



# The Implications of Closing Civic Space for Sustainable Development in Nepal

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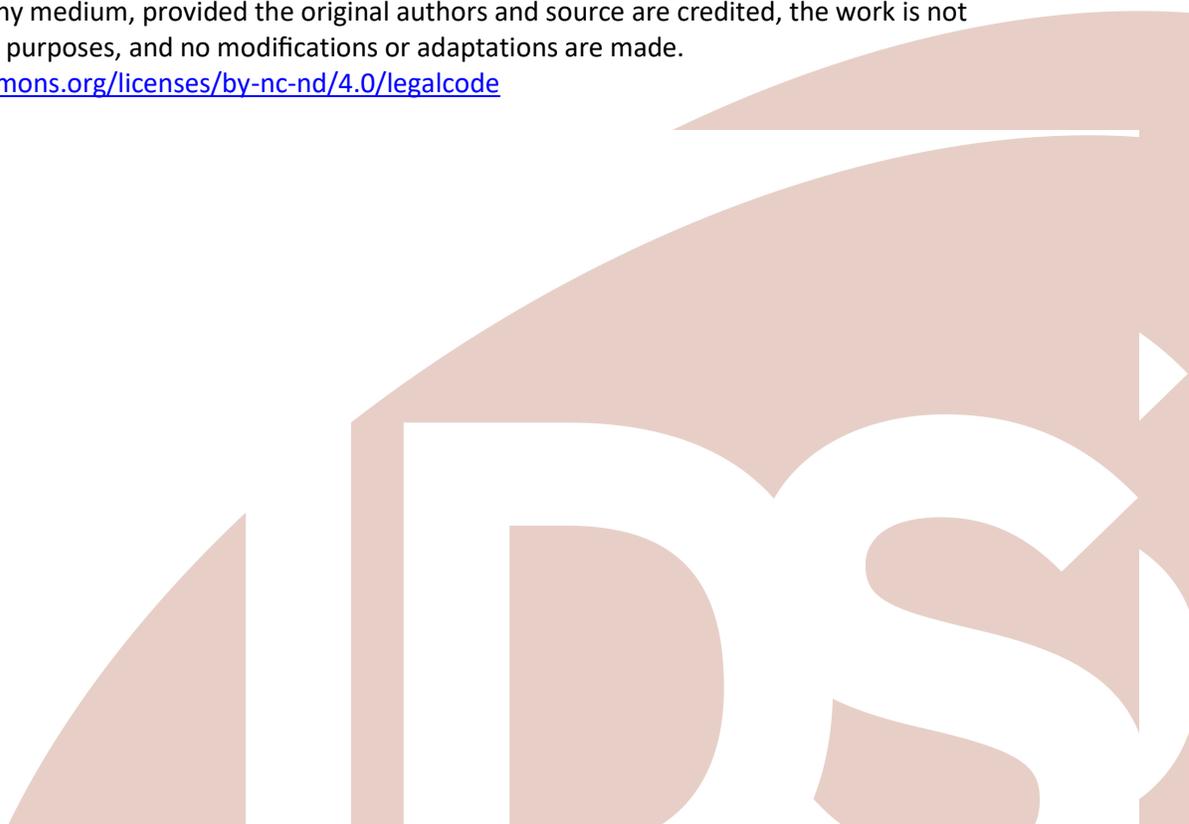
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## Summary

This report on Nepal is one of a set of four country case studies designed to study the implications of closing civic space for the achievement of the Sustainable Development Goals (SDGs). The case study was commissioned in response to the wave of legal, administrative, political and informal means to restrict civic space and the activities of civil society actors in countries around the world in the past decade. Based on a literature review and conceptual framework developed for the study (see also Hossain *et al* 2018), the report documents how changing civic space in Nepal, a country characterized as a competitive democracy with strong commitment to inclusion, has impacted on development outcomes, with a focus on Sustainable Development Goal (SDG) outcomes to do with SDG 4 (access to education) SDG 5 (gender equality), SDG 6 (access to water and sanitation), SDG 16 (peace, justice and strong institutions), and the principles of inclusion and 'leaving no one behind'.

The study found that:

- The civic space in Nepal has changed rapidly in recent years. Civil society actors have played a critical role in defending and defining political and civil rights since the democratic transition in the 1990s. Yet many civil society organizations (CSOs) are perceived as Kathmandu-based, donor-driven (in their agendas and work), and with weak grassroots links and accountability, weakening their legitimacy with respect to the state.
- Since 2015, the civic space has become more fragmented and partisan. Yet despite recent administrative and legal changes and efforts to clamp down on specific movements, civic space in Nepal is in no current danger of closing down for actors directly engaged in inclusive development. However, CSOs may have weaker collective capacity to build broad issue-based alliances to demand accountability from the state, a potential concern for women's organizations, while rising nationalist politics may single out faith-based international non-governmental organizations (INGOs) for particularly tight control.
- As the Nepali state shifts its focus to 'big development' (*bikas*), the inclusion agenda will take a backseat. An emphasis on poverty alleviation will leave space open for civic engagement with the state on service delivery, and no short-run impacts on access to public services is anticipated. However, the quality of basic services such as education and water will remain a concern, in particular for marginalized groups. In the longer run, a CSO mandate for service delivery at the expense of a focus on strengthening rights and inclusion, and at a time when the inclusion agenda is also losing ground in public policy, is likely to be adverse for development outcomes.
- Decentralization may enable local and grassroots organizations to engage with the state on development planning and delivery. But much depends on how successfully they engage with the process, which in turn depends on their capacities and the political will and state capacities to include them. CSOs at the local level are vital for ensuring inclusion and that 'no one is left behind' by development.
- The power of Western donors is in relative decline, as China and India gain prominence in the region. This creates challenges for INGOS and NGOs (non-governmental organizations), who have historically been funded through international aid. The increased Indian and Chinese presence as development partners and investors allows the state to counter the frameworks and development agendas that come with dependence on official development assistance. It has seen the SDGs dethroned by a new infrastructure-heavy framing around 'Big Development', and seen CSOs newly vulnerable to the appearance of being 'pro-India', an accusation used specifically to close space for Madhesi struggles.

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# 1. Introduction

## Background

This report on Nepal is one of a set of four country case studies designed to study the implications of closing civic space for the achievement of the Sustainable Development Goals (SDGs). It adopts a theoretical and analytical framework developed in a synthesis report entitled *The Implications of Closing Civic Space for Development* (see also Hossain *et al* 2018). The study was commissioned from the Institute of Development Studies (IDS) by the ACT Alliance during 2017-18 in response to the wave of legal, administrative, political and informal means to restrict civic space and the activities of civil society actors in countries around the world in the past decade. It was motivated specifically by the need to assess the implications for development outcomes, as measured by the SDGs. This reflects the wide body of evidence that civil society has played a significant role in promoting inclusive, equitable and sustainable modes of development in the past, and reasonable concerns that closures of civic space may choke off pathways to the achievement of the SDGs.

The study as a whole comprised

- a review of the literature on closing civic space, and the development of a conceptual and methodological framework for further study
- an application of these frameworks to a desk-based analysis of the potential development implications of closing civic space in 12 selected countries of interest to the ACT Alliance and its wider partnerships
- a subset of country case studies selected from the 12 for more detailed and empirical analysis of development impacts in selected policy domains (land rights, labour rights, social inclusion, gender equality, poverty, hunger, and urban livelihoods) where identified as of potential relevance in four countries: Brazil, Cambodia, Nepal, and Zimbabwe.

The country cases were selected in part to represent different pathways in the political economy of development. Nepal represents a political settlement which is democratizing in a post-conflict context, in which comparatively rapid development progress has been made in key areas in recent years, and in which social inclusion has been a public policy priority.

The civic space in Nepal has been rapidly changing in recent years, with likely future impacts on development. Since the democratic transition in the 1990s and during the Maoist conflict (1996-2006) civil society actors played a critical role in defending political and civil rights. During the transition period (2006 -2015), these actors helped shape the nature of the contract citizens have with the state through the new Constitution. Civil society actors brought issues of gender equity and inclusion of marginalized groups into decision-making spaces and the formulation of inclusive service delivery policies, producing evidence on how states deliver such services. Despite the vibrant nature of the civic space, a large number of the civil society organizations (CSOs) have been Kathmandu-based, with weaker links to grassroots communities and the local level. Many of these organizations are aid-funded, which means their agenda and activities are vulnerable to changes in the international aid agenda. Donor dependency has also fueled a wider perception among the public and the bureaucracy that these organizations lack autonomy and accountability to their beneficiaries. These factors have influenced how CSOs are able to engage with the state and promote their agenda.

This case study makes the following claims about the changes in the nature of civic space and what it means for development. First, in the present period (2015 onwards), the civic space itself has become

more fragmented and partisan compared to earlier (2006-2014). The space had been tightly regulated by the state before the democratic transition in the 1990s. Since the democratic transition, administrative control over CSOs engaged in service delivery (through new laws, mechanisms) while cumbersome, was rarely repressive. Despite recent administrative and legal changes (i.e. the proposed Social Welfare Act of 2014), civic space in Nepal is in no danger of closing down for actors engaged in promoting inclusive development. While there have been some alarming incidents related to clamping down on the media and specific rights-based groups, there is no evidence of a sinister wider design by the state to shrink civic space.

Second, the close fit between the state and the non-governmental organizations (NGOs) over key issues around inclusion in development and poverty alleviation means that most service delivery NGOs continue to have room to manoeuvre within the system. Cumbersome administrative regulations may delay project delivery but will not hinder NGO operations, particularly for those organizations that are aligned with and have close personal relations with the ruling party. However, as the civic space has become more partisan and fragmented, the ability of the CSOs to create broad issue-based alliances to demand accountability from the state has weakened. The experience of religious-based INGOs interactions with the state may be distinctly different in this regard, given the rise of nationalist agenda within politics.

Third, as the Nepali state shifts its focus to 'big development' i.e., infrastructure and large development projects, the inclusion agenda is likely to take a back seat. However, the continued emphasis on poverty alleviation will leave space open for engagement with the state on service delivery for the marginalized. In the short run there may not be any immediate impact on marginalized groups accessing state service (education, water), even though quality is likely to remain a key concern. In the long run, the lack of quality of services delivered by the state and as the inclusion agenda loses ground may have a negative impact on development outcomes.

Fourth, the decentralization process may have created opportunities for organizations based outside Kathmandu to engage in development planning and delivery. However, the impact of this shift depends on how effective these organizations are in engaging with these processes. Moreover, the balance of power between the key actors in Nepal's political settlement is changing. As the bureaucracy, heavily dominated by specific caste groups, struggles to maintain control given the expansive changes proposed by the new provincial system, there are likely to be attempts to curtail effective inclusion of marginal caste/ class groups in local decision-making processes. The role of the CSOs working at the local level on the inclusion of minorities becomes critical in this context.

Fifth, the power of the Western donors is in relative decline, as China and India gain prominence in the region, creating challenges for how INGOs and NGOs operate in Nepal. The increased Indian and Chinese presence as development partners or investors allows the state to counter the frameworks and development agendas that come with being dependent on official development assistance and has had two distinct impacts on the civic space. First, the established framing of inclusive development by civil society around the internationally-agreed Millennium Development Goals (MDGs) or SDGs has been dethroned by the new framing around 'Big Development'. Second, interventions by India in the domestic affairs of Nepal mean that CSOs need to maintain a distance from issues that may lead to their organizations being viewed as pro-Indian, as this reduces their legitimacy domestically. This is particularly problematic for Madhesi organizations, who are perceived as aligned with India by the non-Madhesi majority. The 2015 Indian interventions on the issue of redrawing the boundaries of the Terai region have created pressure on CSOs to rally behind the state, and seen nationalist discourse gain

ground. The rise of nationalist discourse may limit the space for CSOs to challenge the state on the inclusion agenda, which is, somewhat paradoxically, seen as divisive issue for national unity. Lastly, it is hard to make claims about how the above trends will affect the attainment of selected SDG goals (the focus here being on SDGs 4 '*Quality Education*', 5 '*Gender Equality*', 6 '*Clean Water and Sanitation*', and 16 '*Peace, Justice, and Strong Institutions*'). Nepal has witnessed steady improvements in the MDGs and SDGs related to maternal health care (SDG 5, particularly on achieving sexual and reproductive health rights), school enrolment (SDG 4), access to water/ sanitation (SDG 6), and thanks to the quota system, a significant presence of women in the parliament (SDG 5). Strong legal and Constitutional provisions also ensure representation of women and marginalized groups in different levels of decision-making (SDG 5 and 16). Civil society actors after the democratic transition (1990) and through the post transition period (2006 onwards) played a critical role by advocating the inclusion agenda, producing evidence identifying policy gaps, and playing a key role in drafting progressive policies for these sectors. But it is early to predict how the inclusion agenda will be affected by the shifts in state-civil society relations in the past few years.

