

# DRAFT 03

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**Ethnic and Political Inclusion and Representation in the Federal Parliament. An Analysis of the  
2022 House of Representatives elections**

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## **Abstract**

The paper discusses the legal framework for the elections and the actual results of the 2022 HoR elections regarding ethnic and political inclusion. The author has followed all election from 2008 and draws the lines from the two Constitution Assembly (CA) elections though the two elections held after the 2015 Constitution was adopted. According to the 2007 Interim Constitution, the CA had 601 elected under a mixed electoral system (except for 26 appointees) with 60 % elected under a system of proportional representation (PR) and 40 % under the plurality system first-past-the-post (FPTP). Quota rules for ethnic groups were applied to the PR elections. By the 2015 Constitution, the number of seats were reduced to 335, out of which 40 % should be elected under PR and 60 under FPTP. Quota rules were still in place but with a lower share of PR, the rules had a weakened effect.

The paper will compare the results of the three previous elections with the 2022 one regarding both the political representation and ethnic inclusion and will discuss the legal framework for the same.

## Introduction

Nepal came out of a long-lasting armed conflict in 2005-6. The conflict was an ideological with strong elements of underlying social inequality. The Comprehensive Peace Agreement (CPA) of 2006 and the Interim Constitution of 2007 included all the four elements of power-sharing as defined by Lijphart and discussed by Butenschøn et. al:<sup>1</sup> devolution of powers (such as in a federal state), representation of groups, consensus policies and grand coalitions. In this paper, I will concentrate on the representation in terms of political parties and of groups, such as caste and ethnicity, as well as gender.

Nepal held its second general election in 2022, after the Constitution had been promulgated in 2015. The subject of this paper is to discuss how the political and ethnic representation in the House of Representatives (HoR) has developed as a result of the Constitution and the previous agreements.

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<sup>1</sup> See Butenschøn, Nils A., Øyvind Stiansen and Kåre Vollan (2015): *Power-Sharing in Conflict-Ridden Societies: Challenges for Building Peace and Democratic Stability*. Farnham: Ashgate. and Lijphart, Arend (1999): *Patterns of Democracy. Government Forms and Performance in Thirty-Six Countries*, New Haven: Yale University Press.

The Constitution was passed after a long process of negotiations starting from the peace agreements entered by seven-party-alliance and the Maoists in 2005. I presented the details of the agreements and the Interim Constitution of 2007 in my paper from 2022.<sup>2</sup> Here I will only reiterate that in the early peace agreements, there was an emphasis on removing discrimination and to bring excluded groups into government at all levels. Over time, the term “proportional representation” became a term for proportional representation, not only of political parties in proportion to votes, but also of caste and ethnic groups in proportion to their share of the population. In doing so, one did not only try to secure inclusion of excluded groups, but for all groups, also the elite. However, the measures implemented did not work as efficiently as one could have expected, going back to the original agreements of 2006.

A mixed electoral system was described already in the CPA, and in the Interim Constitution, the mixture was approximately 60 % Proportional representation (PR) and 40 % plurality vote in single-member constituencies (FPTP). This was turned around by the 2015 constitution to 40 % PR and 60 FPTP in the House of Representatives (HoR), the main chamber of the federal parliament, thus weakening the proportional representation of parties. Since the quota rules for ethnic and caste groups were applied only to the PR election, the HoR became less representative also in terms of groups.

## The Legal Framework Regarding the System of Representation

The HoR is elected under a mixed electoral system (parallel) with 165 elected from single-member-constituencies (SMCs) with a plurality vote or FPTP, and 110 under a nationwide closed list proportional system. In the PR system, parties propose list of candidates and they win seats in proportion to their vote. The voters have two ballots, one for election of a single representative in an SMC, and for the party list.

The mixed system was agreed already in 2006 and implemented in the Interim Constitution (IC). However, in the IC approximately 60% of the seats were elected under PR and 40% under FPTP, whereas the 2015 Constitution inverted this mix.

