanpur District Court Bar              |
| 7     | Mr. Krishna Dev Joshi     | Kanchanpur District Court Bar              |
| 8     | Mr. Netra Bahadur Tamang  | Appellate Court Bar, Mahendranagar         |
| 9     | Ms. Poonam Singh Chand    | Appellate Court Bar, Mahendranagar         |
| 10    | Ms. Renu Pradhan Shrestha | Kailali District Court Bar                 |
| 11    | Ms. Janaki Kumar Tuladhar | Kailali District Court Bar                 |
| 12    | Mr. Dhruva Kumar Chouhan  | District Govt . Attorney Office, Kailali   |
| 13    | Mr. Kamal Prasad Gyawali  | Kailali District Court                     |
| 14    | Mr. Thakur Prasad Paudel  | Kanchanpur District Court                  |

### Annex 6.1

#### Brief Description of FGD in Biratnagar

Date: 19 December 2012

**Targeted Participant Group:** Judges, court officers, govt attorneys, members of Bar Association members and private lawyers

#### Themes for Discussions:

Theme I: Need of promoting GESI in judiciary;

Theme II: Reasons for non-inclusive judiciary;

Theme III: Policy options for promoting GESI in judiciary

| S. N. | Name of the participants  | Organization                    |
|-------|---------------------------|---------------------------------|
| 1     | Hon'ble Kaji Bahadur Rai  | Sunsari District Court          |
| 2     | Mr. Bishnu Kumar Giri     |                                 |
| 3     | Ms. Shobha Rai            | Advocate Forum                  |
| 4     | Mr. Birendra Basnet       | Sunsari District Court Bar      |
| 5     | Mr. Md. Idris Sah         | Morang District Court Bar       |
| 6     | Mr. Raj Kumar Rajbanshi   | Morang District Court Bar       |
| 7     | Mr. Keshab P. Pant        | Govt. Attorney Office, Morang   |
| 8     | Mr. Gokul Bahadur Niraula | Govt. Attorney Office, Morang   |
| 9     | Mr. Hari Kumar Pokharel   | Govt. Attorney Office Sunsari   |
| 10    | Mr. Purushotam Dahal      | Appellate Court Bar, Biratnagar |
| 11    | Mr. Rishi Adhikari        | Morang District Court           |

## Annex 6.2

### Brief Description of FGD in Biratnagar

Date: 19 December 2012

**Targeted Participant Group:** Civil Society and Socially excluded group

Themes for Discussions:

Theme I: Need of promoting GESI in judiciary

Theme II: Reasons for non-inclusive judiciary

Theme III: Policy options for promoting GESI in judiciary

| S. N. | Name of the participants | Organization               |
|-------|--------------------------|----------------------------|
| 1     | Mr. Himal Dhoj Limbu     | Morang District Court Bar  |
| 2.    | Mr. Raj Kumar Rajbanshi  | Morang District Court Bar  |
| 3     | Mr. Ram Lal Sutihar      | Madhesi Intellectual Forum |
| 4     | Ms. Aarti Shah           | Madhesi Intellectual Forum |
| 5     | Mr. Shyam B.K.           | Nepal Dalit Sangh          |
| 6     | Ms. Laxmi Paswan         | Nepal Dalit Sangh          |
| 7     | Mr. Rishikesh Chaudhary  | NEFIN, Morang              |
| 8     | Mr. Shahadev Khanal      | RNS                        |
| 9     | Mr. Om Prakash Singh     | Bright Vision College      |
| 10    | Ms. Bimala Bhattarai     | Morang District Court Bar  |
| 11    | Ms. Sharada Poudel       | Morang Bichar Sangh        |
| 12    | Ms. Ambika Sharma        | Nari Bikas Sangh           |