The study was conducted as follows. An initial desk-based literature review and scoping study identified social inclusion and gender equality as among the areas of contention in which closing civic space was likely to have the most impacts on development outcomes in Nepal. To explore these issues further, an IDS researcher with expertise in women's empowerment, gender and politics and civil society and a Nepalese scholar of civil society and development worked together to study these issues in more depth. They identified relevant experts and state and non-state actors in key sectors willing to discuss these issues. Interviews were undertaken with key informants from across civil society, government, donor community in Kathmandu. A total of 15 individual interviews were undertaken with key informants in the relevant sectors (education, water, gender equality), and a participatory workshop was conducted with leaders of CSOs from these sectors to capture their experience and opinions on working with the state in Nepal and the changing natures of civic space.

While accessing key informants was not difficult, several specifically asked that information not be attributable to them; for this reason, we have excluded the customary interviewee list in the report, and anonymized interviewees in reporting their responses. In addition, the researchers collected secondary data and literature and collected and analysed civic space, statistical and development performance data to situate and illuminate the case further. While these secondary sources allowed us to develop a more robust picture, it should be noted that the study findings are limited by specific types of data gaps. First, the limited resources and short time available for the study meant that key informant interviews could be undertaken with only 15 respondents, in addition to a participatory workshop comprising civil society actors, and secondary literature and data review. This meant that all interviews were conducted at the national level, and the interpretation here of how decentralisation may affect service delivery and whether local level changes are likely to influence the capacities of marginalised groups to influence planning and decision-making rely on the interpretations and opinions of those operating at the national level. Second, we relied on key informant interviewees to understand changes in state-civil society relations. Not all interviewees were familiar with the MDGs or SDGs in the sectors of interest, and were better able to reflect more generally on what the nature of shifts meant for the inclusive development agenda. It should also be noted that statistical data were not available to allow us to measure or estimate the extent to which NGOs have contributed attainment of specific MDG or SDG targets. However, our analysis shows that NGOs and CSOs were critical actors in promoting specific inclusive development issues and policies (for example, gender equality clauses, quotas for women or for minority children in school, etc.) Third, decentralisation and the co-ordination between different government bodies at different levels are also likely to have important implications for public service

delivery and impact on the inclusive development agenda; however, these issues are not (yet) directly linked to changes in civic space, and warrant further attention.

The findings of the case study are set out as follows. The next section sets out the challenge of sustainable development in Nepal, exploring development achievements to date, the role of civil society in development, the political economy of sustainable development, the nature of closing civic space, and the roles of international aid donors and development partners, and neighbouring countries i.e. China and India, in shaping civic space and the development process. It briefly lays out the country context, including the main political trends, the role civil society actors have played in the promotion of the inclusive development agenda and rights, and Nepal's performance in relation to the MDGs and the SDGs. Section 3 presents the findings on the key changes that frame state-civil society relations in Nepal. It details the nature of state-civil society relations and how this has shifted, giving an account of the key features of the new regulations (Social Welfare Act) and its impact on the functioning of the NGOs and other civil society actors. It also examines the possibilities and restrictions the new provincial system may create, and how donor-and civil society relations have changed over time. The section then highlights how various actors in Nepal assesses the impact of these changes on the agenda for inclusive development, particularly on the SDGs selected. The final section concludes with a discussion of the possible trajectories the Nepali state may take given the above changes, and the implications for programming for inclusive development.

### The Nepal country case study

A difficult political transition in 2006 after ten years of civil war, the contentious process of framing the new Constitution, and the need for mass rehabilitation after the 2015 earthquake, have all strengthened the demand for inclusive development from various sections of society. The large-scale mobilization for democracy in the 1990s and the ten-year long 'People's War' shaped discourses around inclusion, participation and representation in Nepal. The formulation of an Interim Constitution (2007) in the post-conflict period created space for openly challenging many of the conservative social practices and the old 'rules of the game' of doing politics and business based on class and caste privilege. The emphasis placed on equality and inclusion in the Interim Constitution also created scope for challenging social and political hierarchies, including gender- and caste-based power relations.<sup>1</sup> The transitional context also created openings for the Janajatis (Adivasis), Dalits (the formerly 'untouchable' castes) and the Madhesis (people with origins in the Terai or Tarai region bordering India) to make demands for inclusion in politics and policy making processes that had been previously unimaginable (Tamang, 2009). While the above scenario presents a largely positive outlook for the prospects of development inclusive of the most marginalized groups, whether Nepal will be able to realise inclusive development outcomes remains open to debate.

One reason for the uncertainty about how inclusively development may play out in this context is that Nepal's political system is highly competitive, and since the peace accord was signed in 2006, it has experienced frequent changes in government. On the positive side, Nepal stands out among its South Asian neighbours, which have displayed a range of increasingly authoritarian tendencies in recent years, for its to-date smooth transition of political power through elections or parliamentary procedures. However, the smooth transition of power has not guaranteed steady economic growth, stability or open civic space. Coalition politics has meant that various social and political groups were able to mobilize along caste, ethnic, or regional lines to make their presence felt in the political space. The interference by India on how the provinces in the Terai were to be drawn up and the apparently close links between the-then ruling party to China (India's regional rival) put the Nepali state under high levels of external

pressure from its neighbour. This created space for a particular form of nationalism to emerge that emphasized an 'authentic' Nepali identity, and has created scope for labelling contention around inclusion as divisive. Moreover, there is pressure on the state and ruling elites to demonstrate their autonomy *vis-à-vis* donors at a time when external influence on policy issues has been in one way or another been characterized as inimical to the Nepali state, particularly on the question of granting a greater voice to marginalized groups. These developments create specific forms of constraint and influence how relations among state, donors and civil society actors are framed.

Nepal is currently in the process of implementing far-reaching political and social reforms to address its acute problems of inequality and exclusion (Druzca, 2016). But the rise of identity-based politics and the nationalist rhetoric that has arisen as a reaction have also fragmented the political and civic space, and limited the possibilities of solidarity-based movements for demanding inclusion compared to the previous decade. There are strong pressures on the state and the ruling party, which came to power on the back of an election pledge that promised prosperity, to exert themselves as strong and capable actors who are able to deliver services to the Nepali population and rebuild the economy after a decade each of insurgency and transition.<sup>2</sup> The pressure for performance legitimacy felt by the political elite is partly grounded in the way the inclusion agenda and development success have been used for political mobilisation in Nepal. For ruling elites, failure to deliver development has clear political costs. While state actors and CSOs are well versed in the framings used in international development, and CSOs use its international commitments to pressure the state to take action, the extent to which SDGs and other development framing have been 'localized' within the wider public and the political arena is unclear. What should be noted here is that the political vision and discourse around inclusion and development is shifting, with the emphasis being placed in growth rather than distribution. This indicates that civil society actors are framing their demands for inclusion instrumentally, rather than on the basis of rights; else they are losing their voice in the drumbeat that is the political emphasis on 'big development'.

Given the complex and rapid changes in politics and the state's position on inclusion, the role of civil society organizations in holding the state to account and collaborating with the state on formulating development strategies, producing evidence, and partnering in delivering services, is critical. This study explores how the civic space has changed in Nepal after its transition from conflict (i.e. 2006 onwards) and the possible influence changes in civic space may have on inclusive development. It investigates the roles of civil society actors in advocating for and delivering on the agenda for inclusive development, particularly on the issues related to access to services, representation and voice of the marginalized groups (including women, Dalits, Janajatis and other vulnerable groups), and how the changes in state-civil society relations may influence their ability to undertake these actions.

The case study was guided by the following questions:

- How have civil society actors affected the quality, depth and reach of democratic dialogue on inclusive development after the transition in 2006 and development outcomes?
- Are civil society actors organized along partisan lines in Nepal and being drawn closer to the state? What do partisan divisions mean for state responsiveness in delivery of services to the poor and the inclusion of marginalized groups?
- How have recent changes in the regulatory system affected the ability of CSOs to demand responsiveness and accountability from the state? How may these changes affect CSO ability to advocate and demand services?
- Is the voice of less powerful groups - women, caste and ethnic minority groups - effectively represented in the civic space and various institutional spaces? How will changes in regulations affect the ability of the CSOs to represent the marginalized groups in these spaces?<sup>3</sup>

It should be noted that the multitude of major events - Nepal's recent political history, the earthquake and the Indian blockade - make it difficult to attribute any progress or lack of to any single factor. The study attempts to answer these questions, but is constrained by data gaps, partly due to the limited resources and time, and partly due to the fact that specific impacts on development outcomes of changing civic space are hard to disentangle from other factors; data are either not available. In addition, it is too early for any impacts of changes in civic space on development to have emerged.

### Scope of the study

The exploration of how civil society actors advocate for inclusion, representation and access of services by marginalized groups is closely linked to the SDG call to 'leave no one behind'. In this study we map the changes that took place in Nepal's civic space and attempt to trace through interviews with key actors how these changes may affect their work in advocating for, holding the state to account or delivering services in specific sectors that are closely linked to Nepal's inclusive development agenda. In terms of the Sustainable Development Goals, we attempt to trace the possible impact of the changes in state-civil society relations on the selected SDGs, by tracing how inclusive development may be impacted on specific Targets (Table 1).

*Table 1 Selected SDG targets*

<b>Sustainable Development Goal</b>	<b>Target</b>
SDG 4 <i>Ensure inclusive and equitable quality education and promote lifelong learning opportunities for all</i>	4.1 all girls and boys complete free, equitable and quality primary and secondary education leading to relevant and Goal-4 effective learning outcomes  4.5 eliminate gender disparities in education and ensure equal access to all levels of education and vocational training for the vulnerable, including persons with disabilities, indigenous peoples and children in vulnerable situations
SDG 5 <i>Achieve gender equality and empower all women and girls</i>	5.2 Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation  5.5 Ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life  5.6 Ensure universal access to sexual and reproductive health and reproductive rights
SDG 6 <i>Ensure access to water and sanitation for all</i>	6.1 achieve universal and equitable access to safe and affordable drinking water for all  6.2 achieve access to adequate and equitable sanitation and hygiene for all and end open defecation, paying special attention to the needs of women and girls and those in vulnerable situations
SDG 16 <i>Peace, justice and strong institutions</i>	16.7 Ensure responsive, inclusive, participatory and representative decision-making at all levels

To trace the changes in state-civil society relations interviews focused on the post transition period (2006-2015). Interviewees were asked to reflect on their role during the immediate period after

transition (2006-2007); Constitution formulation and Constitutional crisis (2008-2014); and the period after the new Constitution was formulated (2015- present). It should be noted that while we used these three periods as a heuristic device, these are artificial categories. During the interviews it became clear that an analysis of how civic space changed required a longer historical view. Many of the interviewees traced the changes from the 1990s. Moreover, we realised that while these artificial categories allowed us to probe deeper into specific incidents, some would argue that the transition period lasted till the new constitution was formulated in 2015. As a result, findings in sections 2 and 3 are presented in chronological order, but not within narrowly-defined phases of state-civil society relations.