In Nepal, the term proportional also means that ethnic and caste groups shall be represented according to their strength in the population. Therefore, quotas for groups were applied to the PR race, which has made the system very complicated.

According to the Act on Election of the members of the House of Representatives of 2017, Article 60 (12) only parties passing a threshold of three percent of the total number of valid votes will win seats in the PR election.

Article 84 (2) of the Constitution uses the term “closed lists”. This had not been used in the Interim Constitution but the election law of 2007 used the term in a different meaning than its common use. Closed lists would normally mean that seats won by a party are filled from the lists in the order they are listed. If the lists are ‘open’, the voters can influence the order of the candidates by marking individual preferences. However, in the 2007 law, closed lists meant that voters could not give votes to individual candidates, but the parties could fill the seats they won from anywhere on the list, as

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<sup>2</sup> Vollan, Kåre (2020): *The Systems of Representation in the Three Tiers after the Promulgation of the 2015 Constitution of Nepal: Implementation and Challenges*. A Treatise on the Constitution of Nepal 2015. Kathmandu University School of Law.

long as they met the quota requirements. The voters would therefore not know before the elections who they voted for and the elected persons were more accountable to the party leaders than to the voters. In addition, the candidates would not know if they would be selected and many felt it was unfair that they had used a lot of resources for the party during the campaign, but even if they had been ranked high on the list they were not selected. When closed lists were introduced in the Constitution, there is little doubt that this was in the common meaning of the term and the seats won had to be filled from the top of the lists. The ranking was to be published before the elections.<sup>3</sup>

### Group representation

The language regarding the group representation was changed in the 2015 Constitution. Article 84 (2) stated that “representation shall be ensured on the basis of a closed list also from women, Dalit, indigenous nationalities (Aadibasi Janajati) Khas Arya, Madhesi, Tharu, Muslims and backward regions, on the basis of population”.

The article also includes a definition: “For the purposes of this clause, “Khas Arya” means Kshetri, Brahmin, Thakuri, Sanyasi (Dashnami) communities.” That means that Dalits are not Khas Arya as per this definition.

The Interim Constitution had a slightly different language in Article 63 (4): “the political parties shall ensure the proportional representation of women, Dalits, oppressed communities/indigenous groups, backward regions, Madhesis and other groups”.

The biggest difference is that the group Others have been removed. There was a big debate about the interpretation of this term in 2007: should it mean other excluded groups, which would support the intension of removing discrimination, or did it simply mean all other groups. In the latter case, the group would mainly include the elite groups of high castes in the hills, groups, which would anyway be overrepresented in the FPTP election. The conclusion was that the “other” group would include the elite.

In 2015, all groups were specified, so there was no doubt that even the elite should have a quota. It means that regional parties, for example in Tarai, had to have hill caste candidates on the list. The same would parties with a programme of support to Dalits or excluded castes. People falling outside all the mentioned categories could not stand for elections in PR; this could include naturalised foreigners who had got Nepali citizenship.

### Women

The Constitution, states that “in fielding candidacy by political parties for the election to the House of Representatives under the proportional electoral system, representation shall be ensured on the basis of a closed list also from women, [...], on the basis of population” (article 84 (2)). The language was similar in IC, but in 2007, the election law introduced a proportional representation of men as well, whereas in 2015, it became a minimum requirement for women, which was necessary in order to fulfil a new requirement of article 84 (8): “Notwithstanding anything contained elsewhere in this Article, women should account for at least one third of total members elected from each party in Federal Parliament. In case, one-third percentage of women are not elected while being elected under section (a) of clause (1), and section (a), clause (2) of article 84, the party that fails to ensure

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<sup>3</sup> Vollan, Kåre (2020): The Systems of Representation in the Three Tiers after the Promulgation of the 2015 Constitution of Nepal: Implementation and Challenges. A Treatise on the Constitution of Nepal 2015. Kathmandu University School of Law.

one-third representation shall have to elect at least one-third of total numbers as woman in the Federal Parliament while electing members under section (b) of clause (1).”