## Annex 7

### Positions and Persons Engaged in Judicial Sector

| Service Category                        | Level /Class     | Approved Positions | Total Approved Positions | Working Persons | Total Working Persons |
|---|------------------|--------------------|--------------------------|-----------------|-----------------------|
| Judges                                  | Supreme Court    | 21                 | 264                      | 14              | 233                   |
|   | Appellate Courts | 102                |                          | 83              |                       |
|   | District Courts  | 132                |                          | 126             |                       |
|   | Tribunals        | 9                  |                          | 10              |                       |
| Special Class                           | -                | -                  | 9                        | -               | 9                     |
| Judicial Group (Gazetted+ Non-Gazetted) | G-I              | 21                 | 2574                     | 21              | 2268                  |
|   | G-II             | 122                |                          | 118             |                       |
|   | G-III            | 295                |                          | 324             |                       |
|   | NG-I             | 865                |                          | 706             |                       |
|   | NG-II &III       | 1271               |                          | 1099            |                       |

|  |            |      |             |      |             |
|--|------------|------|-------------|------|-------------|
| Public Prosecutor (Gazetted+ Non-Gaz.)               | G-I        | 25   | 473         | 25   | 418         |
|  | G-II       | 85   |             | 81   |             |
|  | G-III      | 118  |             | 115  |             |
|  | NG-I       | 122  |             | 106  |             |
|  | NG-II &III | 123  |             | 91   |             |
| Legal Group (Gazetted+ Non-Gaz.)                     | G-I        | 21   | 188         | 19   | 178         |
|  | G-II       | 61   |             | 59   |             |
|  | G-III      | 77   |             | 72   |             |
|  | NG-I       | 22   |             | 22   |             |
|  | NG-II &III | 7    |             | 6    |             |
| Others (Gaz.+ Non-Gaz. and Classless)                | G/NG       | 645  | 1989        | 524  | 1802        |
|  | Classless  | 1344 |             | 1278 |             |
| Total Staff in Judicial Group                        | -          | -    | 3235        | -    | 2864        |
| Total Staff in Judicial Service                      | -          | -    | 3244        | -    | 2873        |
| <b>Total Staff in Judiciary and Judicial Service</b> |            | -    | <b>5497</b> | -    | <b>4908</b> |

### Annex 8.1

#### Further Breakdown of Representations of Castes / Ethnic Groups (by Broad Position Categories)

| Category         | Division | Gender       | Judges | Gazetted officers | Non Gazetted officers | Others Services | Total | Percentage |
|------------------|----------|--------------|--------|-------------------|-----------------------|-----------------|-------|------------|
| Brahman/ Chhetri | Hill     | M            | 178    | 681               | 1299                  | 857             | 3015  | 79.2       |
|                  |          | F            | 5      | 39                | 236                   | 188             | 468   | 12.3       |
|                  | Terai    | M            | 20     | 15                | 113                   | 145             | 293   | 7.7        |
|                  |          | F            | 0      | 3                 | 19                    | 11              | 33    | 0.9        |
|                  |          | <b>Total</b> |        | 203               | 738                   | 1667            | 1201  | 3809       |
| OBC, Madhesi (B) |          | M            | 4      | 14                | 81                    | 135             | 234   | 98.3       |
|                  |          | F            | 0      | 0                 | 1                     | 3               | 4     | 1.7        |
|                  |          | <b>Total</b> |        | 4                 | 14                    | 82              | 138   | 238        |
| Dalit (C)        | Hill     | M            | 1      | 2                 | 25                    | 24              | 52    | 53.6       |
|                  |          | F            | 0      | 2                 | 1                     | 12              | 15    | 15.5       |
|                  | Terai    | M            | 0      | 0                 | 6                     | 16              | 22    | 22.7       |
|                  |          | F            | 0      | 0                 | 0                     | 8               | 8     | 8.2        |

|                                    |              |                    |     |     |      |      |      |      |
|------------------------------------|--------------|--------------------|-----|-----|------|------|------|------|
|                                    |              | <b>Total</b>       | 1   | 4   | 32   | 60   | 97   | 100  |
| <b>Janajati (D)</b>                | <b>Hill</b>  | <b>M</b>           | 20  | 58  | 153  | 241  | 472  | 66.4 |
|                                    |              | <b>F</b>           | 2   | 13  | 44   | 75   | 134  | 18.8 |
|                                    | <b>Terai</b> | <b>M</b>           | 0   | 4   | 28   | 61   | 93   | 13.1 |
|                                    |              | <b>F</b>           | 0   | 3   | 3    | 6    | 12   | 1.7  |
|                                    |              | <b>Total</b>       | 22  | 78  | 228  | 383  | 711  | 100  |
| <b>Others (Except A-D)</b>         |              | <b>M</b>           | 3   | 8   | 19   | 17   | 47   | 88.7 |
|                                    |              | <b>F</b>           | 0   | 0   | 3    | 3    | 6    | 11.3 |
|                                    |              | <b>Total</b>       | 3   | 8   | 22   | 20   | 53   | 100  |
| <b>Total Staff Judicial sector</b> |              | <b>M</b>           | 226 | 782 | 1724 | 1496 | 4228 | 90.6 |
|                                    |              | <b>F</b>           | 7   | 60  | 307  | 306  | 680  | 9.4  |
|                                    |              | <b>Grand Total</b> | 233 | 842 | 2031 | 1802 | 4908 | 100  |