## Methodology

The case study was designed in a collaborative manner with inputs from ACT Alliance member organization in selecting the SDGs and identifying the key informants. The empirical work was informed by the analysis presented in the desk-based review of literature on state-civil society relations and also literature on the nature of political settlement in Nepal. The key informants interviewed were donors, INGOs, think –tanks and scholars, media personnel. Fifteen key informant interviews were conducted.<sup>4</sup> These interviewees were selected based on their role during the transition period; whether they worked in or researched on the relevant sectors that were linked to the SDGs selected; whether they advocated for or represented interests of the marginalized groups; and how they were likely to be/ or have been affected by the changes in the state regulations. The interviews explored the following topics:

- the agenda setting power of these organizations
- their ability to hold the state to account
- the nature of their partnerships with the state; and
- their assessment of how state-civil society relations had shifted changed over time after the democratic transition.

The objective of the interviews was to generate qualitative evidence on the nature of changes in the overall political context, particularly the way civic space had changed.

In addition, a participatory workshop was organized with the heads of NGOs, think tanks and with scholars working on inclusion, to capture the diversity of positions held by civil society actors in Nepal and to triangulate findings emerging from the interviews. The workshop included participants who worked on women’s rights; Janajati (indigenous) and Dalit (‘untouchable’) group rights; and actors working in the education and water sectors. While these methods elicited reflections on how CSO-state relations have evolved over the years, and also on specific accountability episodes and views on whether inclusive development could be secured, the interviewees had difficulties reflecting how changes in civic space may affect attaining the SDG goals. Moreover, the participants could clearly articulate what changes in civic space meant for rights and inclusion of the marginalised in the decision-making processes, but, partly because of the preliminary nature of changes in civic space, found it difficult to trace through any implications for service delivery. In addition, many pointed out that it was too early to speculate on the probable impact of proposed new regulations.

## 2. Country context

### The political settlement

Nepal is a multi-ethnic, multi-lingual and multi-religious society.<sup>5</sup> The legal code of the Muluki Ain (Law of the Country) of 1854 instituted by the then-rulers had a far-reaching legacy on the economy, society and the polity of the country. The Muluki Ain ranked the entire population in a caste hierarchy that regimented the social and political life of the people of Nepal, and although the law was repealed and replaced in 1963, the older laws still contour the agenda on inclusion. The first democratically elected government in Nepal was established in 1959. The elected government was overthrown by then-King Mahendra in 1960, who curtailed political freedom, outlawed political parties and established the Panchayat system (Sharma, 2006). The people's movement for a multi-party democracy led to a political transition in Nepal in 1990. The reinstatement of multiparty democracy changed people's expectations, particularly among the disadvantaged groups, about participation in democratic processes, their entitlements and what the state should deliver to the poor. However, the state failed to deliver on these expectations as intra-party and inter-party conflict heightened, and elite capture of state resources resulted in rising levels of inequality and corruption (Thapa with Sijapati, 2005). Against this backdrop, the Maoists mobilized in remote areas and civil war erupted in 1996. King Gyanendra came to power after a massacre in the royal palace, and with the help of the army suspended democracy and declared a state of emergency. This deepened the political crisis and the people's movement for democracy gained strength. In 2005, the Maoists and the major political parties reached a broad consensus to end the political crisis and demanded elections to form a Constituent Assembly. In April 2006, the success of another people's movement saw the departure of the monarchy from active politics, and by November that year, the conflict had formally ended, and a peace agreement was signed between the Government of Nepal (GoN) and the Communist Party of Nepal (Maoist).

Nepal's current competitive but fragile political settlement rests on the 2006 peace agreement, yet its post-conflict history has also been tumultuous. The post-transition period witnessed rapid and significant changes with the resolution of the Maoist conflict, a progressive Interim Constitution, a tortured constitution-writing process, a constitutional crisis, several electoral turnovers, coalitional tensions between political parties, and external interference in Nepal's domestic affairs. The 2012 constitutional crisis resulted from the failure of the first Constituent Assembly (2008-2012) to formulate a new constitution. The broad contours of the new constitution proposed at the time included provisions for the devolution of power away from the centre and to newly created provinces. This was followed by social unrest and protests by groups who felt that the restructuring of the state and the new federal system did not adequately address the rights and needs of minorities, particularly the Madhesis in southern Nepal and the Adivasi Janajatis (indigenous peoples). With the largest party in the Constituent Assembly, the Communist Party of Nepal (Maoist – CPN (M)) having advocated greater rights for these groups during their insurgency and in its aftermath, and despite staunch resistance from the two other major parties and apparent misgivings of their own, the Maoists were unable to come out against these demands.

A new Constituent Assembly was elected in 2013, and this time, the CPN (Maoist) came third behind the Nepali Congress and the CPN (UML), signalling a clear shift in how the issue of inclusion would be dealt with at the highest political level. Differences over the formulation of the new Constitution continued to separate political forces for over a year and a half. However, following the devastating earthquake of April 2015, political consensus was quickly reached and in less than five months a Constitution was finally agreed upon. The run-up to and adoption of the new constitution saw large-scale political

mobilisation by Madhesis in the Terai particularly on the question of the provincial boundaries proposed, and to pressure the Nepali government to concede to Madhesi demands a blockade was imposed by India, further deepening the crisis. Even though some concessions were eventually made to Madhesis, this overt attempt at interference by India meant that ultra-nationalist rhetoric gained ground. In 2017, elections at the national, provincial and local levels were held. At the national level, the left alliance composed of the Communist Party of Nepal (United Marxist-Leninist) (CPN (UML)) and the CPN (Maoist) won an outright majority, with the Nepali Congress and the party of former Panchayat loyalists forming the opposition.

The major political parties—the CPN (UML), the CPN (Maoist), and the Nepali Congress - have all been in power and have done little to distinguish themselves when it comes to socio-economic policies or in terms of performance or politics of patronage. Frequent change has meant that stability and consolidation of power are a key concern of political parties. Nepal is undergoing a period of democratic consolidation that will continue to re-shape the balance of power between contending groups for some years. Given that there have been rapid electoral turnovers and short terms in office, political elites may pursue various development goals in the expectation that they may hold power only briefly. The political elites may take up specific development agendas if this secures electoral victory, or they may undermine the inclusion agenda to ensure that the caste- and class-based hierarchy remains entrenched. The civic space in competitive clientelist states is more open than in authoritarian systems; Nepal is no exception to this general rule. However, while the civic space is vibrant, it also includes a diversity of voices, and is highly contentious, fragmented and partisan. It contains multiple competing groups, divided mainly along the lines of affiliation to the major political parties but it also contains others seeking more rights for marginalised sections of society. The civic space in Nepal not only contains formal civil society organisations, but also informal actors and groups, that move the boundaries between civil society and the political domain.

In the post-transition period, social inclusion had rapidly gained political currency. Nepal has brought about various institutional changes through quotas and other measures to ensure that the voices of the marginalized groups are represented in decision-making processes, including reservation of a proportion of seats for women, Dalits, Janajatis and Madhesis, among others, in elected bodies and the civil and others government services. Yet while the representation and inclusion of marginalized groups and women has now become a political norm, there is debate over how far these institutional changes allow for effective representation by the marginalized groups (women, Dalit, Janajatis and Madhesis).<sup>6</sup> For marginalized groups, unless they have numerical strength or material power (own key resources in the economy) or have strong informal links with the political elites, they may have to mobilize longer and harder to grab attention of the ruling elite (Nazneen *et al* 2019). There is the possibility that despite an enhanced presence in elected bodies in all three levels of government, marginalized groups may be ‘crowded out’ by others unless they have significant allies both inside and outside the state (Houtzager 2003).

Our interviewees representing marginalised groups emphasised the need for allies both inside and outside the state for making effective change, and felt that without these relationships their voices would be marginalized.<sup>7</sup> This is not surprising. In competitive clientelist contexts, where multiple groups compete for state’s attention, a close fit between the state and civil society on specific agendas, and close relations with state actors and political elites are necessary to influence state action. So far, the close fit between state and Nepali civil society on the development agenda on inclusion and poverty alleviation has meant that CSOs with informal relations with elite actors have had room to manoeuvre and advocate their agenda. However, this close fit also created the possibility of CSOs being co-opted by

the state. The partisan nature of the civic space has reduced civil society capacities to form broad issue-based alliances, with adverse implications for the prospects of holding the state to account for its performance on delivering inclusive development and protecting the rights of the marginalised.

## Civic space and the inclusion agenda

### Post-democratic transition: the 1990s

The relationship between the state and CSOs has evolved over the years. Before the 1990s, the relationship was controlled by the state. Civil society actors had limited scope for contesting the state position and for designing and delivering development projects (Sharma, 2006). However, the nature of the relationship shifted dramatically in the 1990s, despite the introduction of new rules and regulations to formalize and control CSO operations in Nepal. The democratic transition in 1990 created spaces for participation by civil society groups in policy making processes, and for advocating for change with a rights-based approach, and CSOs engaged in these processes in greater numbers. Space also opened up for delivery of services. Some scholars have argued that there was a conducive policy framework in the 1990s for the growth of NGOs (Uprety, 2011).

### Conflict years: 2002-2006

During the period of the Maoist conflict and direct and indirect royal rule between 2002 and 2006, civic space was vibrant and active, with many actors defending human rights and democracy. The conflict created space for rights-based CSOs to emerge as key actors in holding state and the Maoists to account. Many of our interviewees recalled the risks they had faced protesting human rights violation by the state and also by the Maoists.<sup>8</sup> The civic space was populated by various federations, rights-based organizations, natural resource networks, as well as identity-based groups such as women's rights groups, indigenous people's groups (Uprety, 2011). At the workshop conducted with civil society actors, participants confirmed that the level of collaboration and solidarity among these groups was high. The nature of the relationship with the state was confrontational, with the state introducing different regulations. However, informally, the state also collaborated with CSOs, particularly given the stance taken by the CSOs to critique the human rights violations perpetrated by the Maoists.

### Post-transition period: 2006- 2015

This scenario changed after 2006, as the post-democratic transition years saw schisms along party lines as well as between those who advocated a more conservative approach to the inclusion agenda and those who felt the state was insufficiently active. The popular movement of 2006 paved the way for new identity-based groups and associations, reflecting the political discourse of the time. The growth of identity-based groups and associations meant new kinds of players entered the civic space, distinct from the service delivery organisations or rights-based groups that had been conventional to date. Identity-based civil society organizations based on region, caste and ethnicity focused on promoting the interests and human rights of marginalized groups. The availability of funding for marginalized groups led to the creation of networks to represent these groups in politics and policy space (Uprety, 2011). The emergence of these groups led to the creation of a vibrant political environment, while their activism also brought the difficulties around the inclusive agenda sharply into focus. Table 2 lists various contentious episodes on rights-based issues that have taken place since 2006, as identified by the workshop participants. These were mostly episodes where gender equality and women's rights and minority rights were demanded by the civil society actors at the national level. Table 2 also reveals the key role played by the civil society actors in championing these causes. The majority of these episodes

was about holding the state to account. This included demands for changing policies and measures to be more inclusive of women and minority groups.