## Distribution of Seats to Parties

In divided societies, one element of power-sharing is to insure a representative parliament. This would necessitate negotiations and compromise in both the daily work and when forming governments. As mentioned earlier, the proportional element was weakened with the 2015 Constitution. The results of the two elections held under the Constitution are presented in the following tables.

**Table 1 The Results of the 2017 HoR elections. M=Male, F=Female, and T= Total.**

Party	FPTP			PR			Total			Per cent seats	Per cent of votes in PR
	M	F	T	M	F	T	M	F	T		
CPN-UML	78	2	80	4	37	41	82	39	121	44.0	33.2
Nepali Congress	23	0	23	20	20	40	43	20	63	22.9	32.8
CPN-Maoist Centre	33	3	36	1	16	17	34	19	53	19.3	13.7
Naya Shakti Party Nepal	1	0	1			0	1	0	1	0.4	0.9
Rastriya Janamorcha	0	1	1			0	0	1	1	0.4	0.7
Rastriya Prajatantra Party	1	0	1			0	1	0	1	0.4	2.1
Federal Socialist Forum Nepal (FSFN)	10	0	10	1	5	6	11	5	16	5.8	4.9
Rastriya Janata Party Nepal	11	0	11		6	6	11	6	17	6.2	4.9
Nepal Workers and Peasants Party (NWPP)	1	0	1			0	1	0	1	0.4	0.6
Independent	1	0	1				1	0	1	0.4	
Total	159	6	165	26	84	110	185	90	275	100	93.7

In 2017, the advantage for the biggest party in FPTP was significant. CPN (UML) got 33.2 % of the votes (in PR) and won almost half of the FPTP seats. The next party, Nepali Congress (NC), won just below, 32.8 %, of the votes, but only 14 % of the FPTP seats. When adding the two races, CPN (UML) still had 44 % of the seats, while NC had 23 %. So, the idea of a proportional election had faded as time went by.

**Table 2 The Results of the 2022 HoR elections. M=Male, F=Female, and T= Total.**

Party	FPTP			PR			Total			Per cent seats	Per cent of votes in PR
	M	F	T	M	F	T	M	F	T		
CPN-UML	40	4	44	12	22	34	52	26	78	28.4	26.9
Nepali Congress	56	1	57	3	29	32	59	30	89	32.4	25.7
CPN-Maoist Centre	17	1	18	2	12	14	19	13	32	11.6	11.1
Rastriya Swatantra Party	5	2	7	7	6	13	12	8	20	7.3	10.7
Rastriya Prajatantra Party	7	0	7	2	5	7	9	5	14	5.1	5.6
Janata Samajbadi Party, Nepal	7	0	7	1	4	5	8	4	12	4.4	4.0
CPN (Unified Socialist)	10	0	10	0	0	0	10	0	10	3.6	3.7
Janamat Party	1	0	1	1	4	5	2	4	6	2.2	3.7
Loktantrik Samajbadi Party, Nepal	4	0	4			0	4	0	4	1.5	1.6
Nagarik Unmukti Party	2	1	3				2	1	3	1.1	2.6
Rastriya Janamorcha	1	0	1			0	1	0	1	0.4	0.4
Nepal Workers and Peasants Party (NWPP)	1	0	1			0	1	0	1	0.4	0.7
Independent	5	0	5				5	0	5	1.8	
Total	156	9	165	28	82	110	184	91	275	100	96.8

In 2022, the two biggest parties, CPN (UML) and NC came very close in the PR race, 26.9 % against 25.7 %. However, in the FPTP, NC won more seats than CPN (UML), even if they came second in terms of nationwide vote. When adding the PR seats, NC remained the biggest. The deviation from proportionality was much lower than in 2017. This is a random effect, which may happen in some elections.