### Annex 8.2

#### Further Breakdown of Representations of Other Excluded Groups (by Broad Position Categories)

| Category                            |               | Division       | Gender | Judges | Gazetted Officer | Non Gazetted Officer | Other Services | Total |
|-------------------------------------|---------------|----------------|--------|--------|------------------|----------------------|----------------|-------|
| <b>Person with Disability</b>       |               | <b>M</b>       | 0      | 2      | 15               | 2                    | 19             | 95.0  |
|                                     |               | <b>F</b>       | 0      | 0      | 0                | 1                    | 1              | 5.0   |
|                                     |               | <b>Total</b>   | 0      | 2      | 15               | 3                    | 20             | 100   |
| <b>Backward areas (9 districts)</b> |               | <b>M</b>       | 4      | 9      | 63               | 66                   | 142            | 86.1  |
|                                     |               | <b>F</b>       | 0      | 0      | 5                | 18                   | 23             | 13.9  |
|                                     |               | <b>Total</b>   | 4      | 9      | 68               | 84                   | 165            | 100   |
| <b>Religious groups</b>             | <b>Hindu</b>  | <b>M</b>       | 223    | 771    | 1689             | 1351                 | 4034           | 87.5  |
|                                     |               | <b>F</b>       | 6      | 53     | 258              | 259                  | 576            | 12.5  |
|                                     |               | <b>Total</b>   | 229    | 824    | 1947             | 1610                 | 4610           | 100   |
|                                     | <b>Muslim</b> | <b>M</b>       | 2      | 2      | 9                | 19                   | 32             | 100   |
|                                     |               | <b>F</b>       | 0      | 0      | 0                | 0                    | 0              | 0     |
|                                     |               | <b>Total</b>   | 2      | 2      | 9                | 19                   | 32             | 100   |
|                                     | <b>Others</b> | <b>M</b>       | 1      | 1      | 7                | 19                   | 28             | 58.3  |
|                                     |               | <b>F</b>       | 0      | 1      | 9                | 10                   | 20             | 41.7  |
|                                     |               | <b>Total</b>   | 1      | 2      | 16               | 29                   | 48             | 100   |
|                                     |               | <b>R Total</b> | 232    | 828    | 1972             | 1658                 | 4690           |       |
| <b>Total</b>                        |               | <b>M</b>       | 226    | 782    | 1724             | 1496                 | 4228           |       |
|                                     |               | <b>F</b>       | 7      | 60     | 307              | 306                  | 680            |       |
| <b>Total</b>                        |               |                | 233    | 842    | 2031             | 1802                 | 4908           |       |