*Table 2 Post-2006 key movements and protests*

Year	Movements and protests
2006	Citizens' Movement for Democracy and Peace (CMDP) People's Movement II Demand for 'Gender Equality Act'
2007	Madhes Movement Other marginalised group's movement for inclusion Badi (against untouchability and livelihood options for women from these groups) movement
2008	Madhes Movement
2009	Movement for Gender representation and amendment of the Act
2010	Movement of <i>sukila-mukila</i> (well-to-do- demand for better business environment and against instability) against the Maoists
2011	Charitrahincheli ('characterless women'-protesting gender violence)
2012	Occupy Baluwatar movement (gender violence protest) Nepal Federation of Indigenous Nationalities (NEFIN) movement
2013	Constituent Assembly II and conservative backlash & ultra-nationalism
2015	Hunger strike for gender-friendly constitution Tikapur incident Madhes Movement Akhandha Sudurpaschim Andolan (demand for inclusion by far western province) Dispute over provincial boundaries and protests
2016	Revision of SWC Act and NGO protests
2018	Row over birth certificate of Chief Justice of Supreme Court, Gopal Prasad Parajuli
Other	Movement to reform medical education led by Dr Govinda KC Nanda Prasad Adhikari's fight for justice for son killed by the Maoists during the insurgency Protests against Partisan approach to appointment of Supreme Court justices Demand for cross-ownership of media

*Source: 1 Participatory workshop results. Note: These episodes were identified by the participants at a workshop organised as part of the study and reflect the views of only the participants. It is not meant to be a comprehensive list, but as illustrative of the contentious nature of the recent period in Nepal's history.*

The entry of identity-based groups has undeniably changed the dynamics of interactions between the state and CSOs. While activism by these groups has sharply highlighted where the state has failed to deliver, the increased mobilisation by identity-based groups has also sharpened social divides and led to a backlash by dominant ethnic and social groups.<sup>9</sup> It has also created an impetus among many civil society actors to tie their agenda closely with specific political parties who seem more amenable towards their demands. As noted above, this has resulted in weakened solidarity among CSOs and the civic space has become fragmented along party lines. While civil society remains vibrant, there is a shift in the influence CSOs have over the state. Moreover, there are also new regulations and administrative measures aimed at formalizing and controlling NGO operations.

#### Regulatory environment and changes and impact on CSOs

It may be argued that the introduction of these new regulations is part of the post transition process where the relationships between the state and civil society actors are being renegotiated. Interviewees did not believe new regulations were part of an overarching plan by the state to constrain civil society

actors, but argued that these regulations were introduced to: a) combat corruption within the NGO sector; b) ensure synergies between how NGOs design and deliver development programmes and the state's ambition to deliver on tangible development outcomes (or hardware); and c) increase the power of the bureaucrats in managing interactions with the CSOs (see Section 3). The last point perhaps indicates that the nature of the relationship between CSOs and the state has become antagonistic. However, it should be noted that the nature of the space is far from repressive, with NGOs being able to manoeuvre and operate using various informal mechanisms to secure the necessary permissions. We examine these claims in this and the following sections. Table 3 lists major laws and regulations formulated by the state that are relevant for NGOs.

*Table 3 Key laws and regulations governing NGOs in Nepal*

Year	Act	Specific implications for NGO operation
1961	National Directive Act	Section 8 stipulates that any order or direction by the government is final and cannot be appealed
1977	Association Registration Act	Requirements for registration and (annual) renewal, and approval from Home Ministry. All of these provisions may be used for delaying permission to NGO registration and projects.
1992	Social Welfare Act	CSO receiving foreign funding has to be registered; to provide details of aid and how this is has been used
1997	Association Registration Act	The process and the documents required is made difficult
2006	Companies Registration Act (allows for formation of non-profits)	Requires non-profit organizations that will be registered to have 3 branches in the country
2012	Local Government Resource Mobility and management directive	CSOs to provide detail of activities to local authority; failure results in nonrenewal; in planning development projects give priority to projects currently under operation in local areas
2014	Draft Social Welfare Act	Additional provisions on operation; transparency on resource use; compulsory public disclosure of activities, details of balance sheet and annual plan; requirement of permission from Foreign Ministry; dissolution of NGO possible upon order from local authority; SWC can suspend NGOs is they are engaged in activities that contravene what is stated in the MOU or prevailing laws

*Source: 2 compiled from ICNL et al (2017)*

As Table 3 shows, key regulatory acts were introduced or revised after the transition in 2006, as the nature of the civic space became more contentious. While these measures could be read as steps aiming to ensure transparency and accountability of the NGO sector, many have had unintended consequences, in some cases allowing the Government to exert control (see Section 3). For all our interviewees, recent measures have created bureaucratic hurdles and delays in administering their projects (see Section 3). Before we discuss the nature and impacts of these recent changes, a few broader points need to be made. These points relate to the changing nature of state-CSO relations and how the NGOs are perceived by the government and also wider society. It is important to take into account the latter, as wider social perspectives influence the legitimacy of NGOs as actors in promoting contentious issues related to inclusion and development.

One immediate impact of the Social Welfare Act in 1992 was that the number of registered NGOs increased rapidly (see Figure 1). By 2017, more than 45,000 NGOs had been registered and received the

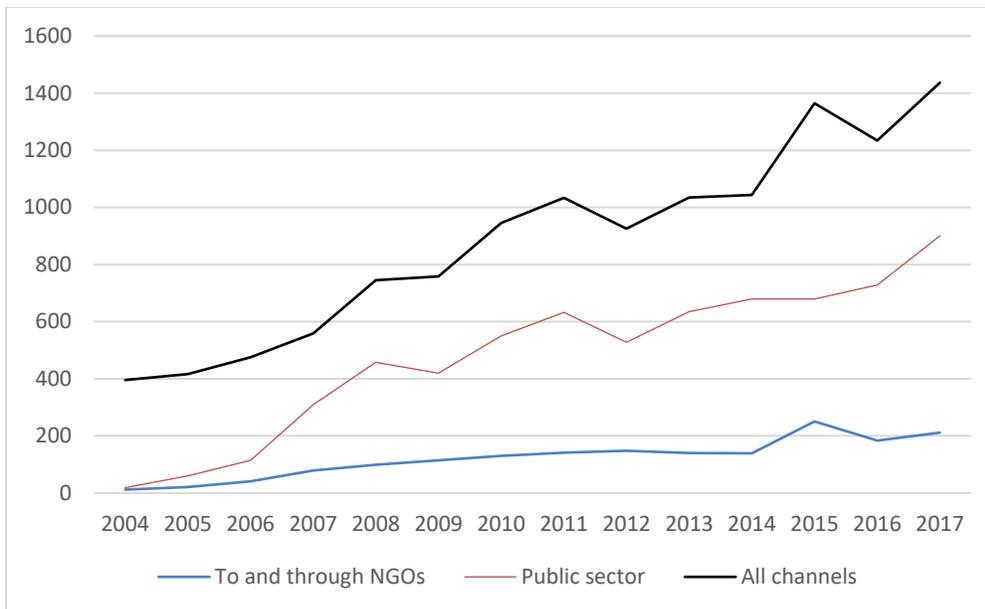
mandatory affiliation with the Social Welfare Council. This number is a matter of heated dispute in Nepal, and features as one of the key issues in the discussion on state-CSO relations, with CSO leaders arguing that as only around 5,000 NGOs are affiliated with the NGO Federation of Nepal, the number of active CSOs is far lower. Many of the CSO leaders we interviewed believed the number was exaggerated by the state and the media to create hyperbole about ‘dollar’ NGOs,<sup>10</sup> or organizations created to siphon off dollar grants for private benefit. Not all Nepali NGOs are affiliated with the NGO Federation, and the number of NGOs in operation seems to be a trivial or semantic matter, yet the dispute over the number of NGOs operating in Nepal reveals the following. First, large NGO numbers enable the government and media to point to the rapid expansion of the NGO sector, and to accuse the sector of failure to deliver on development while benefiting from foreign funds.<sup>11</sup> Second, many organisations are registered but later become dormant, but remain included in the total number provided by the Social Welfare Council. This creates difficulties for assessing how the sector has expanded over the years. In fact, antagonism between the state and the CSOs is a relatively new development. While the state has always tried to exert control, the policy environment has been relatively conducive since the 1990s.

Figure 1 NGOs affiliated with the Social Welfare Council



Source: 3 Derived from data provided in SWC documents available at <http://www.swc.org.np/wp-content/uploads/2015/08/by-yearwise.pdf> and [http://www.swc.org.np/wp-content/uploads/2017/08/ngo\\_rec.pdf](http://www.swc.org.np/wp-content/uploads/2017/08/ngo_rec.pdf)

Figure 2 Aid flows to Nepal through different channels (USD millions)



Source: 4 OECD/DAC official aid statistics; QWIDS [accessed April 29 2019]

Note: Official aid donor disbursements

### Perceptions of NGOs

Although civil society actors have played a significant role as advocates for inclusion, these actors have been criticised by the state and in the media for promoting ‘foreign’ agendas, for their lack of legitimacy, and for being exclusionary themselves.<sup>12</sup> Our interviewees felt some of these criticisms were justified. The interviewees felt that many Kathmandu-based NGOs had failed to build grassroots links, thus operating largely at the national level, being led by elite and professional groups. As many NGOs are donor-dependent, their agenda is influenced by changes in international funding agendas and their autonomy is open to question. Moreover, many NGOs have themselves proved unable to employ a staff that reflects the diversity of Nepal (see Table 4). However, they also pointed out that lack of diversity among the staff and influence of international actors are issues that do not only affect the NGO sector, and these are at times used to delegitimize NGO actors.<sup>13</sup>

We briefly discuss below the merits of the arguments levelled against the NGOs. Undeniably, the flow of foreign aid into Nepal since the 1990s has contributed to development. The NGO sector was heavily regulated till 1990, and the number of NGOs grew slowly (ADB, 2006). After the democratic transition, foreign funds flowed directly to NGOs, instead of as previously had been the case, to a consolidated fund managed by the government; this led to a rapid growth in the sector. Nevertheless, the share of aid being channelled through other sectors (chiefly the government) has grown faster than to NGOs, particularly in the 2000s (see Figure 2).

Critics of foreign funding pointed out that the availability of funds had ‘professionalized’ the civil society space as groups were required to function in managerial, bureaucratic and projectized ways that weakened their ability to mobilize as social movement actors over the years.<sup>14</sup> Participants at the workshop also pointed out that competition for foreign funds had weakened the position of the civil society actors when engaging in collective negotiations with the state. While the participants did not mention specific examples, the women’s movement actors present at the workshop argued that competition for funding had reduced solidarity among NGOs working on women’s rights. Moreover, the

creation of donor-funded issue-based networks meant that these excluded many actors or included only those actors with the skillsets and language to operate within the parameters set by the donors. This meant that many such actors lacked legitimacy.

The NGOs established before the last decade were chiefly led by the high-caste Hindu elite (Tamang 2009). While many of these civil society actors had played a key role in the pro-democracy movement in the 1990s and the 2000s, experienced state repression and promoted a progressive agenda, they are not socially inclusive in their leadership structures. According to a survey conducted by the NGO Federation of Nepal, despite the general push towards greater inclusivity over the past decade, the hold of the ‘upper-caste’ groups in the NGO sector remains still very strong even though there appear to have been great strides made in terms of gender representation (see Table 4).

*Table 4 Social and gender diversity in NGOs*

Hill ‘upper-caste’ representation (%)						Gender representation (%)			
General body membership			Executive committee membership			General body membership (2017)		Executive committee membership (2017)	
2015	2016	2017	2015	2016	2017	Male	Female	Male	Female
23	52	49	47	43	45	49	51	53	47

*Source: 5 ‘Work Force Diversity and Internal Control System in NGOs: Survey Report 2017’, n.d., NGO Federation of Nepal. <http://www.ngofederation.org/sites/default/files/2018-01/Work%20Force%20Diversity%20and%20Internal%20Control%20System%20in%20NGOs%20Su>*

While the dominance of the upper caste groups provides easier access to bureaucracy and the political elites who also largely draw from these caste groups, members of some more marginalized groups still face difficulties in gaining access to policymakers and negotiating with state actors. Our interviewees from the Dalit, Madhesi and other smaller ethnic or religious minority organisations pointed out that while access to policy spaces has widened, and procedures have changed in the way state structures operate, invisible barriers still exist. Many pointed out they were able to manoeuvre through the bureaucratic maze created by the state regulations related to NGOs because they had connections with political leaders or friends inside the bureaucracy. Similarly, several argued that they faced difficulties in promoting the rights of the specific groups to which they belonged. Our interviewees felt that if a mainstream organisation headed by upper caste leader mobilised on similar concerns they would experience less harassment.

