

A Policy Review of Ichchhakamana Rural Municipality's Policies and Programmes

for FY 2023/2024 (2079/2080 BS)

From
Gender Equality and Social Inclusion
and Indigenous Perspectives



National Indigenous Women Forum
Kathmandu, Nepal

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Published by NIWF

Supported by UNDP

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Moreover, there was a focus on increasing awareness of issues such as violence against women (VAW), child marriage, polygamy, and economic empowerment of Chepang women through income-generating trainings and grant support. Detailed plans were outlined for road and suspension bridge construction, irrigation, urban development and housing, hydroelectricity, and information and communication. The municipality intended to disseminate its activities through a radio programme, develop a more climate-friendly environment, emphasize transparency, and implement a system for collecting and addressing complaints.

Conversely, the study also identified areas for improvement in the plans and programmes. At the municipality level, IRM had allocated a budget of NRS 100,000 for the Domestic Violence, Child Marriage and Drug Abuse Control Programme, while NRS 52,00,000 was earmarked for GESI in total. Despite the already low budget allocation for gender-based violence (GBV) related activities, the annual plans and programmes failed to incorporate GBV considerations in other sectors such as education, health, and media. Although there were targeted programmes for women and other social groups at both the municipality level and under the ward ceiling project, including a NRS 100,000 worth awareness-raising programme on VAW at Ward No. 2, the plans and programmes did not specifically mention gender-responsive budget planning.

In addition, the plans for tourism lacked acknowledgement of Chepang culture and heritage, and their preservation, though expectations were directed towards the tourism master plan. There was a notable absence of clear and comprehensive plans and budgetary commitments for conducting classes in the mother tongue. In the promotion of culture, the plans lacked specific policies to preserve and revitalise Chepang oral history. Similarly, there was no plan for the establishment of a GBV Elimination Fund, and lack of clarity on how the municipality intended to enhance the capacity of reconciliation centres at the ward level. The plans also did not show a commitment to obtaining free, prior, and informed consent (FPIC) from IPs for infrastructural development. There were also no specific policies in line with Article 8(j) of the Convention on Biological Diversity (CBD), which ensures that the innovations and practices of Indigenous and local communities contribute to the conservation and sustainable use of biological diversity.

ABBREVIATIONS

CBD	:	Convention on Biological Diversity
CEDAW	:	Convention on Elimination of All Forms of Discrimination against Women
CERD	:	International Convention on the Elimination of All Forms of Racial Discrimination
FPIC	:	Free, Prior, and Informed Consent
GESI	:	Gender Equality and Social Inclusion
GoN	:	Government of Nepal
ILO	:	International Labour Organisation
IRM	:	Ichchhakamana Rural Municipality
IPs	:	Indigenous Peoples
IW	:	Indigenous Women
LGOA	:	The Local Governance Act
SDGs	:	Sustainable Development Goals
UNDRIP	:	United Nations Declaration on the Rights of Indigenous Peoples
UNFPII	:	United Nations Permanent Forum on Indigenous Issues

Executive Summary

This study evaluated the plans and programmes of Ichchhakamana Rural Municipality (IRM) for the fiscal year 2023/2024 (2079/2080 BS) focusing on gender equality and social inclusion (GESI) as well as Indigenous considerations. It primarily employed desk research methods to assess the extent to which IRM incorporated the Government of Nepal's commitment to gender equality, the rights of Indigenous Peoples (IPs), and the inclusive principles enshrined in the 2015 Constitution of Nepal.

The findings showed that the municipality aimed for prosperity by concentrating on agriculture, tourism, and infrastructure development. To realize these aspirations, it prioritised five key areas: economic development, social development, infrastructural development, environmental conservation and disaster management, and institutional development and service delivery. The municipality asserted that the formulation of plans and policies adhered to the seven stages outlined by the Directive on Formulation of Annual Plan and Budget of Local Levels, 2018, which prioritizes enhancing GESI. The directive also mandates the collection of plans and programmes from each hamlet of the wards, a process facilitated by IRM through the *tol vik's sanstha* (hamlet development organization). Having already developed its GESI strategy, the municipality was slated to develop a comprehensive GESI policy or act. In the broader context of strengthening good governance and federalism, IRM's earnest efforts to infuse GESI considerations in its plans and programmes was commendable. While acknowledging that budgeting was not profoundly gender-responsive, the municipality endeavoured to ensure inclusivity within its budgetary allocations. Nevertheless, there was a recognized need for IRM to integrate intersectionality considerations into both its annual plans and budgeting processes. Overall, the strengths of the plans and programmes from GESI perspectives were multifaceted. IRM targeted the economically challenged Chepang community, aiming to distribute cattle and seeds free of charge for agricultural work and animal husbandry. A commitment to eradicating hunger was also evident. Furthermore, the municipality aimed to support underprivileged segments of society by providing loans without collateral through cooperatives. Additional efforts included implementing a curriculum in the mother tongue, establishing hostels for students from economically disadvantaged backgrounds, and upgrading health facilities and services. Health-focused initiatives and programmes aimed at minimizing alcohol consumption were also part of the plan.

Moreover, there was a focus on increasing awareness of issues such as violence against women (VAW), child marriage, polygamy, and economic empowerment of Chepang women through income-generating trainings and grant support. Detailed plans were outlined for road and suspension bridge construction, irrigation, urban development and housing, hydroelectricity, and information and communication. The municipality intended to disseminate its activities through a radio programme, develop a more climate-friendly environment, emphasize transparency, and implement a system for collecting and addressing complaints.