## Excluded groups in the 2022 Elections

Traditionally, the political power of Nepal has rested with the high castes of the hills and some ethnic groups. This has been reflected in the elections held from 1991 to 2022. The success of a group in elections does not fully correspond to other social indicators so therefore this paper will concentrate on the electoral success and analyse the results of the FPTP elections where no quotas have been applied. In doing so, the share of elected members of the HoR is compared to the group's share of the population.

### Census 2021

In previous analyses, the census of 2011 has been used. In 2021, a new census was taken and I will use the figures from the new census in this analysis. In 2011, the census identified 125 castes or ethnic groups. In 2022, 17 more were added, giving a total of 142. Some of these groups are sub-groups of others, such as Rai, Gurung or Sherpa.

The census does not indicate to which of commonly used broader groups, such as Hill Castes, Dalits, Janajatis of Madhesi castes, the groups belong. For the 125 groups, such allocation is given in Vollan

2015, Appendix A.<sup>4</sup> With expert assistance<sup>5</sup> it has been possible to place the 17 new groups in the broader groups as well.

**Table 3 Allocation of the 17 new census groups to broader groups.**

New 2021 Group	Population		Broad group	Comment
	Number	Percent		
Ranatharu	83,308	0.29	Tharu	Sub-group of Tharu
Baniyan	53,655	0.18	Madhesi Caste	
Bhumihar	32,199	0.11	Madhesi Caste	Sub-group of Brahmin
Rauniyar	27,258	0.09	Madhesi Caste	Sub caste of Baniyan
Gondh/Gond	12,267	0.04	Madhesi Caste	
Pun	9,827	0.03	Hill and Mountain Janajatis	Sub-group of Magar
Khatik	9,152	0.03	Madhesi Dalit	
Kewarat	8,809	0.03	Madhesi caste	
Chai/Khulaut	4,805	0.02	Madhesi Caste	
Chumba/Nubri	4,414	0.02	Hill and Mountain Janajati	
Beldar	3,037	0.01	Madhesi Caste	
Done	2,125	0.01	Hill and Mountain Janajati	
Mugal/Mugum	2,124	0.01	Hill and Mountain Janajati	
Karmarong	1,663	0.01	Hill and mountain Janajati	
Phree	921	0	Hill and mountain Janajati	
Surel	318	0	Hill and Mountain Janajati	
Bankariya	180	0	Hill and Mountain Janajati	

Some of the broader groups, such as Hill Janajatis or Madhesi castes has groups that fare well in elections, whereas others hardly win seats. Based on the analysis in the following, the groups being used in this paper are shown in Table 4.

<sup>4</sup> Vollan, Kåre (2015): Elections in Nepal: Identifying the Politically Excluded Groups. A study of the parliamentary election results from 1991 to 2013. Kathmandu: Social Science Baha and Himal Books.

<sup>5</sup> Thank you to Mr Tularam Shaha of Nepal Madhesh Foundation and Mr. Diwas Rai of Nepal Federation of Indigenous Nationalities.

**Table 4 The broader groups used in this analysis, with their share of the population according to the 2011 and the 2021 censuses.**