## Development performance

Nepal presents several development paradoxes that make it unique among present-day low-income countries, and which raise important questions about the potential and actual role of civil society in development policy. Nepal shares a challenging and vulnerable ecology (experiencing two devastating

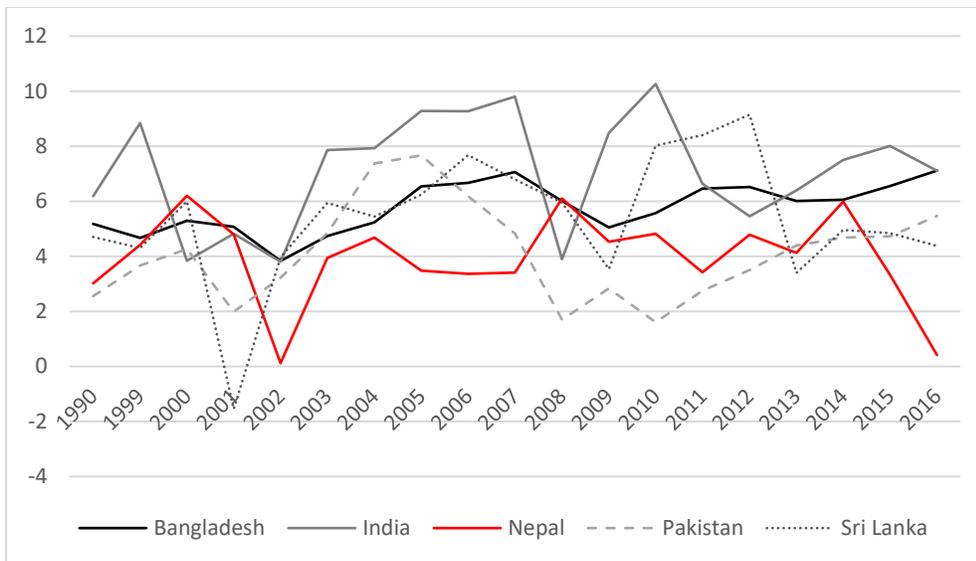
earthquakes in 2015 alone) with a recent past of violent conflict with many low-income countries in Asia and sub-Saharan Africa. It also shares a propensity to difficult and frequent political transitions and to aid dependence for basic public service delivery. Despite considerable volatility in the country's growth rates in the past decades, however (see Figure 3), there has also been a comparatively rapid reduction in poverty and income inequality, with remittances from out-migration a critical part of that story. In this section we provide a general overview of Nepal's development performance, the unevenness of progress, and of Nepal's performance in the SDG sectors identified in the Introduction.

Gains in economic growth and productivity, in particular in the all-important agricultural sector, which contributes one-third of GDP and employs two-thirds of the labour force, have been slow. Yet women's labour force participation rates are unusually high for Asia, and the country is experiencing a demographic dividend, with the working age population now larger than its dependants (Kitzmuller, Cosic, and Dahal 2017). Despite rapid improvements in social indicators in the past 20 years economic and human development remain significant challenges (see **Error! Reference source not found.**3). Nepal performed creditably on the MDGs, but nevertheless only partially achieved several goals. While the figure below shows a positive trend in access to education, water, sanitation and improvements in nutrition, during the same time as the civic space opened up. However, whether the positive changes are strongly connected to the opening up of civic space where CSOs demand accountability or whether the changes are because the state gained more capacity or received more aid is difficult to untangle. However, it can be argued that the advocacy by CSOs for inclusive policies and programmes (SSRP- and quotas in education; or Gender Representation Act- quotas for women) may have created pressure on the political and policy elites to act.

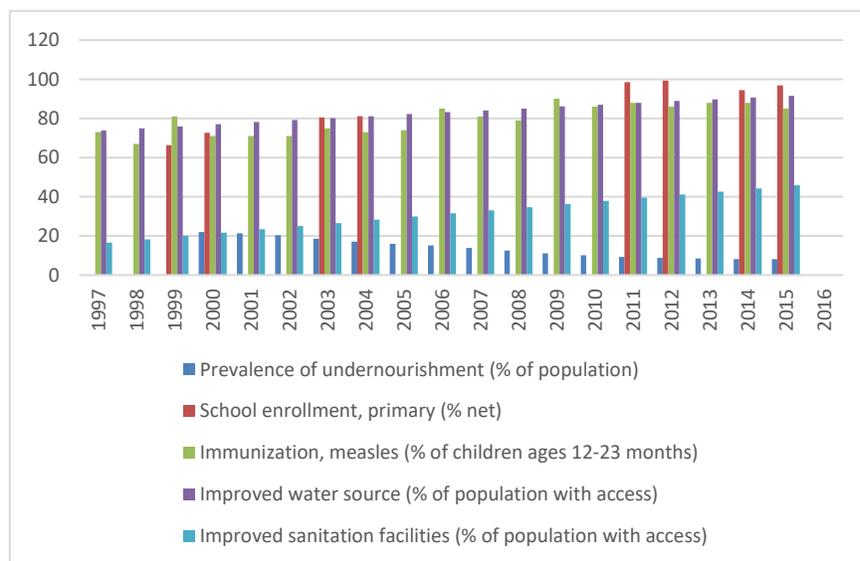
Although the social indicators in Nepal reveal a positive trend, in its review of the MDGs, the Government of Nepal concluded that while progress had been impressive compared to other countries in the region, it was unevenly spread. It was also vulnerable to, among other factors, the economic downturn associated with natural disasters such as the 2015 earthquake and the blockade in the south, also in 2015 (Government of Nepal 2016). Nonetheless, compared to many of its regional comparators, Nepal has made faster human development progress and from a lower base than several (see

3 and Figure 6). A critical concern for the monitoring of development progress is the adequacy of data systems, and in particular the weakness of disaggregated data that would enable tracking of progress among marginalized and excluded groups. This limits any long-term trend analysis for minority groups, although recent changes in how allocations are tracked may allow for better analysis in the future.

*Figure 3 GDP growth, South Asia*

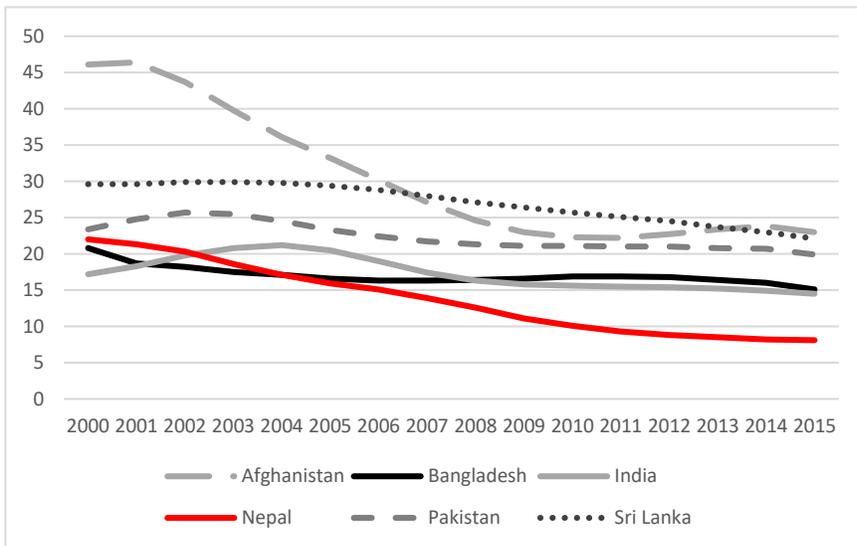


Source: 6 World Development Indicators  
 Figure 4 Selected social indicators



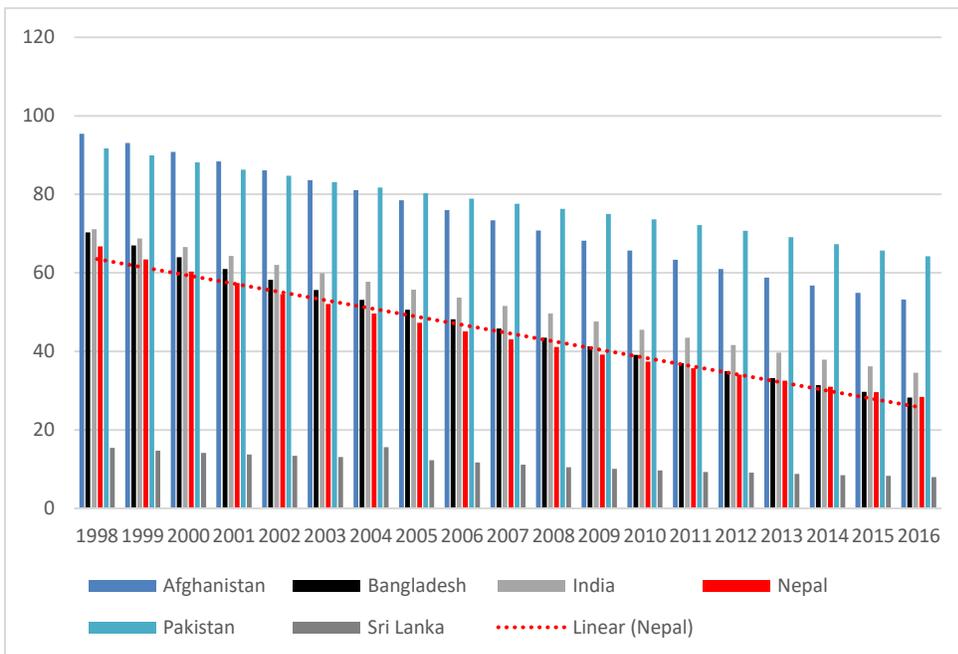
Source: 7 World Development Indicators

Figure 5 Prevalence of undernourishment, South Asia



Source: 8 World Development Indicators

Figure 6 Maternal mortality rates (per 1,000), South Asia



Source: 9 World Development Indicators

Of relevance to the role of civic space in development is pressures to improve public services such as access to health, education, water and promotion of gender equality. Table 5 reveals Nepal's performance for the relevant specific MDGs or SDGs throughout the last and present decade.

*Table 5 Nepal's performance on selected MDG / SDG targets & indicators*

<b>Targets and Indicators</b>	<b>1990</b>	<b>2000</b>	<b>2005</b>	<b>2010</b>	<b>2015</b>
<b>Education</b>					
MDG 2.1/ SDG 4.1.1 Net enrolment rate in primary education (%)	64	81	84	94	97
MDG 2.2. Proportion of pupils enrolled in Grade 1 that reach Grade 5 (survival rate)	38	63	79	78	
SDG 4.1.2 Primary* completion rate (%)					88
MDG 3.1. Ratio of girls to boys in primary education	0.56	0.79	0.9	1	
SDG 4.1.4 Ratio of girls (to boys) enrolled in grade one who reach grade eight					1.04
MDG 3.2 Ratio of girls to boys in secondary education (Grades 9-10)	0.43	0.7	0.84	0.93	
SDG 4.1.5 Ratio of girls (to boys) enrolled in grade one who reach grade twelve					1.1
MDG 3.3 Ratio of women to men in tertiary education/SDG 4.3.2 Ratio of girls' enrolment in tertiary education (graduate level)	0.32	0.28	0.5	0.63	1.05
MDG 2.3/SDG 4.6.1 Literacy rate of 15-24 years old (%)	50	70	79	87	89
<b>Gender equality</b>					
MDG 3.6. Proportion of seats held by women in the national parliament (%)/SDG 5.5.1 Seats held by women in the national parliament (%)	3.4	5.8		33	30
<b>Water and sanitation</b>					
MDG: 7.13 Proportion of population using an improved drinking water source (%)	46	73	81	80	84
SDG: 6.1.2 Basic water supply coverage (%)					87
MDG: 7.14 Proportion of population using minimum sanitation facility (%)	6	30	39	43	81
SDG: 6.2.2 Proportion of population using latrine (%)					68

*Source: 10 Government of Nepal, 2016, The Millennium Development Goals, Final Status Report, 2000–2015, Government of Nepal, National Planning Commission, Kathmandu.*

*Note: At the time the MDGs were adopted, primary education in Nepal used to be Grades 1-5. It is now Grades 1-8.*

The numbers undeniably reveal positive trends for access to water, sanitation, school enrolment, and proportion of seats held by women in the last and current decade as the civic space opened up. However, it is difficult to make a causal link between the two. Our interviewees pointed out that NGOs no doubt played a key role in advocating for specific policies and programmes for inclusion and

produced evidence on gaps in specific sectors. For example, women's organisations created broad based alliance on reservations for women's seats in the parliament and played an active role in pushing this agenda through (Tamang, 2009). Scholars with close links to government officials in the water sector have been influential ensuring that programmes designed to provision water in Kathmandu considered inclusion issues.<sup>15</sup> Research organisations such as CREPHA produced evidence on health service delivery that was taken up by the GoN to change how policies could ensure reproductive rights of women. However scholars point out that the ability to monitor and hold the state to account is generally weak (Kitzmuller, Cosic, and Dahal 2017).