Conversely, the study also identified areas for improvement in the plans and programmes. At the municipality level, IRM had allocated a budget of NRS 100,000 for the Domestic Violence, Child Marriage and Drug Abuse Control Programme, while NRS 52,00,000 was earmarked for GESI in total. Despite the already low budget allocation for gender-based violence (GBV) related activities, the annual plans and programmes failed to incorporate GBV considerations in other sectors such as education, health, and media. Although there were targeted programmes for women and other social groups at both the municipality level and under the ward ceiling project, including a NRS 100,000 worth awareness-raising programme on VAW at Ward No. 2, the plans and programmes did not specifically mention gender-responsive budget planning.

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Recommendations

- Indigenous rights compliance: Formulate and implement plans, policies, and programmes guided by ILO's Indigenous and Tribal Peoples Convention, 1989 (C169), in particular, and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), in general.
- FPIC: Establish a mechanism for obtaining FPIC in accordance with the UNDRIP, and make it mandatory to seek FPIC from IPs in all legal, administrative, and development interventions directly or indirectly affecting IPs, including Indigenous women.
- Biodiversity and Indigenous knowledge: Frame and implement policies and programmes aligned with CBD 8(j), respecting, preserving, and maintaining the knowledge, innovations, and practices of Indigenous and local communities.
- Capacity building for gender equality: Promote capacity enhancement activities to empower local representatives and administrators in implementing international agreements such as the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW). Effectively implement legal provisions and policies including the Domestic Violence (Offence and Punishment) Act, 2009, the Crime Victim Protection Act, 2018, and National Gender Equality Policy, 2021.
- Mainstream GESI: Incorporate GESI as an intersecting approach in all plans, policies, programmes, and budgeting. Develop a comprehensive GESI or social inclusion policy or act.
- Proportional inclusion: Implement proportional inclusion and meaningful participation in all activities as mandated by the 2015 Constitution. Reflect this in training events, exposure visits, income generating activities, or other programmes at the grassroots or policy level.
- Benefits redistribution: In line with the spirit of the 2015 Constitution and Local Government Operations Act, 2017, plan and ensure that benefits gained by a specific group (from training, skills development activities, agriculture/animal husbandry programmes, among others) are transferred to other community and municipality members.
- GBV Elimination Fund and intersectional programmes: Develop a plan for establishing a GBV Elimination Fund and introduce intersecting programmes to combat Violence Against Women and Girls (VAW/G) and support GBV survivors.
- Gender-responsive budgeting: Manifest the strategy of gender-responsive budgeting in financial planning and allocation.

- Leave No One Behind (LNOB) principle: Ensure that all policies, plans, and activities affecting both tangible and intangible aspects of life adhere to the LNOB principle, one of the six Guiding Principles of the United Nations Sustainable Development Cooperation Framework and the central, transformative promise of the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs).
- Minimize policy repetition: Minimize or eliminate the repetition of the same policies and programmes for fiscal years. Address components carried over from previous plans and programmes, such as the setup of the GBV Elimination Fund.
- International treaty awareness: Increase awareness among local representatives about Nepal's ratification and support for international treaties and conventions. Provide training for their effective implementation.

CHAPTER 1: INTRODUCTION

Context

In 2015, with the promulgation of a new Constitution, Nepal transformed into a federal state. The 2015 Constitution of Nepal ensures 31 fundamental rights for citizens, including the right to inclusion and participation in state structures. Its commitment lies in building an equitable society through proportional inclusion, economic equality, prosperity, and social justice. Article 56, specifically outlining a three-tiered state structure-federal, provincial, and local-clarifies the powers of each government level.

Despite the constitutional vision of socialism and an inclusive state, democracy, and society, objections arose following the promulgation of the Constitution, especially from the Madhesi and the Tharu people. Their protests extended beyond delineation issues, encompassing concerns of underrepresentation in the national legislature, perceived second-class citizenship status, and the alleged abrogation of agreements for proportional representation in the public sector.

Indigenous Peoples (IPs) in Nepal also find the Constitution infringing on their native rights. According to Chemjong (2019), it reflects Hindu symbolism and identity, raising issues of representation and identity for IPs.

Nepal is a signatory to various international conventions, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169) (C169), International Convention on the Elimination of All Forms of Racial Discrimination (CERD), and Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Yet, Amnesty International and the Community Self-Reliance Centre (CSRC) have documented numerous human rights violations against IPs. These include forced evictions, denial of rights to ancestral lands, and unjustified restrictions on access to forests and natural resources essential for their traditional way of life, leading to denial of access to food. The documented violations encompass arbitrary arrests, unlawful killings, detention, and torture or other ill-treatment by the Nepali Army and national park personnel responsible for protecting conservation areas.

A study by Amnesty International also pointed out that activists in areas where forest-dependent IPs reside express concern about the government's conservation approach. They see it as biased, neglecting the rights of IPs as guaranteed in C169 and outlined in the UNDRIP. Similar settings lacking meaningful implementation of C169 and the UNDRIP have been reported in a study by NIWF. The documented evidence unmistakably reveals that the state is violating the rights of IPs to their lands, territories, or resources as stated in articles 8, 10, 25.

Article 8 2b States shall provide effective mechanisms for prevention of, and redress for any action which has the aim or effect of disposing them of their lands, territories or resources.

Article 10 Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

Article 25 Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

Article 27 States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

The focus of IPs rights to their lands, territories, or resources often takes centre stage, overshadowing the less highlighted but equally crucial violation of their rights to cultural traditions, customs, ceremonies, and the freedom to engage in all traditional and other economic activities.

The Constitution underscores the non-negotiable priority of including all individuals in the country's social, cultural, economic, and political processes. Economic equality, prosperity, and social justice are key targets for the government. To achieve this goal of inclusion, the Government of Nepal (GoN) adopted various policy measures and programmes, particularly through its Fourteenth Plan (2016/2017-2018/2019), which emphasized gender equality and social inclusion (GESI) mainstreaming as a key cross-cutting policy. The Fifteenth Plan (2019/2020-2023/2024) further aspires to eradicate all forms of discrimination, poverty, and inequality.