## Annex 9

### Further Breakdown of Representations of Castes/ Ethnic Groups and other groups (Judicial Group)

| Category                     | Division | Gender       | Court officers | Non Gazetted | Total | Percentage |
|------------------------------|----------|--------------|----------------|--------------|-------|------------|
| Brahman/<br>Chhetri          | Hill     | M            | 373            | 1153         | 1526  | 81.3       |
|                              |          | F            | 24             | 198          | 222   | 11.8       |
|                              | Terai    | M            | 6              | 104          | 110   | 5.9        |
|                              |          | F            | 2              | 16           | 18    | 1.0        |
|                              |          | <b>Total</b> |                | 405          | 1471  | 1876       |
| OBC, Madhesi (B)             |          | M            | 12             | 75           | 87    | 98.9       |
|                              |          | F            | 0              | 1            | 1     | 1.1        |
|                              |          | <b>Total</b> | 12             | 76           | 88    | 100        |
| Dalit (C)                    | Hill     | M            | 1              | 22           | 23    | 76.7       |
|                              |          | F            | 0              | 1            | 1     | 3.3        |
|                              | Terai    | M            | 0              | 6            | 6     | 20.0       |
|                              |          | F            | 0              | 0            | 0     | 0          |
|                              |          | <b>Total</b> | 1              | 29           | 30    | 100        |
| Janajati (D)                 | Hill     | M            | 31             | 142          | 173   | 68.9       |
|                              |          | F            | 8              | 36           | 44    | 17.5       |
|                              | Terai    | M            | 2              | 26           | 28    | 11.2       |
|                              |          | F            | 3              | 3            | 6     | 2.4        |
|                              |          | <b>Total</b> | 44             | 207          | 251   | 100        |
| Others (Except A-D)          |          | M            | 2              | 19           | 21    | 87.5       |
|                              |          | F            | 0              | 3            | 3     | 12.5       |
|                              |          | <b>Total</b> | 2              | 22           | 24    | 100        |
| Person with Disability       |          | M            | 2              | 9            | 11    | 100.0      |
|                              |          | F            | 0              | 0            | 0     | 0.0        |
|                              |          | <b>Total</b> | 2              | 9            | 11    | 100        |
| Backward areas (9 districts) |          | M            | 6              | 62           | 68    | 93.2       |
|                              |          | F            | 0              | 5            | 5     | 6.8        |
|                              |          | <b>Total</b> | 6              | 67           | 73    | 100        |
| Religious groups             | Hindu    | M            | 425            | 1517         | 1942  | 88.9       |
|                              |          | F            | 30             | 212          | 242   | 11.1       |
|                              |          |              | 455            | 1729         | 2184  |            |
|                              |          |              | 99             | 99           |       |            |
|                              | Muslim   | M            | 1              | 8            | 9     | 100.0      |
|                              |          | F            | 0              | 0            | 0     | 0          |
|                              |          | <b>Total</b> | 1              | 8            | 9     | 100        |
|                              | Others   | M            | 1              | 7            | 8     | 44.4       |

|              |  |              |     |      |      |      |
|--------------|--|--------------|-----|------|------|------|
|              |  | <b>F</b>     | 1   | 9    | 10   | 55.6 |
|              |  | <b>Total</b> | 2   | 16   | 18   | 100  |
|              |  | <b>Total</b> | 458 | 1753 | 2211 |      |
| <b>Total</b> |  | <b>M</b>     | 427 | 1547 | 1974 |      |
|              |  | <b>F</b>     | 37  | 258  | 295  |      |
| <b>Total</b> |  |              | 464 | 1805 | 2269 |      |

### Annex 10

#### Further Breakdown of Representation of Castes /Ethnic Groups and other groups (Public Prosecutor Group)

| Category                            | Division     | Gender       | Officers | Non Gazetted | Total | Percentage |
|-------------------------------------|--------------|--------------|----------|--------------|-------|------------|
| <b>Brahman/ Chhetri</b>             | <b>Hill</b>  | <b>M</b>     | 189      | 128          | 317   | 85.2       |
|                                     |              | <b>F</b>     | 8        | 28           | 36    | 9.7        |
|                                     | <b>Terai</b> | <b>M</b>     | 7        | 8            | 15    | 4.0        |
|                                     |              | <b>F</b>     | 1        | 3            | 4     | 1.1        |
|                                     |              | <b>Total</b> | 205      | 167          | 372   | 100        |
| <b>OBC, Madhesi (B)</b>             |              | <b>M</b>     | 2        | 6            | 8     | 100.0      |
|                                     |              | <b>F</b>     | 0        | 0            | 0     | 0.0        |
|                                     |              | <b>Total</b> | 2        | 6            | 8     | 100        |
| <b>Dalit (C)</b>                    | <b>Hill</b>  | <b>M</b>     | 0        | 3            | 3     | 100.0      |
|                                     |              | <b>F</b>     | 0        | 0            | 0     | 0.0        |
|                                     | <b>Terai</b> | <b>M</b>     | 0        | 0            | 0     | 0.0        |
|                                     |              | <b>F</b>     | 0        | 0            | 0     | 0.0        |
|                                     |              | <b>Total</b> | 0        | 3            | 3     | 100        |
| <b>Janajati (D)</b>                 | <b>Hill</b>  | <b>M</b>     | 13       | 11           | 24    | 63.2       |
|                                     |              | <b>F</b>     | 2        | 8            | 10    | 26.3       |
|                                     | <b>Terai</b> | <b>M</b>     | 2        | 2            | 4     | 10.5       |
|                                     |              | <b>F</b>     | 0        | 0            | 0     | 0.0        |
|                                     |              | <b>Total</b> | 17       | 21           | 38    | 100        |
| <b>Others (Except A-D)</b>          |              | <b>M</b>     | 1        | 0            | 1     | 100.0      |
|                                     |              | <b>F</b>     | 0        | 0            | 0     | 0.0        |
|                                     |              | <b>Total</b> | 1        | 0            | 1     | 100        |
| <b>Person with Disability</b>       |              | <b>M</b>     | 0        | 6            | 6     | 100.0      |
|                                     |              | <b>F</b>     | 0        | 0            | 0     | 0.0        |
|                                     |              | <b>Total</b> | 0        | 6            | 6     | 100        |
| <b>Backward areas (9 districts)</b> |              | <b>M</b>     | 2        | 1            | 3     | 100.0      |
|                                     |              | <b>F</b>     | 0        | 0            | 0     | 0.0        |
|                                     |              | <b>Total</b> | 2        | 1            | 3     | 100        |
| <b>Religious groups</b>             | <b>Hindu</b> | <b>M</b>     | 209      | 153          | 362   | 88.5       |
|                                     |              | <b>F</b>     | 11       | 36           | 47    | 11.5       |