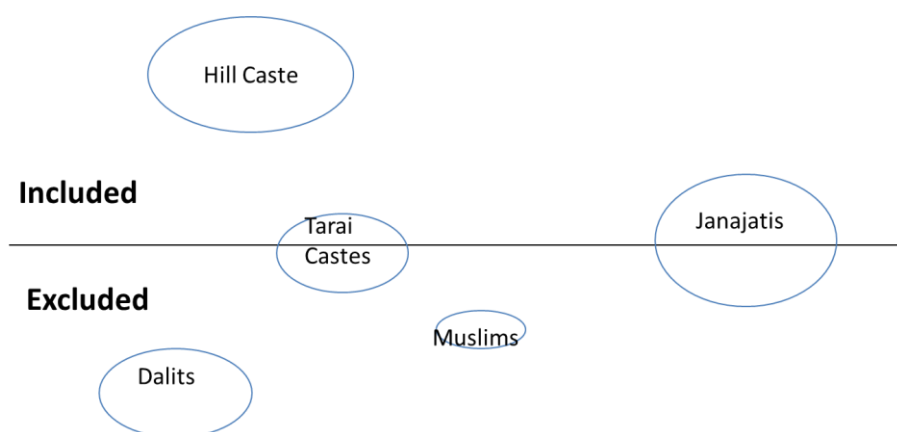
Group	Census 2011	Census 2021
<i>Excluded groups</i>		
Hill Dalits	8.6	8.8
Hill and mountain Janajatis, excluded only	16.1	15.8
Madhesi castes, excluded only	9.2	10.0
Madhesi Dalits	4.7	4.7
Tarai Janajatis, excluded	2.1	2.3
Religious groups (Muslims and Sikhs)	4.5	4.9
<i>Total excluded groups</i>	<i>45.1</i>	<i>46.6</i>
<i>Included groups</i>		
Hill caste	31.3	30.3
Hill and mountain Janajatis, included only	11.2	10.7
Madhesi castes, included only	5.8	5.9
Tarai Janajatis, included[2]	6.6	6.5
<i>Total included groups</i>	<i>54.9</i>	<i>53.4</i>

Over the ten years between the two censuses, the share of the included groups have been reduced, but only with 0.5 %.

### Excluded and included groups

In previous analyses, I have used the FPTP election results from 1991 to 2017 in order to decide if a caste or group belong to an included or excluded group. It is clear that Hill Castes belong to included, and Dalits and Muslims to excluded groups. Madhesi (Tarai) castes and Janajatis would have groups in both categories, as illustrated in Figure 1.

**Figure 1. An illustration of how the broad groups may be divided in included and excluded groups. The line is dependent on the threshold one wants to apply.**



The first step in the current analysis was to identify each member of parliaments and CA by caste or Janajati group. As for previous studies, Ms Samhita Malla has identified each of the HoR members, by either name or by calling them, and I thank her and the MPs for their co-operation on this.

In order to be categorised as “Included”, a group needs consistently to win at least 90 % of their share of the population in the FPTP elections. For larger groups, the result has been quite stable over the years. For smaller groups, winning one seat may change this, but in such cases, I have looked at the history.<sup>6</sup> In conclusion, the groups remain in the same categories as in earlier publication. The only change is that the 17 new groups have been placed in their respective groups based on the election results. If the threshold for being included were reduced to 60 %, little would change. Only the Madhesi caste groups Koiri/Kushwaha and Teli would move to “included”.

Using the previous categories, Table 5 shows the share of the seats won by the broad group compared to the share of population according to the 2021 census.

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<sup>6</sup> The small groups, which have now won seats, but has kept their category, are: Bhote, Majhi, Koiri/Kushwaha, Teli and Badhaee/Badhee. The same is the new small group Banyan-



**Table 5 The excluded and included groups with the results for the FPTP elections from 1991 to 2022<sup>7</sup> compared to the groups' share of the population as per the 2021 census.<sup>8</sup>**

Group	1991	1994	1999	2008 FPTP	2013 FPTP	2017 FPTP	2022 FPTP	Census 2021
<b>Excluded groups</b>								
Hill Dalits	0.5	0.0	0.0	2.5	0.4	1.8	0.6	8.8
Hill and mountain Janajatis, excluded only	5.9	5.4	4.9	9.2	5.4	6.7	6.7	15.8
Madhesi castes, excluded only	2.0	1.0	4.9	5.4	3.8	4.9	5.5	10.0
Madhesi Dalits	0.0	0.0	0.0	0.4	0.4	0.0	0.0	4.7
Tarai Janajatis, excluded	0.5	0.0	0.5	1.7	0.8	0.0	0.0	2.3
Religious groups (Muslims and Sikhs)	2.4	2.4	2.0	2.5	2.1	1.8	0.0	4.9
<b>Total excluded groups</b>	<b>11.2</b>	<b>8.8</b>	<b>12.2</b>	<b>21.7</b>	<b>12.9</b>	<b>15.2</b>	<b>12.7</b>	<b>46.6</b>
<b>Included groups</b>								
Hill caste	53.7	62.4	58.1	41.3	55.0	50.9	57.6	30.3
Hill and mountain Janajatis, included only	19.5	12.7	16.6	16.3	13.8	15.2	14.5	10.7
Madhesi castes, included only	7.3	9.3	9.3	15.4	10.4	12.7	9.1	5.9
Tarai Janajatis, included <sup>9</sup>	8.3	6.8	3.9	5.4	7.9	6.1	5.5	6.5