Nepal has committed to the Sustainable Development Goals (SDGs), evident in key policy documents like the current Fifteenth Plan and the 25 Year Long-Term Vision. The SDGs, focusing on leaving no one behind, possess significant potential to uplift historically marginalized groups, including women, girls, various castes, ethnicities, racial groups, and Indigenous communities globally.

SDG 5 emphasizes gender equality, aiming to empower all women and girls through

nine targets. Government ministries and local governments have implemented GESI strategies to ensure meaningful participation of women, the poor, Dalits, Indigenous communities, Madhesis, Muslims, and historically excluded groups in the formulation, implementation, monitoring, and evaluation of plans, policies, and programmes.

Strategy 3 of the National Gender Equality Policy strives to develop a gender-responsive governance system across all government levels through legal arrangements, institutional reform, and capacity building, supported by 14 policies and strategies.

Gender equality-cutting across ethnicity, caste, class, age, disabilities, and household positions-remains pertinent at the community level, where women and girls often find themselves subordinate. In Nepal, political processes encouraged Hinduisation, imposing restrictions on women even among relatively egalitarian ethnic groups. Consequently, gender equality for Indigenous women (IW) is now as crucial as safeguarding the rights of IPs.

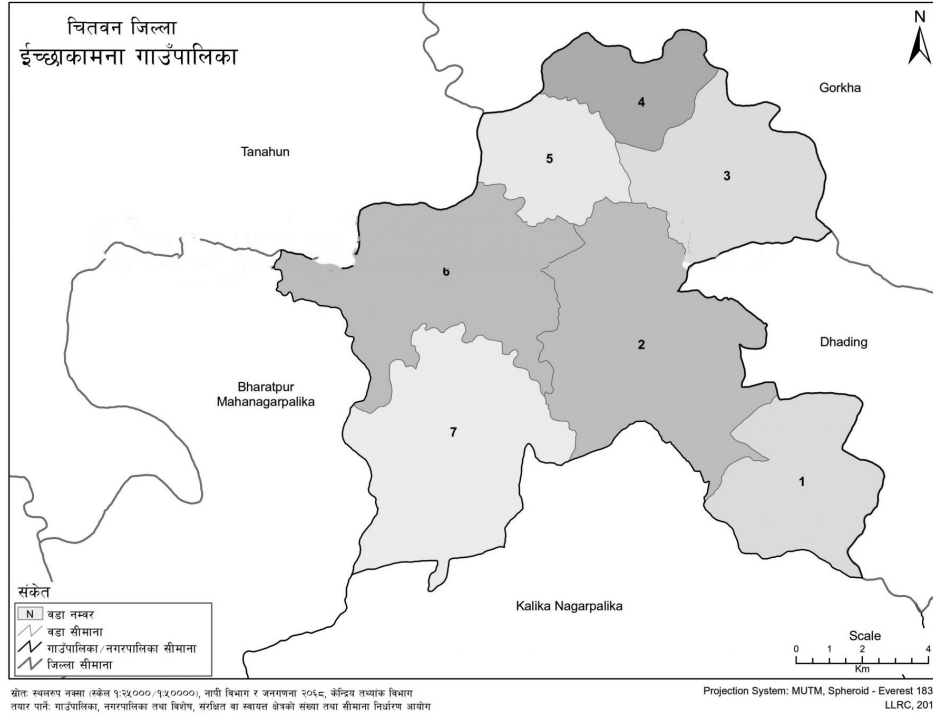
In this backdrop, this study aimed to examine Ichchhakamana Rural Municipality's (IRM) plans and programmes for FY 2023/2024 (2079/2080 BS) with a focus on GESI and Indigenous considerations, aligning with the constitutional commitment to inclusion and the GoN's dedication to gender equality and IPs' rights. It sought to evaluate SDG 5 in IRM's plans and gauge adherence to rights guaranteed by the UNDRIP and C169 within the municipality's policies and programmes.

Study Methodology

This study relied primarily on desk research, specifically examining IRM's plans and programmes for FY 2023-2024 and other relevant documents publicly available on its official website.

Socio-demographic Details of IRM

IRM stands as the only rural municipality among the seven local governments in Chitwan district, Bagmati Province. Situated approximately 100 kilometres southwest of Kathmandu, the capital of Nepal, it encompasses an area of 166.67 square kilometres, divided into seven wards.



Map of Ichchhakamana Rural Municipality

During the National Population and Housing Census 2021, IRM had a total population of 27,643, with 50.7 percent being male and 49.3 percent female. The census also reported the population composition of Chepang, Gurung, and Magar communities as 10,338 (37.4 percent), 6387 (23.1 percent), and 3261 (11.8 percent) respectively.

The census data revealed a literacy rate of 74.2 percent. Broken down by gender, the female literacy rate stood at 68.9 percent, while the male literacy rate was 79.3 percent. Among the married population, comprising 63.2 percent of the total, 60.3 percent were male and 66.1 percent female. Data on age at first marriage indicated a higher number of women marrying at younger ages compared to men. For instance, 9.3 percent of women were married at the ages of 10-14, whereas the corresponding percentage for men was 2.9 percent. Similarly, 30.8 percent of women and 13.7 percent of men were married in the age category of 15-17. Notably, in the age category above 20, the number of men exceeded that of women. For example, 16.4 percent women were married at the ages of 20-24, compared to 28.1 percent of males. This discrepancy suggested a trend where girls were expected to marry at an early age.

The census also collected data on the population aged 10 years and above engaged in economic activities in the last 12 months. Results indicated that 61.7 percent of the total population was involved in agriculture, with 68 percent of them being female and 56.5 percent male. The construction sector engaged 9.4 percent of the population, with 14 percent being male and 3.9 percent female. Additionally, only 3 percent of the total population was engaged in the government sector, with 3.1 percent being male and 3 percent female.