Nepal faces further challenges in ensuring accountability for public service provision. The new fiscal architecture for federal Nepal does not currently look likely to strengthen accountability for public service provision, although much depends on the alignment of revenue-raising with service-providing responsibilities at different levels of the state (Bajracharya et al. 2017). Nevertheless, Nepal continues to make surprising gains on matters such as undernutrition reduction, on which it recorded the highest scores internationally over a decade during which it was also experiencing civil war and political volatility (Headey and Hoddinott 2015).

## The role of civil society in development

The discussions in the above sections show that civil society and NGOs have played a significant role in advocating the inclusion agenda. They have at times produced key evidence (for example on health by CREPHA) or brokered changes in specific programmes (e.g. water sector) or have been critical in attaining specific SDG indicators (women's representation). Reviewing the achievement of the MDGs, the Government itself noted that:

*the triangular relationship between state, civil society and the private sector has worked well. The momentum for social and economic development slowed after the year 2000 due to political conflict, but social sector achievements were sustained as the safety net at the grassroots level demonstrated resilience when the State's outreach dwindled* (Government of Nepal 2016, 140).

The main contributions of the CSOs and the NGOs were in the 1990s when key policies were formulated for the social sectors such as education and health. After the transition from conflict (2006 onwards) CSOs have focused on the representation of marginalised groups in decision-making processes which included advocating for quotas and affirmative action.

A conducive policy environment existed for the CSOs to operate in the 1990s, and during the transition period CSOs were able to engage extensively with the state actors. Our interviewees pointed out that the relatively open policy space allowed for engagement with the state on development concerns. This engagement largely took place through advocacy, production of evidence, and consultations. In the discussion below we focus on CSO role in development, using examples from the selected SDG sectors of focus.

Nepal has inclusive policies on health and education. In education, the government provides free primary education, a number of strategies to promote inclusion of girls and other disadvantaged groups, specifically Dalit and Janajati children, religious groups and those living with disabilities (Acharya, 2007). CSOs played an important role in policy formulation, producing evidence and providing technical

support on maternal health, reproductive health, education curriculum design and reforms, and skills development policies.<sup>16</sup> While the technical support in framing these policies from the civil society groups has been significant, since 2006, the key contribution of the civil society actors has been promoting a rights-based approach for inclusive development that led to the development of progressive policies. Given the deep-seated and pervasive patterns of gender, class and caste-based inequalities this is critical in shaping approaches to address the needs of the marginalized.

Given that the civil society sector expanded along the same time in Nepal as the rights-based agenda gained ground in international development, the influence of this approach on donor-dependent organizations is unsurprising. Apart from the CSOs leading the diffusion of international norms and discourse in local planning and policy, some of these actors have been the first to frame and raise issues that put specific agendas on the policy map. For example, women's rights groups have led initial public awareness raising campaigns that raise issues of gender inclusion<sup>17</sup> and violence against women within the policy space (Tamang, 2009).<sup>18</sup> The outcomes of these engagements were a gender-friendly Constitution, the Gender Equality Act, a law addressing domestic violence, and the Representation of Women Act. Human rights groups, media, and identity-based groups have resisted and challenged rights violations, particularly those against the marginalized groups by state and other actors. These movements have led to the formulation of progressive laws and policies on migration, trafficking and other reforms, and a Constitution that is widely considered progressive in that it guarantees many rights which had been demanded by marginalized groups for decades, although some argue that there have been some reversals in the Constitution adopted in 2015 (for example on women's rights to transmit citizenship).

More recently, NGOs have been delivering services on the ground through outsourcing contracts with the state which includes microfinance, skills training, livelihood programmes (Karkee and Comfort, 2016). Although it is difficult to gauge the aggregated development impact of the NGOs in delivering services to the poor given the lack of specific programme data, it may be argued that the innovation in program design and NGO outreach programmes in areas where the state's presence has been limited has been crucial for development progress. In addition, civil society roles in the post-earthquake recovery, and extensive collaboration with the government in this process enhanced CSO legitimacy. The NGOs were able to provide technical expertise, assist in targeting the affected population, and the media was able to keep pressure on the state to ensure action. NGOs were also allowed access to policy and decision-making spaces. While this engagement with the state has created scope for future partnerships with the state, it has also created tensions. According to our interviewees, this is partly due to NGOs being nimble and being effective in delivering services compared to services provided by the state.<sup>19</sup> The future impact of this engagement with the state remains to be seen.

### 3. Changing civic space

#### Deepening of the partisan divide and its impact

The rapid growth of civil society since 1990, in particular development NGOs and CSOs, has accompanied and to some extent reflected the contentions over political power in the move to a stable political settlement in Nepal (Bhatta 2012). Many civil society actors have become politically aligned, and this alignment has deepened since 2006. The partisan alignment of civil society actors, particularly NGOs, can be an advantage when it comes to manoeuvring through Nepal's complex bureaucratic system, where NGOs require multiple permissions at different levels. The majority of our interviewees pointed out that closer connection with the ruling party means an easier ride through the complex bureaucratic maze. They also argued that the influence of particular organizations that were known to be in the 'UML' camp would increase during the tenure of the government. However, this influence of civil society actors belonging to different political camps has not been consistent due to the ongoing political transition, and the somewhat free hand the bureaucracy usurped in the interim to shape policy and political institutions.

The participants at the workshop and the majority of our interviewees stated that the deepening of the partisan nature of the civic space has undermined the civil society solidarity that existed before 2006 and constrained the effectiveness of umbrella organizations such as the NGO Federation. We are unable to comment about how civic space has shifted at the local level and whether solidarity has reduced among the actors as resource and time constraints meant it was impossible to conduct interviews at the local level. However, the experience of the NGOs in securing government permission or being able to advocate an agenda varied among our interviewees depending on their area of work. Those perceived as working only in advocacy faced difficulties in securing government permission for their work, and in being able to advocate their specific agenda; these difficulties were also related to political affiliations. There were no reports of positive examples of where groups came together to counter this pressure. The fragmentation of the civic space along party lines may mean that broad issue-based alliances to demand accountability from the state have weakened. Moreover, a close fit with the ruling party agenda may be required for CSOs to be able to advocate for policy or programmatic change.

However, a closer fit may be impossible for some identity-based groups. Fragmentation of the civic space along party lines coupled with the rise of nationalism in politics, particularly in light of the recent blockade by India, meant that for specific types of identity groups operating within this space has become difficult. This is particularly applicable to the civil society actors who work on Madhesi rights. One of our interviewees stated that he took down the signboard of his organization from the front of the building as it had the term 'Madhes' written on it.<sup>20</sup> A key point made in several interviews was that with the rise of anti-India sentiment and the perception of Madhesis seen as being aligned with 'Indian interest,' an alliance has formed among the dominant hill groups, 'upper-castes', Janajatis and Dalits alike. This implicit alliance has emphasized the need for stability and formulating a Constitution at the cost of limiting the debate on social inclusion.<sup>21</sup> The implications of this alliance on inclusion agenda, particularly on gender and rights of smaller minority groups to date are unknown. Most participants at the workshop thought that the majority of NGOs had lost credibility and autonomy in recent years as they had toed the party-line, and the wider public viewed them as appendage or 'pet' NGOs.<sup>22</sup> The deepening of the partisan nature may not have a direct influence on the service delivery capacity of the NGOs, but it has weakened their collective strength to demand answers from the state, and limited the

possibilities of alliances and wide coalitions across the party-lines (as witnessed during the second people's movement). While this may not have a direct development impact in terms of these organisations delivering services to people or in assisting the state to deliver services, it may mean that NGOs have less credibility and voice in promoting the agenda for inclusion, particularly in advocating for the rights of marginalised groups.

### New measures for controlling civic space

The increasingly partisan nature of civic space may have triggered the state to renew its efforts to restrict debate and introduce various measures of control. The impetus to restrict debate and introduce measures for control has many sources, and the measures do not always stem from state reactions to civil society. New measures include new controls over the media, and the introduction of the (proposed) Social Welfare and Development Act (SWDA). Although in the 1990s some of the regulations pertaining to the media were liberalized and the Freedom of Information Act was passed in 2007, in practice laws allow for 'reasonable restrictions' over media content that may undermine national unity or stoke ethnic tension (Freedom House, 2016; ICNL et al, 2017). These restrictions are selectively applied to specific issues that are closely linked to the agenda for inclusion. For example, the media coverage of the Madhesi protests against the new constitution was highly contentious. There have been attacks on journalists covering labour rights and protests in recent times (Freedom House, 2016; see CIVICUS site). One of the most famous cases of restriction involves the government reaction against the follow up to the generally well-received Gender and Social Exclusion Assessment (2006) report that was funded by DFID and the World Bank which explored the issue of social inclusion in various institutions. In 2013, The then-government put intense pressure on the funders of the report over its content and a watered-down version was allowed to be published. The government reaction was partly influenced by the fact around the time the report was being finalised, Janajati groups were engaged in massive mobilisation efforts calling for ethnic provinces. In fact, several of our interviewees mentioned this incident and expressed concern that given the rise of nationalism, these laws may be used to restrict the debate on inclusion, by emphasizing the need for stability for development.<sup>23</sup>

Apart from attempts to control the media, the proposed regulatory framework may have far-reaching consequences in terms of civil society's ability to deliver on different projects and to hold the state to account. Analysis of the proposed SWDA revealed that the Act would limit actions by civil society actors in different ways by granting 'excessive' powers of oversight to the Social Welfare Council (SWC), restricting NGO access to foreign funding, and requiring CSOs to secure permission from multiple authorities, extending the time required by the CSOs to start new projects (ICNL, 2016). Nepal's civic space had always been regulated strictly by the state (ADB, 2006), and NGOs were required to register with local authorities (the district administration).<sup>24</sup> Those receiving foreign funding needed to renew their registration every year. The proposed Act contains provisions for streamlining and standardizing the CSO registration process. On the surface, the provisions made in the law about the registration procedures, regulatory powers of the Social Welfare Council and approval processes for receiving foreign funding on the surface appear reasonable.<sup>25</sup> The measures aim to reduce corruption and ensure transparency of NGO operations. The finer-print of the draft law and the experience of the civil society actors in dealing with the SWC have, however, created widespread apprehension. ICNL *et al* (2017) analysis of the law shows that many of the provisions proposed would violate international human rights standards of freedom of free expression, association and assembly. The widespread view is that the Act will restrict the civil society actors in different ways, particularly their access to international support.<sup>26</sup> The Act requires CSOs to secure approvals from different agencies and restricts access to

funding by requiring the CSOs to get Social Welfare Council permission for projects using foreign funds (Nepali Times, 2017). The ICNL (2016) analysis reveals that given that the proposed Act requires all CSOs to register with multiple authorities, it may dampen smaller local-level initiative, while more bureaucratized, formal, Kathmandu-based organizations should be able to bear the costs of lengthy permission processes.