<sup>7</sup> The number for the years 1991 to 2013 are taken from Vollan, Kåre 2015: Elections in Nepal: Identifying the Politically Excluded Groups. A study of the parliamentary election results from 1991 to 2013. Kathmandu: Social Science Baha and Himlal Books. The 2017 numbers are from Vollan, Kåre (2020): The Systems of Representation in the Three Tiers after the Promulgation of the 2015 Constitution of Nepal: Implementation and Challenges. A Treatise on the Constitution of Nepal 2015. Kathmandu University School of Law. The 2022 figures are calculated as part of this study.

<sup>8</sup> The groups in the three elections in the 1990s and the FPTP part of the 2008 to 2022 elections that won fewer seats than 90 per cent of their share of the population are defined as 'excluded'.

<sup>9</sup> Tharus only.

<b>Total included groups</b>	<b>88.8</b>	<b>91.2</b>	<b>87.8</b>	<b>78.3</b>	<b>87.1</b>	<b>84.9</b>	<b>86.7</b>	<b>53.4</b>
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Little has changed in the possibilities for excluded groups to win seats in FPTP elections over the years. The main conclusion is that 53 % of the population win 87 % of the seats when they are up for free competition. And opposite, 47 % of the population is represented by less than 13 % of the FPTP seats. It worth noting that in the first CA election in 2008, the excluded groups won close to 22 % of the seats. This may be due to the attention inclusion had at the time, but after that, the representation of excluded groups has fell down to the same low level as before.

The election law of 2017 introduced quotas for the groups mentioned in the Constitution, to be applied to the PR election.

**Table 6 The quotas applied to lists in the PR election, as per the 2017 election law.**

<b>Groups being represented</b>	<b>Percentage of Candidates</b>
Dalit	13.8
Adibasi Janajati	28.7
Khas Arya	31.2
Madhesi	15.3
Tharu	6.6
Muslim	4.4

The figures used are slightly different from the figures I present, which may come from a different categorisation of some smaller groups.

Some groups may fall outside these groups, and it is not clear where Sikhs, Tarai Janajatis other than Tharus, should be placed.

The introduction of quotas for the already privileged groups was criticised by the EU Election Observation Mission for the 2017 elections by stating: “The design of the PR quota system, which includes the Khas Arya [elite castes] among the groups for inclusion, has the consequence of actually enhancing the participation of elite social groups within the legislatures, increasing their dominance. [...] This is arguably in contravention of international standards on equality, as, under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the

Elimination of All Forms of Racial Discrimination, affirmative action measures are foreseen only as a means to promote equality.<sup>10</sup> The statement was not well received by ECN and the government.<sup>11</sup>

Even if there was a quota also for otherwise included groups, the quotas did improve the representation also in 2022. Table 7 shows the development of the results over time for both FPTP and PR.