CHAPTER 2: RIGHTS OF INDIGENOUS PEOPLES

In 1997, the GoN officially recognized the concept of "Indigenous nationalities". Subsequently, on 22 August 2007, the Legislative Parliament of Nepal ratified C169, adopted by the ILO in 1989. Then, on 13 September 2007, Nepal voted in favour of the UNDRIP.

The United Nations Declaration on the Rights of Indigenous Peoples

The UNDRIP, adopted on 29 June 2006, during the inaugural session of the Human Rights Council, is a comprehensive document addressing the rights of IPs.

Developed over two decades, it encompasses both individual and collective rights, covering cultural rights, identity, education, health, employment, language, and more. The document asserts that IPs, collectively or individually, have the right to enjoy all human rights and fundamental freedoms recognized by the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights law. They are entitled to equality and freedom from any form of discrimination based on their Indigenous origin or identity. The right to self-determination allows IPs to freely determine their political status and pursue economic, social, and cultural development. While preserving their distinct institutions, they possess the right to participate fully in the political, economic, social, and cultural affairs of the state.

Seventeen of the 45 articles of the UNDRIP specifically address Indigenous culture, emphasizing protection and promotion. This involves respecting the direct input of IPs in decision-making and allocating resources for areas like education in Indigenous languages.

While UN Declarations are generally not legally binding, they signify the evolving international legal norms and the commitment of states to specific principles. The UNDRIP follows this pattern.

In its policies for FY 2023/2024, IRM expressed its intention to establish a language and literature academy at the municipality level and introduce classes in the mother tongue at schools. Although theoretically promising, the municipality lacked a serious commitment and concrete action plans for implementation. Notably, it was not dedicated to fulfilling articles 13, 14, 15, and 31 of the UNDRIP.

UNDRIP articles related to culture include:

Article 13

- 1. Indigenous Peoples have the right to revitalise, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.*

2. *States shall take effective measures to ensure that their right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.*

Article 14

1. *Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.*

Article 15

1. *Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.*

Article 31

1. *Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge, and traditional cultural expressions.*

ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169)

C169, addressing Indigenous and tribal peoples, is an international treaty established by the International Labour Conference of the ILO in 1989. It embodies a consensus among ILO tripartite constituents regarding the rights of Indigenous and tribal peoples within the nation-states where they reside, outlining the responsibilities of governments in safeguarding these rights. It is founded on the principles of respecting the cultures and ways of life of IPs, acknowledging their right to land and natural resources, and allowing them to determine their own development priorities. C169 aims to eliminate discriminatory practices affecting these peoples and facilitate their participation in decision-making processes that impact their lives. Therefore, the fundamental principles of consultation and participation are integral to the treaty. Additionally, it addresses various issues relevant to IPs, encompassing employment, vocational training, education, health, social security, customary law, traditional institutions, languages, religious beliefs, and cross-border cooperation. C169 becomes legally-binding upon states through ratification.

IRM, however, exhibited a lack of commitment to upholding articles 5, 8, and 21 of C169. Specifically, there were no policies concerning Namrung Puj?, a religious ritual intricately connected to Chepang land, territory, spirituality, and history. In this regard, the municipality fell short of complying with Article 5 (C) of C169. Similarly, when coding plans for education in mother tongue and cultural preservation, the municipality did not align with the principles outlined in Article 21.

Important C169 articles include:

Article 5

In applying the provisions of this Convention:

(a) the social, cultural, religious and spiritual values and practices of these peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals;

(b) the integrity of the values, practices and institutions of these peoples shall be respected;

(c) policies aimed at mitigating the difficulties experienced by these peoples in facing new conditions of life and work shall be adopted, with the participation and co-operation of the peoples affected.

Article 8

1. In applying national laws and regulations to the peoples concerned, due regard shall be had to their customs or customary laws.

2. These peoples shall have the right to retain their own customs and institutions, where these are not incompatible with fundamental rights defined by the national legal system and with internationally recognised human rights. Procedures shall be established, whenever necessary, to resolve conflicts which may arise in the application of this principle.

3. The application of paragraphs 1 and 2 of this Article shall not prevent members of these peoples from exercising the rights granted to all citizens and from assuming the corresponding duties.

Article 21

1. Education programmes and services for the peoples concerned shall be developed and implemented in co-operation with them to address their special needs, and shall incorporate their histories, their knowledge and technologies, their value systems and their further social, economic and cultural aspirations.

2. The competent authority shall ensure the training of members of these peoples and their involvement in the formulation and implementation of education programmes, with a view to the progressive transfer of responsibility for the conduct of these programmes to these peoples as appropriate.

3. In addition, governments shall recognise the right of these peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples. Appropriate resources shall be provided for this purpose.

Convention on Biological Diversity

The Convention on Biological Diversity (CBD) is an international legally-binding treaty with three main goals: conserving biodiversity, promoting its sustainable use, and ensuring the fair sharing of benefits arising from the use of genetic resources. The treaty, established to foster actions for a sustainable future, was opened for signature at the Earth Summit in Rio de Janeiro on 5 June 1992, and took effect on 29 December 1993. Nepal signed the CBD in 1992, with parliamentary ratification in 1993, making the country a contracting party to the convention since 1994.

The Chepang community possesses valuable knowledge about wild edibles and herbs, contributing to nature and biodiversity conservation. However, the Private Forest Nationalisation Act of 1957 restricted their access to and use of forests, and impacted practices like Namrung Puj? and shifting cultivation. With the advent of federalism, local governments, including IRM, have the potential to implement Article 8(j) of the CBD, but the municipality's commitment to this point lacked visible reflection in its plans and policies.