Interestingly, our interviews revealed that the more formal bureaucratized NGOs were also concerned about the Act, even if they were able to bear the costs of obtaining multiple permissions and filing papers. The experiences of our interviewees in dealing with the Government process revealed diverging patterns depending on: a) the type of organization (i.e. research, rights-based, service-delivery, INGO, national organization); b) the kinds of issues the organization worked on; c), and the identity of the leadership of the organization. These experiences of course influenced their views on the SWC and the proposed SWDA. Generally, rights-based and research organizations experienced more difficulties when registering with the SWC compared to those which delivered services. The immediate reason stated by the interviewees was that the difficulty resulted from fact that the 'outputs' of these organizations are intangible, and project 'beneficiaries' cannot be clearly identified. However, some also indicated that these difficulties need to be considered against the shift within the government that emphasizes specific types of development project which contribute to 'big development', and want to direct the NGO sector towards these. Some also argued that the difficulty also resulted from their focus on inclusion agendas that are not palatable to the authorities.<sup>27</sup>

All interviewees revealed that there was an emphasis from the SWC on delivering 'hardware' for development - infrastructure, water, education, health - rather than 'software' - conscientization, rights training, etc. In one instance where a non-profit was working on developing free education material based on the national curriculum in digital format for the entire Nepali school-going population, it was asked to identify its beneficiary group and the geographical area it worked in, to secure permission from that concerned authority. Apart from the tussles over 'hardware-software' concerns, almost all organizations we spoke to experienced delays of three to nine months in receiving project approval. Some reported that they had resorted to starting the project while the permission was pending, filing the final report to the SWC once the project was completed and asking the SWC to issue the necessary papers of approval. However, the interviewees that reported using this strategy had deep connections with the ruling political elite and belonged to the 'UML' camp. Many civil society actors we interviewed experienced demands from the SWC or other agencies for excessive 'fees' (over those officially specified) or other benefits. Those receiving foreign funding or INGOs received requests to select as partners, organizations run by the relatives of the SWC official. It was reported by our interviewees and workshop participants that in the instances where these requests were refused the permission for the project was delayed and the organization was harassed.

International NGOs (INGOs) reported that they faced particular difficulties because of the high levels of distrust that exist between themselves and the government. The INGOs were perceived by the government to be 'rolling in money' (workshop participant), which created specific pressures to pay fees. In addition, we were informed that church-based organizations faced specific problems and their activities were viewed with particular suspicion, because of prevalent perception that these organizations are trying to change Nepali culture through proselytization. Our interviewees pointed out that this is a longstanding concern that resurfaces at specific junctures when the state increases its control. What remains to be seen is whether the rise of a nationalist agenda that emphasizes 'authentic Nepali identity' may create further difficulties for church or other faith-based organisations. We do not have extensive data to this to comment given the limited number of interviews.<sup>28</sup> While Association of

International NGO (AIN) members have petitioned the PM on National Integrity Policy and raised this issue, the negotiations have yet to bear fruit.<sup>29</sup>

While the above issues largely reflect weak governance, the tightening of the regulatory system will have specific impacts on the inclusion agenda and the ability of civil society ability to promote rights of marginalized groups. Our interviews revealed that rights-based organizations which were headed by the Brahmin or Chhetri leadership with close connections with the ruling party could secure permission relatively easily. They were also able to challenge the actions of the SWC or bureaucrats through informal channels. The rights-based organizations headed by ethnic or other minorities (Madhesi, Janajatis or Dalits) experienced difficulties in securing permission for their projects. Some interviewees reported that their number of active projects had reduced over the years, and they had difficulties securing permission for foreign funded projects on issues of inclusion or rights (i.e., communal land, political rights).

In keeping with a trend that had emerged earlier, in 2017 the SWC amended its Foreign Assistance Approval Directive to make it mandatory for NGOs to focus 60 per cent of their funds on the provision of 'hardware', meaning infrastructure. Since the amendment granted the authority to grant discretionary exceptions to both the concerned ministry and to SWC, any organisation found to be not abiding with directives in what is framed as the 'national interest' may not receive project approval. While civil society actors have openly criticized the proposed SWDA, they have failed to present a united front, and their opposition has been fragmented along party lines. This failure reveals the impact of partisanship that has reduced the collective power of the CSOs to hold the state to account. These incidents indicate that the capacity of the rights- and identity-based CSOs to advocate for inclusion and hold the state to account may be adversely affected in the long run. However, more systematic data is needed to track how project delays or inability to secure permission may affect the targeted population.

### Bureaucracy and the new provincial system

While the bureaucracy and the new provincial system do not directly relate to the discussion above on the partisan nature or the new regulations for controlling actions by the civil society actors, they do influence the nature of the space within which CSOs operate. The bureaucracy is an important actor in Nepal's political settlement. The composition of the bureaucrats at the top level of the public administration and within the civil service is dominated by upper caste groups (Bishokwarma, 2018). While our interviewees recalled working on progressive policies in education, water, gender equality with the bureaucrats in specific ministries and government departments, they also identified bureaucratic resistance to acknowledge NGOs' role in development and their need for control as key factors behind the proposed new regulation for controlling civic space. The relationship between the Government and the NGOs has been uneasy over the years, and the legacy of the competition for development funds between state-run and NGO-run programmes has created tensions between the groups (ADB, 2006). However, analysis of funds received show that a large percent of development funding is received by state bodies, although there has been a rise in ODA to the NGO sector in addition (see Figure 2). Most of our interviewees argued that the elected officials were not the key drivers behind the SWDA but the bureaucrats as they wanted to 'put NGOs in their place.'<sup>30</sup> While the need for bureaucratic control may be a key factor (from the experiences of our interviewees), we were unable to identify specific sources of tension between the groups, other than that the bureaucracy wanted to consolidate its position within the political settlement of Nepal.

The new provincial system that has come into effect will create opportunities and difficulties for civil society actors. Nepal's transition to a federal state is governed by informal practices and systems that organize social relations in a web of privileges and patronage.<sup>31</sup> It is safe to say that alliances in these systems will be characterized by patron-client relations, exclusionary practice, factionalism, corruption that challenges the creation of an inclusive state. Our interviewees pointed out that the federal system proposed provides expansive powers to the local government authorities. However, the rolling out of the system is resisted by the bureaucrats at the centre which fears the loss of power (human resources, budgets, decision making power) to the sub-national level. The expansive clauses on inclusion of class, caste, and ethnic minorities in the local level decision-making process have also created resentment along the upper caste dominated bureaucracy, which fears losing privilege. This indicates that while quotas and new participatory spaces created possibilities for inclusion of marginalised groups in decision-making, past coalitions and patterns of selection favoured well-connected groups, possibly along caste, class and ethnic lines. In this space, an agenda for inclusive development remains elusive. It should be noted that in SDG policy sectors of education, water, and women's representation, capacity gaps may affect delivery, given the proposed system is yet to take shape. However, in the long run, access and delivery to services to minority groups may not be disrupted by the political elites (given the high levels of electoral competition) and the bureaucracy. However, voice and representation agendas are unlikely to progress, – i.e. proposed quotas may not be rolled back but the inclusion agenda may not be advanced by the state.

While the above outcomes appear likely, there may be opportunities for change depending on how marginalised groups at the local level mobilise and form alliances and navigate the system. Our interviewees pointed out that quotas in the representative system ensure mandatory inclusion of women and marginalized groups in various decision-making positions. These create possibilities for promotion of a rights-based agenda and for these groups to voice their concerns leading to the development of inclusive institutions. A question remains in terms of the capacity of representatives, and whether an enabling environment can be created, and whether the alliances are in place among marginalized groups. We are unable to make further comments on the nature of local alliances that may emerge, but it should be noted that while the interviewees from women's rights groups and the organizations working on gender equity were excited by the prospect of women leaders entering the provincial systems of government, they were also aware of the capacity gap and the barriers to participation and voice at the local level. Many also pointed out the capacity gaps that exist among the local level CSOs. Crucially, many of the national level organisations lack effective connections with the grassroots groups and have not worked extensively at the municipal level. This means that while national CSOs may have capacity and experience, it may be more difficult to build local level CSO capacity in the near future.

The operationalization of the new provincial system means that creation of capacity and procedures will take time, which may hamper disbursement of budget and service delivery and other activities in the short run.<sup>32</sup> Expansive powers granted to the local government (including law making powers) do open up the possibility to challenge the centralized control by the ruling elites and the creation of effective participatory institutions at the local level.<sup>33</sup> Whether the provincial and local governments take advantage of these expansive provisions remains to be seen, particularly given that their cognitive framing of centre-province relations remains unchanged and there is ambiguity about the limits of power and over how funding would be channelled.<sup>34</sup>

## State-Donor relations

Many civil society actors depend on donor funding and the prevalent perception is that they promote a Western or foreign agenda. This perception works to the disadvantage of civil society actors when it comes to promoting inclusive agendas. Moreover, in the current climate where donor-state relations are undergoing a qualitative shift this association may prove to be even more disadvantageous. Nepal is still an aid-dependent country and the influence of donors in driving the development agenda remains strong. Policy frameworks and strategies are heavily influenced by the international discourse and donor funding trends (Karkee and Comfort, 2016). Research on health and education sector strategies and policy processes indicate that multilateral and bilateral organizations were key influences on these policies. While state officials have accepted the influence wielded by the donor agencies, the bureaucracy remains sceptical, and resistance within the bureaucracy regarding donor influence is relatively strong.

According to donor interviewees, pressure from India and China has influenced the way the Nepali state deals with Western donors publicly, and the power of Western donors is waning. For example, recent remarks on quotas made by European Union election observers drew strong critiques from the ruling elite and all political parties. Donor interviewees explained that the reason behind the state and elite group's disproportionate reaction was that the state was 'insecure.' Any proposals that appear to challenge the status quo, including demands for inclusion, can be interpreted as a 'conspiracy' by the donors to undermine the state.

Aid agencies working in Nepal have reported excessive bureaucratic control is exerted by state agencies requiring multiple permissions, leading to long project implementation delays. Moreover, donors also experience the pressure to invest in 'hardware' (infrastructure), which creates difficulties for agencies interested in the quality of services, governance and inclusion. It is too early to comment on how this has influenced the kinds of projects donors have funded over the years. However, donor interviewees pointed out that in SDG co-ordination meetings, many donor agencies agreed to invest in infrastructure, although for which reason is unclear. Donors reported that they had faced hostility from certain groups within the bureaucracy and political elites when advancing a social inclusion agenda, particularly the inclusion of caste/ethnic minority groups. This pushback comes particularly among upper caste/class groups who perceive the inclusion agenda as a 'foreign import', and among whom there is a strong desire to maintain class- and caste-based privileges.<sup>35</sup>

## Impact of changing civic space on selected SDGs

Impacts on selected SDGs were traced through the analysis. These included SDG 4 (access to education), SDG 5 (gender equity), SDG 6 (access to water and sanitation), and SDG 16 (inclusive institutions). Our analysis of the development trends shows steady improvement in school enrolment, access to safe water, and improved sanitation. It also shows improvements in maternal health care, school enrolment, access to water/ sanitation, and thanks to the quota system, a significant presence of women in the parliament. Nepal has already attained another indicator for gender equality (SDG 5), namely the presence of an anti-domestic violence law. Strong legal and Constitutional provisions also ensure representation of women and marginalized groups in different levels of decision-making (SDG 5 and 16). As discussed in Section 2, these gains were made after the democratic transition (1990), and continued steadily through the post transition period (2006 onwards). Section 2 also pointed out that the civil society actors during these periods had played a critical role in advocating the inclusion agenda, producing evidence identifying policy gaps, and playing a key role in drafting progressive policies for the social sectors. It also showed that the civic space remained relatively open during these periods, and

that broad alliances were possible between a wide range of development actors and CSOs on specific rights-based issues.

These policy gains in education, health, water and sanitation and steady progress made in indicators that measure access reveal that marginalized groups would have been left behind without the implementation of policies and programmes that included specific targeting, affirmative action, and equity provisions. Of particular importance in making these gains is the existence of inclusive institutions and the space for debate and contention (SDG 16). Our analysis in section 2 showed that CSOs played a critical role in representing and enabling citizens to engage with the state when it came to the inclusion agenda. They also played a key role producing evidence the impact of public policy excluding vulnerable groups and placed specific rights issues (gender equity, violence against women, affirmative action) on the map. In this light, given intersecting inequalities and exclusions based on caste, gender, class and place, civil engagement was of critical importance.