**Table 7 The representation of groups in the 2008, 2013, 2017 and 2022 elections, compared with the groups' share of the population according to the 2021 census. F=FPTP, Tot=Total**

Group	2008			2013			2017			2022			Census 2021
	F	PR	Tot <sup>12</sup>	F	PR	Tot <sup>13</sup>	F	PR	Tot	F	PR	Tot	
<b>Excluded groups</b>													
Hill Dalits	2.5	8.7	6.1	0.4	7.8	4.7	1.8	13.6	6.5	0.6	10.9	4.7	8.8
Hill and mountain Janajatis, excluded only	9.2	6.0	7.3	5.4	2.1	3.5	6.7	0.9	4.4	6.7	11.8	8.7	15.8
Madhesi castes, excluded only	5.4	8.7	7.3	3.8	7.8	6.1	4.8	4.5	4.7	5.5	3.6	4.7	10.0
Madhesi Dalits	0.4	4.5	2.8	0.4	3.3	2.1	0.0	0.9	0.4	0.6	0.9	0.7	4.7
Tarai Janajatis, excluded	1.7	2.4	2.1	0.8	2.7	1.9	0.0	1.8	0.7	0.0	2.7	1.1	2.3
Religious groups (Muslims and Sikhs)	2.5	3.0	2.8	2.1	4.2	3.3	1.8	5.5	3.3	0.0	5.5	2.2	4.9
<b>Total excluded groups</b>	21.7	33.1	28.3	12.9	27.8	21.6	15.2	27.3	20.0	12.7	34.5	22.1	46.6
<b>Included groups</b>													
Hill caste	41.3	28.1	33.6	55.0	30.4	40.7	50.9	30.0	42.5	57.6	33.6	48.0	30.3
Hill and mountain Janajatis, included only	16.3	20.9	19.0	13.8	24.5	20.0	15.2	25.5	19.3	14.5	14.5	14.5	10.7
Madhesi castes, included only	15.4	11.9	13.4	10.4	10.4	10.4	12.7	10.9	11.6	9.1	10.0	9.5	5.9
Tarai Janajatis, included <sup>14</sup>	5.4	6.0	5.7	7.9	6.9	7.3	6.1	7.3	6.5	5.5	6.4	5.8	6.5
<b>Total included groups</b>	78.3	66.9	71.7	87.1	72.2	78.4	84.8	72.7	80.0	86.7	64.5	77.8	53.4

<sup>10</sup> EU EOM: Final report Nepal House of Representatives and Provincial Assembly Elections 26 November and 7 December 2017 (February 2018).

<sup>11</sup> See Vollan, Kåre (2020): The Systems of Representation in the Three Tiers after the Promulgation of the 2015 Constitution of Nepal: Implementation and Challenges. A Treatise on the Constitution of Nepal 2015. Kathmandu University School of Law.

<sup>12</sup> Elected only, not including the 26 appointed.

<sup>13</sup> Elected only, not including the 26 appointed.

<sup>14</sup> Tharus only.

<b>Total</b>	100	100	100	100	100	100	100	100	100	100	100	100	100
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The representation of excluded groups increased from 12.7 % in FPTP to 22.1 % in total. However, it is still far from the 46.6 % of the population. In particular, Madhesi Dalits and excluded castes took little benefit from the quotas on PR. The quotas for Dalits were mainly filled by Hill Dalits and the Madhesi quota by already included castes. Similarly, the Janajati quota benefitted in particular the already included Janajatis.

### Gender Representation

Table 8 gives a breakdown of the gender representation in the two races in the 2018 elections.

**Table 8 Gender representation within each group in both races in the 2022 election. Number of representatives.**

Group	Section of the HoR election								
	FPTP			List PR			Total		
	Male	Female	Total	Male	Female	Total	Male	Female	Total
Hill Caste	91	4	95	9	28	37	100	32	132
Hill Dalit	1		1	5	7	12	6	7	13
Hill and mountain Janajatis	33	2	35	5	24	29	38	26	64
Madhesi Caste	22	2	24	3	12	15	25	14	39
Madhesi Dalits	1		1	1		1	2		2
Tarai Janajatis	8	1	9	2	8	10	10	9	19
Religious groups (Muslims and Sikhs)				3	3	6	3	3	6
<b>Total</b>	156	9	165	28	82	110	184	91	275

The reason for the dominant representation of women in the PR part of the election is the constitutional requirement that at least 1/3 of the elected members from each party of the two chambers of parliament combined had to be women, and any deficit had to be compensated by this race.<sup>15</sup>

<sup>15</sup> The Constitution article 84 (8).