Article 8(j) of the CBD states

Each contracting Party shall, as far as possible and as appropriate:

*Subject to national legislation, respect, preserve and maintain knowledge, innovations and practices of **indigenous** and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge innovations and practices.*

Based on the gathered information, it can be concluded that IPs possess vital knowledge, information, and technology crucial for preserving both cultural and biodiversity. Documents and treaties like the UNDRIP, C169, and the CBD emphasize the obligation of state parties to respect the cultures and ways of life of IPs, recognizing their rights to land, natural resources, and the ability to define their own development priorities. They underscore the need for the state to protect the rights of IPs, and this protection should be evident in their plans, programmes, and policies. In the context of Nepal, it is the responsibility of local governments to embody these fundamental principles.

CHAPTER 3: LEGAL PROVISIONS ON GENDER EQUALITY AND SOCIAL INCLUSION

Constitutional Perspectives on GESI

The Preamble of the 2015 Constitution of Nepal states:

*Protecting and promoting social and cultural solidarity, tolerance and harmony, by recognizing the multi-ethnic, multi-lingual, multi-religious, multi-cultural and geographically diverse characteristics; and resolving to build an egalitarian society based on the **proportional inclusive** and participatory principles in order to ensure economic equality, prosperity and social justice by eliminating discrimination based on class, caste, region, language, religion and gender and all forms of caste-based untouchability.*

The Preamble of the 2015 Constitution of Nepal emphasizes the protection and promotion of social and cultural solidarity, tolerance, harmony, and unity in diversity. It aspires to build an egalitarian society based on principles of proportional inclusivity and participation, aiming for economic equality, prosperity, and social justice.

Despite addressing discrimination based on class, caste, region, language, religion, and gender, the Constitution fails to acknowledge patriarchal governance as a root cause of discrimination and oppression. It solely recognizes the feudalistic, autocratic, centralised, and unitary system of governance as contributing factors.

In Nepal, consistent paternalistic behaviours within patriarchal and patrilineal systems have resulted in entrenched discrimination against women and girls. Although women have participated in the country's political and social transformation since at least the 1950s, their contributions have not translated meaningfully into substantial political representation. The political structure, according to Krishna Bahadur Bhattachan (2000), has favoured certain caste groups, promoting patriarchy within oligarchy. Thus, the causes of oppression are not solely attributed to the unitary governance system but also to governance heavily influenced by patriarchy, predominantly controlled by men from certain caste groups.

While the 2015 Constitution ensures a minimum representation of women in legislative bodies, political parties lack commitment to allowing women and those from marginalised groups to compete in first-past-the-post (FPTP) elections. The 2022 elections saw a minimal number of women elected to the House of Representatives and provincial assemblies, highlighting the challenges women face in political representation. Despite constitutional provisions, the nomination of women through FPTP remains low, with a nominal increase of 5.5 percent in the first parliamentary elections under the 2015 Constitution to 9 percent in the 2022 election.

In IRM's context, the municipality had framed its plans and policies in line with articles 18 and 38 of the Constitution. The municipality aimed to declare itself free

of child marriage, polygamy, and violence against women, planning legal awareness programmes at ward and municipality levels. To effectively implement Article 38(2), IRM needs to enhance specificity in its plans and programmes, recognizing gender as a cross-cutting theme. Regarding Article 18(3), IRM lacked a clear vision and plans despite advocating for the preservation of language, culture, and practices of IPs and women.

Article 18

Right to equality: (1) All citizens shall be equal before law. No person shall be denied the equal protection of law.

(2) No discrimination shall be made in the application of general laws on grounds of **origin, religion, race, caste, tribe, sex, physical condition, condition of health, marital status, pregnancy, economic condition, language or region, ideology** or on similar other grounds.

(3) The State shall not discriminate citizens on grounds of **origin, religion, race, caste, tribe, sex, economic condition, language, region, ideology** or on similar other grounds.

Provided that nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or development of the citizens including the socially or culturally backward women, Dalit, indigenous people, indigenous nationalities, Madhesi, Tharu, Muslim, oppressed class, Pichhada class, minorities, the marginalized, farmers, labours, youths, children, senior citizens, gender and sexual minorities, persons with disabilities, persons in pregnancy, incapacitated or helpless, backward region and indigent Khas Arya.

Article 38

Rights of women:

(1) Every woman shall have **equal lineage right** without gender-based discrimination.

(2) Every woman shall have the right to **safe motherhood and reproductive health**.

(3) No woman shall be subjected to **physical, mental, sexual, psychological or other form of violence or exploitation on grounds of religion, social, cultural tradition, practice or on any other grounds**. Such act shall be punishable by law, and the victim shall have the right to obtain compensation in accordance with law.

(4) Women shall have the right to **participate in all bodies of the State on the basis of the principle of proportional inclusion**.

(5) Women shall have the right to obtain special opportunity in education, health, employment and social security, on the basis of **positive discrimination**.

(6) The spouse shall have the **equal right to property and family affairs**.

Indigenous activists emphasize that the Constitution fails to recognize Indigenous women, addressing women as a collective rather than acknowledging the specific challenges faced by IW. Not only are the rights of IW overlooked, but the Constitution also fails to adequately ensure the rights of IPs. While Article 40 explicitly outlines the Rights of Dalit in seven points, there is a noticeable absence of a comparable provision addressing IPs' rights and concerns.