|              |               |                |     |     |     |       |
|--------------|---------------|----------------|-----|-----|-----|-------|
|              |               | <b>Total</b>   | 220 | 189 | 409 | 100   |
|              | <b>Muslim</b> | <b>M</b>       | 1   | 1   | 2   | 100.0 |
|              |               | <b>F</b>       | 0   | 0   | 0   | 0.0   |
|              |               | <b>Total</b>   | 1   | 1   | 2   | 100   |
|              | <b>Others</b> | <b>M</b>       | 0   | 0   | 0   |       |
|              |               | <b>F</b>       | 0   | 0   | 0   |       |
|              |               | <b>Total</b>   | 0   | 0   | 0   |       |
|              |               | <b>R Total</b> | 221 | 190 | 411 |       |
| <b>Total</b> |               | <b>M</b>       | 214 | 158 | 372 |       |
|              |               | <b>F</b>       | 11  | 39  | 50  |       |
| <b>Total</b> |               |                | 225 | 197 | 422 |       |

### Annex 11

#### Further Breakdown of Representation of Castes /Ethnic Groups and other groups (Legal Group)

| Category                    | Division                   | Gender       | Officers | Non<br>Gazetted | Total | Percentage |
|-----------------------------|----------------------------|--------------|----------|-----------------|-------|------------|
| <b>Brahman/<br/>Chhetri</b> | <b>Hill</b>                | <b>M</b>     | 119      | 18              | 137   | 87.3       |
|                             |                            | <b>F</b>     | 7        | 10              | 17    | 10.8       |
|                             | <b>Terai</b>               | <b>M</b>     | 2        | 1               | 3     | 1.9        |
|                             |                            | <b>F</b>     | 0        | 0               | 0     | 0.0        |
|                             |                            | <b>Total</b> | 128      | 29              | 157   | 100        |
| <b>OBC, Madhesi (B)</b>     |                            | <b>M</b>     | 0        | 0               | 0     |            |
|                             |                            | <b>F</b>     | 0        | 0               | 0     |            |
|                             |                            |              | 0        | 0               | 0     |            |
|                             |                            |              |          | 0.0             |       |            |
| <b>Dalit (C)</b>            | <b>Hill</b>                | <b>M</b>     | 1        | 0               | 1     | 33.3       |
|                             |                            | <b>F</b>     | 2        | 0               | 2     | 66.7       |
|                             | <b>Terai</b>               | <b>M</b>     | 0        | 0               | 0     | 0.0        |
|                             |                            | <b>F</b>     | 0        | 0               | 0     | 0.0        |
|                             |                            |              | 3        | 0               | 3     |            |
|                             |                            |              | 2        | 0               |       |            |
| <b>Janajati (D)</b>         | <b>Hill</b>                | <b>M</b>     | 14       | 0               | 14    | 82.4       |
|                             |                            | <b>F</b>     | 3        | 0               | 3     | 17.6       |
|                             | <b>Terai</b>               | <b>M</b>     | 0        | 0               | 0     | 0.0        |
|                             |                            | <b>F</b>     | 0        | 0               | 0     | 0.0        |
|                             |                            | <b>Total</b> | 17       | 0               | 17    | 100        |
|                             | <b>Others (Except A-D)</b> |              | <b>M</b> | 5               | 0     | 5          |
|                             |                            | <b>F</b>     | 0        | 0               | 0     | 0.0        |
|                             |                            | <b>Total</b> | 5        | 0               | 5     | 100        |