As shown above, the nature of civic space is changing rapidly, with increased control being exerted by the state over the work done by these actors. Space for raising specific concerns is shrinking for certain identity groups (particularly Madhesi; land rights for Janajati and social inclusion for Dalits), and the fragmented and partisan nature of the civic space has reduced the solidarity that once existed between identity-based groups in the sector. Moreover, the donor-dependent nature of many development and rights-based NGOs has led the state to treat them with suspicion. As state-donor relations experience a qualitative shift, this will further reduce the ability of the civil society to frame agendas that challenge the status quo.

Given the above shifts in state-civil society relations, how may these influence civil society's ability to promote the SDG agenda 'leave no one behind,' particularly in terms of holding the state to account, advocating the agenda for inclusion, and producing evidence on exclusion, or developing and implementing innovative programming from which the state could learn and scale up? Before we move on to answering this question, we need to take into account the following. The Nepali state's interest in pursuing development goals is undiminished. There is a strong interest among the political elite to implement development projects and programmes in education, water and sanitation, and health. These programmes yield tangible gains, opportunities for distributing patronage through building infrastructure,<sup>36</sup> and jobs. The present development vision among the political elite emphasizes big development (infrastructure or 'bikas'). 'Big development' was referred to by all our interviewees and workshop participants as one of the key impetus behind current government action. The vision includes development of 'hardware' or infrastructure for growth and poverty alleviation. This means that access to services (for access to education, water and improved sanitation, maternal health) will continue to remain a priority. Where the shift has taken place is how social inclusion is perceived by the elites. Our key informants indicated that the prevalent attitude among the political elites and the bureaucracy is that the inclusion agenda has been resolved through the introduction of quotas and affirmative action for the marginalized groups and women. Quotas have ensured the presence of these groups in different bodies and there is a reluctance to move beyond to focus on the issue of quality of representation.<sup>37</sup> At present the prevalent discourse is around poverty reduction in framing the agenda for the marginalized groups and not inequality, which has specific implications for the way civil society actors may engage.

What the above implies is that space for holding the state to account on inclusion, equality and rights will shrink. However, the space could remain open for CSOs if they engage in service delivery. In terms of the SDGs, all our interviewees pointed out that the positive trend in making gains will continue despite the limited scope for the advocating inclusion. They offered the following explanations. First, the

quantitative indicators that are used for tracing advancement on specific SDGs for example women's leadership (SDG 5); inclusive institutions (SDG 16); scholarships in education for marginalized groups and girls (SDG 4), access to water (SDG 6) will fail to capture whether these groups are able to effectively participate in the institutional spaces. It should be noted that the recent UN Women portal that tracked how gender indicators for each SDG goal for different countries revealed that data may be missing for many different categories to effectively assess gender inclusion. The existence of quotas will place Nepal in a favourable place when assessments are conducted. Women's rights groups and Dalit groups stressed that an enabling environment for effective representation is missing and participation is ritualistic.

Second, while political elites have moved away from inclusion, their interest in big development projects may mean that more schools, irrigation programmes, and dams would create the necessary infrastructure for delivery of services. The interviewees argued that the state's main argument would be that the expansion or growth would benefit the marginalised through the 'trickle down' of growth, or is delivered through targeted initiatives. Lastly, they felt that while the space for rights-based development was likely to shrink, providing access to marginalized groups would remain a priority for the government given its developmental vision and the need to secure electoral victory. It is too early to assess whether these observations will hold in the long term, but there is no evidence to date that the state has stopped prioritising marginalised groups in policy rhetoric.<sup>38</sup> The above explanation seems a plausible scenario. A key issue of concern here is whether there are any trade-offs if the state emphasizes big construction project (energy, roads etc) over spending on social safety nets and other 'softer' sectors? It seems reasonably clear that the loss of space for specific agenda and for actors to hold the state to account may, at the very least, restrict the public discourse on inclusion, forcing civil society actors into tighter and less critical relationships with the state, shaping the inclusion of different groups in policy processes, and altering how the state is held to account.

## 4. Conclusions

This study traced the changing nature of civic space in Nepal and how the shifts in the state-civil society relations may influence inclusive development through the role of CSOs in enabling access to education, health, water and in promotion of gender equality. In the previous section we attempted to analyse how the shifting civic space may influence the inclusion agenda and provision of services for the poor. Civic engagement is of particularly vital importance in Nepal because of its intersecting inequalities of class, caste and gender. We have shown that the nature of engagement between the state and the civil society actors have qualitatively changed, with the state increasingly exerting control over the space. However, it should be noted that the Nepali state remains democratic and competitive.<sup>39</sup> While the state exercises bureaucratic control and is driven by the need to exert its authority given its weak position vis-à-vis the neighbours in the region, the civic space is still relatively open, and its drive to demonstrate strength is in the form of development performance on a broad-based human development agenda.

Nevertheless, a few areas of change warrant further attention. First, given the need for stability, ruling elites may want to contain the debate and disruptions that lead to frequent turnovers, which may mean tendencies towards government control over civil society may increase. Although the close fit between the state and the NGOs over key issues around inclusion in development and poverty alleviation means that most service delivery NGOs are likely to continue to have the room to manoeuvre within the system. Second, while the civic space remains relatively open, the degree to which freedom is enjoyed by different actors varies. INGOs and rights-based organizations seem most vulnerable to state control. The fragmentation of the CSOs along party lines mean that the ability of the CSOs to resist state control and to create broad issue-based alliance to demand accountability from the state is weak. Third, the impact of the new NGO regulations remains to be seen. The interviews so far indicated that delays, scope for corruption and harassment had been experienced by NGOs/ INGOs. However, some of the NGOs with informal connections to state officials and ruling elites has also devised strategies for mitigating the delays in securing permission. While some NGOs reported that number of their active projects have decreased, it is early to assess the possible development impact. Our analysis of the development of this new regulation does not indicate any sinister design by the state, but it does create cumbersome processes and the scope for the bureaucracy to exert more control and opportunities for corruption and to punish specific NGOs. In addition, the ICNL analysis has shown that the proposed changes not meet international human rights standards on freedom of association, of assembly and pf expression.

Fourth, decentralisation processes may create opportunities for organisations based outside Kathmandu to engage in development planning and delivery. However, the impact of this shift depends on how effective these organizations are able to engage with these processes. Given that the balance of power between the key actors in Nepal's political settlement is changing, and that the bureaucracy is heavily dominated by specific caste groups, there will be attempts to curtail effective inclusion of marginal caste/ class groups in the local decision-making processes. Fifth, the side-lining of the inclusion agenda for 'Big Development' raises some concerns. This may mean that the far-reaching reforms were initiated by Nepal after the revolution may stall, and the rights-based agenda may be replaced by a poverty reduction approach. While the latter will allow for improvement of the conditions of the people and the

emphasis on Big Development may lead to a larger economic pie, questions about inequality are likely to be sidelined.

In light of the above, what strategies will enable civil society actors to remain relevant? What should be done in terms of programming? What emerges from the analysis is that quality of service and effective representation in various decision-making bodies will be key areas of concern. Key areas for programming should include: monitoring quality of services (education, water, sanitation, health), holding the state to account on the quality by producing evidence, capacity building of women and marginalized groups, building alliances at the local level between the different groups and at the solidarity-based alliances at the national level among civil society actors, as well as state and market actors, where relevant. In addition, the new provincial structure may mean that increased capacity building and social accountability programmes may allow for effective engagement on rights issues. It is too soon to say whether this new structure would mean that the most likely prospect for successful rights-based programmes will be the federal level of the provinces. Invariably the creation of the new provincial structure will invariably lead to delays in delivery, budget disbursement, and other difficulties given the centralized tendencies of the state. However, the expansive powers of the local government mean that there is widening space in which contention over local development is likely to be part of deliberative democratic practices.

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<sup>1</sup>Although there are particular laws that may reinforce gender and caste-based hierarchy. For example, the Citizenship Laws limits women's rights to pass on citizenship to foreign-born husbands and children.

<sup>2</sup> Interview, Executive Director, think tank.

<sup>3</sup> It should be noted that Nepal's recent political history and the earthquake and the Indian blockade make it difficult to attribute any progress or lack of it to any single factor.

<sup>4</sup> We were asked by interviewees not include their name or organisation in the report.

<sup>5</sup> There are more than 100 caste or ethnic groups in Nepal, more than 100 languages are spoken, and five religions are practiced by at least 1 per cent of the population; however, Hinduism is predominant, being reported for more than four-fifths of the population.

<sup>6</sup> Interviews, Janajati Organization; Dalit Organization; Madhesi Organisation.

<sup>7</sup> Interviews, Janajati Organization; Dalit Organization; Madhesi Organisation.

<sup>8</sup> Interviews, Association of International NGOs (AIN) member; interview, editor, print media.

<sup>9</sup> Workshop participants; interview; Executive Director, think tank.

<sup>10</sup> Interview, human rights activist. Not all NGOs register with the Social Welfare Council though, particularly if they do not receive foreign funds.

<sup>11</sup> Interview, Executive Director, think tank; interview; AIN member.

<sup>12</sup> Interview AIN member; interview, international NGO; interview, executive director, health organization.

<sup>13</sup> Interview, Dalit organization, Interview, women's rights organization; Interview, executive director Think Tank

<sup>14</sup> Interview, senior social scientist, multilateral organization.

<sup>15</sup> Interview, former minister for water.

<sup>16</sup> Interview, health NGO; interview, research organization; ActionAid, 2015.

<sup>17</sup> Nepal has introduced 33 percent quotas for women at all levels of government employment.

<sup>18</sup> Government recognizes violence against women as a public health issue and has passed two key pieces of legislation: the Gender Equality Act (2006) includes changes in laws on sexual violence, including compensation from those convicted of rape. The Domestic Violence (Crime and Punishment) Act (2009) ensures that domestic violence is criminally punishable.

<sup>19</sup> Interview, INGO head; Interview, donor agency.

<sup>20</sup> Interview, Madhesi rights organisation.

<sup>21</sup> Interview, ASB.

<sup>23</sup> Interview, print media; interview, ASB.

<sup>24</sup> This tight regulation pre-1990s had limited the ability of the CSOs to achieve outreach to the excluded hard to reach regions and the very marginalised (Upreti, 2011). Post democratic transition, though the NGO sector expanded, the link to grassroots remained weak. The availability of donor funding coupled with civil war meant that many NGOs restricted their operations to specific zones.

<sup>25</sup> Interview think tank; interview, print media. Analysis based on reading the draft.

<sup>26</sup> Interviews, donor agency interview; ED, INGO; interview, ED, Think Tank.

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- <sup>27</sup> Interview, Madhesi organization; interview, Adivasi organization.
- <sup>28</sup> Interview, think tank; interview, health organization.
- <sup>29</sup> <https://www.ohchr.org/Documents/Issues/Opinion/Legislation/NPL-1-2018.pdf> [accessed April 29 2019].
- <sup>30</sup> Interview, former minister; interview, editor, print media.
- <sup>31</sup> Interview, former minister; interview, editor, print media; interview, official, donor agency.
- <sup>32</sup> Interview, former government official.
- <sup>33</sup> Interview, think tank, and former secretary to the Prime Minister.
- <sup>34</sup> Interview, multilateral agency; interview, INGO head 2; Interview, INGO head 3.
- <sup>35</sup> Interview, multilateral agency working on governance; interview, executive director, health organization; interview; former secretary to ex-prime minister.
- <sup>36</sup> School building, sanitary latrines, piped water, engineering projects.
- <sup>37</sup> Interview, women's groups; interview, Dalit women's groups; interview, health organisation; interview; education NGO; interview; Madhesi rights group.
- <sup>38</sup> Interview, Madhesi organization; interview; Dalit organization; interview; former INGO.
- <sup>39</sup> Interview, editor, print media.