Article 40

Rights of Dalit:

- (1) The Dalit shall have the right to participate in all bodies of the State on the basis of the principle of proportional inclusion. Special provision shall be made by law for the empowerment, representation and participation of the Dalit community in public services as well as other sectors of employment.*
- (2) Provision of free education with scholarship, from primary to higher education, shall be made by law for the Dalit students. Special provision shall be made by law for the Dalit in technical and vocational education.*
- (3) Special provision shall be made by law in order to provide health and social security to the Dalit community.*
- (4) The Dalit community shall have the right to use, protect and develop their traditional occupation, knowledge, skill and technology. The State shall accord priority to the Dalit community in modern business related with their traditional occupation and provide skills and resources required therefor.*
- (5) The State shall once provide land to the landless Dalit in accordance with law.*
- (6) The State shall, in accordance with law, arrange settlement for the Dalit who do not have housing.*
- (7) The facilities conferred by this Article to the Dalit community must be distributed in a just manner so that the Dalit women, men and Dalit in all communities can obtain such facilities proportionately.*

In the House of Representatives, 60 percent of representatives are elected through a FPTP system, while the remaining 40 percent are chosen via Proportional Representation (PR). As previously mentioned, the historical influence of patriarchal governance has not only resulted in a limited number of women elected through FPTP but also led to a notably low nomination of women.

The Constitution mandates the inclusion of women in specific roles, such as the deputy speaker of the House of Representatives, vice chairperson of the National Assembly, and participation in village and municipal executives. In IRM, the inclusion of women in the Village Executive adhered to the provisions outlined in Article 215 of the Constitution.

Article 215

Provisions relating to Chairperson and Vice-Chairperson of Village Executive:

- (4) The members of the Village Executive shall also include four women members elected by the members of the Village Assembly from amongst themselves and two members elected by the Village Assembly from the Dalit or minority communities, in possession of the qualification under clause (5), no later than fifteen days after the final results of the election to the Village Assembly under Article 222.**

Article 216

Provisions relating to Mayor and Deputy Mayor of Municipal Executive:

*(4) The members of the **Municipal Executive** shall also include **five women members** elected by the members of the Municipal Assembly from amongst themselves and **three members** elected by the Municipal Assembly **from the Dalit or minority communities**, in possession of the qualification under clause (5), no later than fifteen days after the final results of the election to the Municipal Assembly **under Article 223.***

The Constitution emphasizes economic equality, prosperity, and social justice, with social security being identified as a crucial measure to achieve these objectives. Article 43 guarantees social security as a fundamental right for various vulnerable groups, as well as members of tribes on the verge of extinction.

Article 42

Right to social justice:

*(1) The socially backward women, Dalit, **indigenous people, indigenous nationalities, Madhesi, Tharu, minorities, persons with disabilities, marginalized communities, Muslims, backward classes, gender and sexual minorities, youths, farmers, labourers, oppressed or citizens of backward regions and indigent Khas Arya** shall have the right to participate in the State bodies on the basis of inclusive principle.*

Article 43

Right to social security:

*The indigent citizens, incapacitated and helpless citizens, helpless single women, citizens with disabilities, children, citizens who cannot take care themselves and citizens belonging to the **tribes on the verge of extinction** shall have the right to social security, in accordance with law.*

Several legislative measures have been enacted to implement this right. These include the Local Government Operations Act, 2017, Social Security Act, 2018, and Contributory Social Security Act, 2018. The delineation of authority for social security is defined in the Constitution, where it is considered an exclusive power of the federal government and a concurrent function of federal, provincial, and local governments. Currently, the GoN provides social security allowances to five targeted populations: 1) Senior Citizen's Allowance, 2) Single Women Allowance, 3) Child Grant, 4) Disability Allowance, and 5) Endangered Ethnicity Allowance.

Schedule-8 of the Constitution offers 22 powers to local governments, including the authority to protect and develop languages, cultures, and fine arts. However, this detail has received limited attention and investment, falling short of aligning with the principles outlined in C169 and the UNDRIP.

Local Government Operations Act, 2017

The Local Governance Act, 2017 (LGOA) aims to implement provisions related to the powers of local levels outlined in the 2015 Constitution of Nepal. It seeks to foster cooperation, coexistence, and coordination between the three tiers of government, while delivering efficient and quality services. The LGOA defines the roles, responsibilities, and authorities of municipalities and rural municipalities, enabling them to exercise their rights granted by schedules 8 and 9 of the Constitution.

Section 46 of the LGOA mandates the establishment of a judicial committee in every municipality and rural municipality, as per Article 217 of the Constitution. Section 47(1) lists 13 specific cases under the jurisdiction of judicial committees, and Section 47(2) identifies 11 cases that can be settled through mediation. It also clarifies that parties can file cases directly in court if they choose to do so regarding disputes under subsection 2.

Overall, the LGOA prioritises GESI, particularly focusing on women, Dalit, and minorities. However, it falls short in specifying IPs and Indigenous women. Even Section 24(5), which mentions marginalised and endangered communities, has no explicit guarantee of meaningful engagement for IPs. Furthermore, the term "minorities" does not encompass IPs, who make up around 37 percent of the country's total population.

Sections in the LGOA that emphasize GESI:

Chapter 6: Plan formulation and implementation

Sub-section 2: Prioritizing **gender and social inclusion as an interrelated theme** when making periodical, annual, strategic topics and sectoral medium-term and long-term development plans.

Sub-section 3(f): When making plans, the municipality will give **priority** to plans that directly benefit **women, children, backward classes, regions and communities**.

Sub-section 3 (g): Prioritizing plans to increase **gender equality and social inclusion**.

Section 24 (5) When formulating and implementing plans, the rural municipality and municipality shall have the **maximum participation of local intellectuals, experts, experienced, professionals, marginalized and endangered communities, women, children, Dalits, youth, minorities, disabled persons, senior citizens and other stakeholders**.

Section 65: The **Local Revenue Consultative Committee** are to be established as follows:

(a) Vice-Chairman or Deputy-Chairman - Convenor

(c) Two members including **one woman** from among the members of the Executive appointed by the Executive

Section 66: The **Resource Estimate and Budget Limit Determination Committee** will be formed as follows:

(b) Vice-Chairman or Deputy-Chairman

(c) Among the members of the executive, four members appointed by the chairperson or head to **represent women, Dalits or minorities.**

Section 111: When appointing or nominating the committee, sub-committee or working group to be formed, **proportional inclusion** must be maintained.