|                              |        |       |         |     |     |      |  |
|------------------------------|--------|-------|---------|-----|-----|------|--|
| Person with Disability       |        | M     | 0       | 0   | 0   |      |  |
|                              |        | F     | 0       | 0   | 0   |      |  |
|                              |        | Total | 0       | 0   | 0   |      |  |
| Backward areas (9 districts) |        | M     | 0       | 0   | 0   |      |  |
|                              |        | F     | 0       | 0   | 0   |      |  |
|                              |        | Total | 0       | 0   | 0   |      |  |
| Religious groups             | Hindu  | M     | 137     | 19  | 156 | 87.6 |  |
|                              |        | F     | 12      | 10  | 22  | 12.4 |  |
|                              |        | Total | 149     | 29  | 178 | 100  |  |
|                              | Muslim | M     | 0       | 0   | 0   |      |  |
|                              |        | F     | 0       | 0   | 0   |      |  |
|                              |        | Total | 0       | 0   | 0   |      |  |
|                              | Others | M     | 0       | 0   | 0   |      |  |
|                              |        | F     | 0       | 0   | 0   |      |  |
|                              |        | Total | 0       | 0   | 0   |      |  |
|                              |        |       | R Total | 149 | 29  | 178  |  |
|                              | Total  |       | M       | 141 | 19  | 160  |  |
|                              |        |       | F       | 12  | 10  | 22   |  |
| Total                        |        |       | 153     | 29  | 182 |      |  |

## Annex 12.1

## Further Breakdown of Special Class Officials of Judicial Service by Caste/ethnicity

| Group             | Brahmin/Chhetri |   |       |   | Dalit |   |       |   | Janajati |   |       |   | OBC |   | Total |   |
|-------------------|-----------------|---|-------|---|-------|---|-------|---|----------|---|-------|---|-----|---|-------|---|
|                   | Hill            |   | Terai |   | Hill  |   | Terai |   | Hill     |   | Terai |   | M   | F | M     | F |
|                   | M               | F | M     | F | M     | F | M     | F | M        | F | M     | F |     |   |       |   |
| Judicial          | 2               | 0 | 0     | 0 | 0     | 0 | 0     | 0 | 0        | 0 | 0     | 0 | 0   | 0 | 2     | 0 |
| Public Prosecutor | 3               | 0 | 1     | 0 | 0     | 0 | 0     | 0 | 0        | 0 | 0     | 0 | 0   | 0 | 4     | 0 |
| Legal Officers    | 2               | 0 | 0     | 0 | 0     | 0 | 0     | 0 | 1        | 0 | 0     | 0 | 0   | 0 | 3     | 0 |
| Total             | 7               | 0 | 1     | 0 | 0     | 0 | 0     | 0 | 1        | 0 | 0     | 0 | 0   | 0 | 9     | 0 |



## Annex 12.2

## Further Breakdown of Special Class Officials of Judicial Service by other Groups

| Group             | Person with disabilities |          | Backward regions |          | Religious group |          |          |          |          |          | Total Religious Groups |          |
|-------------------|--------------------------|----------|------------------|----------|-----------------|----------|----------|----------|----------|----------|------------------------|----------|
|                   |                          |          |                  |          | Hindu           |          | Muslim   |          | Others   |          |                        |          |
|                   | M                        | F        | M                | F        | M               | F        | M        | F        | M        | F        | M                      | F        |
| Judicial          | 0                        | 0        | 0                | 0        | 2               | 0        | 0        | 0        | 0        | 0        | 2                      | 0        |
| Public Prosecutor | 0                        | 0        | 0                | 0        | 4               | 0        | 0        | 0        | 0        | 0        | 4                      | 0        |
| Legal Officers    | 0                        | 0        | 0                | 0        | 3               | 0        | 0        | 0        | 0        | 0        | 3                      | 0        |
| <b>Total</b>      | <b>0</b>                 | <b>0</b> | <b>0</b>         | <b>0</b> | <b>9</b>        | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>9</b>               | <b>0</b> |