Section 17 (4) When submitting nomination papers according to sub-section (1), the party has arranged to submit nomination papers such that **50 percent of the president and vice president, chief and deputy chief and chief and deputy chief of the district coordination committee are female candidates.**

**However, it is also stated that if the party presents only one candidate, the provisions of this sub-section will not be applicable.*

Since the publication of its first annual report for FY 2018/2019, the National Inclusion Commission (NIC) has emphasized the need for a federal law to define citizens and categories eligible for inclusiveness benefits, as required by the Constitution. The NIC highlights that inclusiveness has not been implemented in its true sense due to the absence of a federal law.

According to the Constitution, special provisions can be made through legislation for the protection, empowerment, and development of socially or culturally backward groups. The NIC has urged the development of a system for identifying and maintaining up-to-date data of target groups at the local level. The absence of a unified legislation on inclusion is considered a significant barrier to implementing inclusiveness, and the NIC has stressed the need for clear criteria, procedures, physical and financial resources, autonomy, and a prepared implementation mechanism to comply with constitutional and legal provisions.

CHAPTER 4: REVIEW OF IRM's POLICIES AND PROGRAMMES THROUGH GESI LENS AND INDIGENOUS PERSPECTIVES

IRM's policies and programmes for FY 2023-2024 (2079/2080 BS) were presented at its Village Assembly Meeting on 24 June 2022. They covered five areas: economic development, social development, infrastructure development, environmental conservation and disaster management, and institutional development and service delivery. Each area was further divided into relevant subtopics.

Economic Development

The municipality delineated its economic development policies through 53 detailed points, categorized into five subsections. Notably, there was a strong emphasis on agriculture and animal development, with 21 points dedicated to this sector. In essence, IRM targeted the impoverished class, including Chepangs; farmers; migrant returnees; and traditional skills holders. Despite that, the annual plan did not specifically address GBV survivors, single women, persons with disabilities, and Indigenous women.

Strengths

- Encompassed crucial areas like agriculture and animal development, cottage industries, tourism, cooperatives, poverty alleviation, and the financial sector.
- Promoted self-sufficiency in agriculture and animal husbandry, offering various grants to farmers.
- Introduced promising schemes ("One ward, One production" and "One house, 10 fruit plants") for economic upliftment.
- Targeted the economically disadvantaged Chepang community, distributing cattle and seeds free of charge for agricultural and animal husbandry purposes.
- Demonstrated commitment to exploring local skills on the verge of extinction, organizing skill-development training for preservation and promotion.
- Pledged to ensure none of the municipality's residents would experience a day without sustenance.
- Strived to identify economically disadvantaged segments of society and implement income-generating activities, offering collateral-free loans through cooperatives.

Weaknesses

- Lacked programmes promoting traditional Chepang food culture, which could contribute to their food security and the preservation of wild edibles and underutilised plant species.

- Aimed to preserve cultures of various ethnic communities and organize cultural programmes, but did not specify any particular culture or means of preservation. This could be resolved with the development of a tourism master plan.
- Did not adequately acknowledge Chepang cultures and heritage, and their preservation, hindering the potential for tourism in the area. Again, the resolution of this issue could be achieved through a tourism master plan.

Social Development

Policies relating to social development were subdivided into six categories, comprising 39 points under the GESI heading, which was further categorized into six subsections. Additional areas with a higher number of policies included health, education, and drinking water and sanitation, with 27, 24, and 15 points, respectively.

Strengths

- Featured multiple initiatives for overall improvements in the quality of education, particularly in public schools, focusing on reducing dropouts, enhancing teacher capacity, and improving infrastructure.
- Aimed to implement a curriculum in the mother tongue at the municipality level and provide free hostels for students from economically disadvantaged backgrounds.
- Planned to establish a committee for language and literature development and preservation.
- Intended to implement health promotion initiatives and campaigns to reduce alcohol consumption, removing "modern" market-available drinks.
- Planned to upgrade health facilities and services, with a specific attention on the pregnant, elderly, and chronically ill.
- Emphasized sports development, ensuring budget allocations for this purpose.

Weaknesses

- Lacked plans and programmes, including a budgetary commitment, for conducting classes in the mother tongue. Developing policies to prepare teachers for mother tongue classes should have been considered.
- Needed a more focused approach on promoting traditional drinks to discourage market-available drinks and enhance the local economy.
- Planned to establish a tol vikas samití (hamlet development committee) in each ward for garbage management, yet the existing tol vikas sanstha or hamlet development organization could effectively execute this function.

- Required policies to preserve and revitalise Chepang oral history.

Gender Equality and Social Inclusion

Owing to the significance of GESI, this subsection under Social Development received special emphasis.

Strengths

- Addressed the concerns of women, children, Dalit, persons with disabilities, the elderly, and other targeted groups (Indigenous, marginalised, and minority).
- Aimed to increase awareness of VAW, child marriage, polygamy, and to empower Chepang women economically through income-generating training and grant support.
- Aimed to implement programmes for targeted groups by establishing procedures and a budget directory at the municipality level.
- Proposed establishing reconciliation centres in each ward to settle disputes, aligning with the instruction from the Ministry of Federal Affairs and General Administration.

Weaknesses

- Lacked any plan for the establishment of a GBV Elimination Fund.
- Lacked any plan to capacitate reconciliation centres at ward level amidst the challenges faced by Judicial Committees reported by numerous vice-chairs and deputy mayors from previous governments formed after the first general elections.

Infrastructural Development

The infrastructural development policy encompassed a total of 37 points, the most prominent agendas revolving around road and suspension bridge projects and electrification. The immediate advantages of road connectivity included the expansion of commercial vegetable farming, streamlining the transportation of locally-grown produce and handicrafts, thereby boosting economic conditions. The expansion and upgrading of roads, bolstered by the municipality's ambulance service and even private vehicles transporting produce, provided crucial support to pregnant women, persons with disabilities, and those dealing with chronic illnesses.

Strengths

- Planned comprehensively for road and suspension bridge projects, irrigation, urban development and housing, hydroelectricity, and information and communication.
- Committed to resettle families forced to migrate from areas such as Kuyalghari

and Gujiwang due to landslides, and implement the Ichchhakamana Housing Programme.

- Planned to launch the Bright Ichchhakamana Programme and expand electricity to every corner of the municipality.
- Intended to broadcast a radio programme to disseminate the municipality's activities to the wider public.

Weaknesses

- Lacked a firm commitment to obtaining FPIC from IPs in its infrastructural development activities.

Environmental Conservation and Disaster Management

The policies concerning environmental conservation and disaster management were outlined in 14 points.

Strengths

- Aimed to form the National Adaptation Programme of Action (NAPA) for disaster management.
- Planned to foster a climate-friendly municipality through programmes aligned with the indicators of the Environmentally Friendly Local Governance framework.

Weaknesses

- Lacked specificity in adherence to CBD 8(j), which ensures the incorporation and promotion of innovative practices from Indigenous and local communities with traditional lifestyles.

Institutional Development and Service Delivery

Policies related to institutional development and service delivery were subdivided into two categories: Office Management policy and Financial Management and Good Governance Policy. Office Management policy was presented in 16 points, also covering the capacity development of administrative staff and representatives. Financial Management and Good Governance policy contained a total of 32 points, subdivided into two categories: revenue mobilisation and financial discipline, and good governance.

Strengths

- Aligned with the Constitution and federal policies.
- Enforced progressive property taxation and reduced taxes for low-income citizens.
- Implemented a system for collecting and addressing complaints.
- Handed over completed projects to consumers' committees to ensure further

ownership.

- Focused on transparency.

Weaknesses

- Lacked any specific plan to capacitate elected representatives and officials on GESI, gender responsive budgeting, Indigenous issues, intersectional approaches and human rights.
- Lacked any specific plan to strengthen the functioning of Judicial Committee at municipality level and reconciliation centres at ward level.

Institutional Development and Service Delivery plans and policies were aligned with the Constitution and federal policies, and ambitious. Its implementation, therefore, required a committed determination.

Recommendations

- **Indigenous rights compliance:** Formulate and implement plans, policies, and programmes guided by C169, in particular, and the UNDRIP, in general.
- **FPIC:** Establish a mechanism for obtaining FPIC in accordance with the UNDRIP, and make it mandatory to seek FPIC from IPs in all legal, administrative, and development interventions directly or indirectly affecting IPs, including IW.
- **Biodiversity and Indigenous knowledge:** Frame and implement policies and programmes aligned with CBD 8(j), respecting, preserving, and maintaining the knowledge, innovations, and practices of Indigenous and local communities.
- **Capacity building for gender equality:** Promote capacity enhancement activities to empower local representatives and administrators in implementing international agreements such as the CEDAW. Effectively implement legal provisions and policies including the Domestic Violence (Offence and Punishment) Act, 2009, the Crime Victim Protection Act, 2018, and National Gender Equality Policy, 2021.
- **Mainstream GESI:** Incorporate GESI as an intersecting approach in all plans, policies, programmes, and budgeting. Develop a comprehensive GESI or social inclusion policy or act.
- **Proportional inclusion:** Implement proportional inclusion and meaningful participation in all activities as mandated by the 2015 Constitution. Reflect this in training events, exposure visits, income generating activities, or other programmes at the grassroots or policy level.
- **Benefits redistribution:** In line with the spirit of the 2015 Constitution and the LGOA, plan and ensure that benefits gained by a specific group (from training, skills development activities, agriculture/animal husbandry programmes, among others) are transferred to other community and municipality members.
- **GBV Elimination Fund and intersectional programmes:** Develop a plan for establishing a GBV Elimination Fund and introduce intersecting programmes to combat VAW/G and support GBV survivors.
- **Gender-responsive budgeting:** Manifest the strategy of gender-responsive budgeting in financial planning and allocation.
- **LNOB principle:** Ensure that all policies, plans, and activities affecting both tangible and intangible aspects of life adhere to the LNOB principle, one of the six Guiding Principles of the United Nations Sustainable Development Cooperation Framework and the central, transformative promise of the 2030 Agenda for Sustainable Development and its SDGs.

- **Minimize policy repetition:** Minimize or eliminate the repetition of the same policies and programmes for fiscal years. Address components carried over from previous plans and programmes, such as the setup of the GBV Elimination Fund.
- **International treaty awareness:** Increase awareness among local representatives about Nepal's ratification and support for international treaties and conventions. Provide training for their effective implementation.

References

Bhattachan, K.B. (2002). Possible ethnic revolution or insurgency in a predatory unitary Hindu state, Nepal. In Kumar, D. (Ed.) *Domestic Conflict and Crisis of Governability in Nepal*. CNAS.

Chemjong, D. (2019). Nepalko rajnitima Adivasiko mukti ra sanskritik samanatako sawal. In Rai, T.B. & Chhantyal, G. (Eds.) *Pratirodjko Rajaniti: Adivasi Janajati ra Nepali Rajya*. NEFIN.

IRM. (2023). Policies and Programmes 2079/80. Retrieved from ichchhakamanamun.gov.np on 25 February 2023

NSO. (2022). Preliminary Report of National Population Census 2021. Retrieved from [Census Nepal 2021 \(cbs.gov.np\)](http://cbs.gov.np) on 24 February 2023.

NSO. (2023). District Profile of Chitwan, 2074. Retrieved from [Chitwan - Central Bureau of Statistics \(cbs.gov.np\)](http://cbs.gov.np) on 24 February 2023



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