## Annex 13.1

## Further Breakdown of First Class Officials of Judicial Service by Caste/ethnicity

| Group             | Brahmin/Chhetri |          |          |          | Dalit    |          |          |          | Janajati |          |          |          | OBC      |           | Total    |   |
|-------------------|-----------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------|----------|---|
|                   | Hill            |          | Terai    |          | Hill     |          | Terai    |          | Hill     |          | Terai    |          | M        | F         | M        | F |
|                   | M               | F        | M        | F        | M        | F        | M        | F        | M        | F        |          |          |          |           |          |   |
| Judicial          | 21              | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 21        | 0        |   |
| Public Prosecutor | 24              | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 1        | 0        | 0        | 0        | 0        | 25        | 0        |   |
| Legal Officers    | 18              | 0        | 0        | 0        | 0        | 0        | 0        | 0        | 1        | 0        | 0        | 0        | 0        | 19        | 0        |   |
| <b>Total</b>      | <b>63</b>       | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>2</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>0</b> | <b>65</b> | <b>0</b> |   |

## Annex 13.2

## Further Breakdown of First Class Officials of Judicial Service by other Groups

| Group             | Person with disabilities |   | Backward regions |   | Religious group |   |        |   |        |   | Total Religious Groups |   |
|-------------------|--------------------------|---|------------------|---|-----------------|---|--------|---|--------|---|------------------------|---|
|                   |                          |   |                  |   | Hindu           |   | Muslim |   | Others |   |                        |   |
|                   | M                        | F | M                | F | M               | F | M      | F | M      | F | M                      | F |
| Judicial          | 0                        | 0 | 0                | 0 | 21              | 0 | 0      | 0 | 0      | 0 | 0                      | 0 |
| Public Prosecutor | 0                        | 0 | 0                | 0 | 25              | 0 | 0      | 0 | 0      | 0 | 0                      | 0 |



## Annex 15.1

## Further Breakdown of Third Class Officials of Judicial Service by Caste/ethnicity

| Group             | Brahmin/Chhetri |    |       |   | Dalit |   |       |   | Janajati |    |       |   | OBC |    | Other |   | Total |     |    |
|-------------------|-----------------|----|-------|---|-------|---|-------|---|----------|----|-------|---|-----|----|-------|---|-------|-----|----|
|                   | Hill            |    | Terai |   | Hill  |   | Terai |   | Hill     |    | Terai |   | M   | F  | M     | F | M     | F   |    |
|                   | M               | F  | M     | F | M     | F | M     | F | M        | F  | M     | F |     |    |       |   |       |     |    |
| Judicial          | 242             | 23 | 5     | 2 | 1     | 0 | 0     | 0 | 2        | 4  | 8     | 2 | 3   | 12 | 0     | 2 | 0     | 283 | 36 |
| Public Prosecutor | 88              | 7  | 3     | 1 | 0     | 0 | 0     | 0 | 9        | 2  | 2     | 0 | 2   | 0  | 1     | 0 | 105   | 10  |    |
| Legal             | 47              | 5  | 2     | 0 | 1     | 2 | 0     | 0 | 7        | 3  | 0     | 0 | 0   | 0  | 5     | 0 | 62    | 10  |    |
| Total             | 377             | 35 | 10    | 3 | 2     | 2 | 0     | 0 | 40       | 13 | 4     | 3 | 14  | 0  | 8     | 0 | 455   | 56  |    |

## Annex 15.2

## Further Breakdown of Third Class Officials of Judicial Service by other Groups

| Group             | Person with disabilities |   | Backward regions |   | Religious group |    |        |   |        |   |
|-------------------|--------------------------|---|------------------|---|-----------------|----|--------|---|--------|---|
|                   |                          |   |                  |   | Hindu           |    | Muslim |   | Others |   |
|                   | M                        | F | M                | F | M               | F  | M      | F | M      | F |
| Judicial          | 2                        | 0 | 6                | 0 | 296             | 29 | 1      | 0 | 1      | 1 |
| Public Prosecutor | 0                        | 0 | 2                | 0 | 100             | 10 | 1      | 0 | 0      | 0 |
| Legal             | 0                        | 0 | 0                | 0 | 58              | 10 | 0      | 0 | 0      | 0 |
| Total             | 2                        | 0 | 8                | 0 | 454             | 49 | 2      | 0 | 1      | 1 |

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