**Table 9 Gender representation per party in both races in the 2022 election. Number of representatives. M=Male, F=Female, Tot=Total.**

Party	FPTP			PR			Total			Per cent women of party representation
	M	F	Tot	M	F	Tot	M	F	Tot	
CPN-UML	40	4	44	12	22	34	52	26	78	33.3
Nepali Congress	56	1	57	3	29	32	59	30	89	33.7
CPN-Maoist Centre	17	1	18	2	12	14	19	13	32	40.6
Rastriya Swatantra Party	5	2	7	7	6	13	12	8	20	40.0
Rastriya Prajatantra Party	7	0	7	2	5	7	9	5	14	35.7
Janata Samajbadi Party, Nepal	7	0	7	1	4	5	8	4	12	33.3
CPN (Unified Socialist)	10	0	10	0	0	0	10	0	10	0.0
Janamat Party	1	0	1	1	4	5	2	4	6	66.7
Loktantrik Samajbadi Party, Nepal	4	0	4			0	4	0	4	0.0
Nagarik Unmukti Party	2	1	3				2	1	3	33.3
Rastriya Janamorcha	1	0	1			0	1	0	1	0.0
Nepal Workers and Peasants Party (NWPP)	1	0	1			0	1	0	1	0.0
Independent	5	0	5				5	0	5	0.0
Total	156	9	165	28	82	110	184	91	275	33.1

In total, 33.1 % percent of the seats in the HoR are filled by women. The rule works for all parties winning PR seats. In FPTP, only nine women were elected. The number for 2017 was six. One may speculate if the rule gives too few incentives for parties to nominate women in electable constituencies since they will be represented under PR. On the other hand, parties know that a majority of the PR seats will be filled with women, which leaves little room for parties to secure their leading cadres (most often men) seats in PR.

### The winning candidates

As mentioned earlier, the Constitution uses the term “Closed Lists”. The common interpretation of that is that the seats won by a party are filled from the top of a ranked list, and that the voter know the list before the election. They will therefore know who will be member of parliament if their chosen party wins seats.

With quota rules, it gets very complicated for the parties to set up a list that will provide a valid group result, regardless how many seats they might win. In addition, the rule for at least 1/3 women from each party would make it impossible not to jump down the list in some cases.

This problem was solved by a directive<sup>16</sup> issued by the Election Commission of Nepal (ECN), in its Article 36) (3): “While selecting names of candidates of inclusive groups pursuant to sub-section (1),

<sup>16</sup> Members to the House of Representatives Proportional Election Directives, 2022

it shall not be allowed to select names of candidates in lower serial number without selecting name of candidate in the upper serial number.”

This means that if a female Tharu is next to be selected, the party cannot bypass a candidate with that identity on the list and choose one further down, as they could before 2015. They will have to take the one ranked next on the list, starting from the top. However, in order to meet the quota rules one may by-pass a number of candidates with other identities.

This improved the transparency and made the elections more predictable but for a voter, it would still seem to be strange that many candidates are bypassed when the candidates are filling the seats, even if it according to much stricter rules than before 2015.

## Conclusions

The quotas for both elite and excluded groups are a significant feature of the Nepali system of representation. The rules raise a number of questions regarding:

- The principle of equality;
- The creamy layers;
- The complexity;
- The effects on minority parties;
- The transparency.

### The Principle

The early agreements, such as the CPA, emphasised the need for abolishing discrimination. Ten years later, proportional elections became a mantra of giving seats to all groups according to their strength in the population. The Constitution of 2015 states in its preamble that we, the sovereign people of Nepal;

PROTECTING and promoting unity in diversity, 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 “proportional inclusive” principle was only implemented for 40 % of the seats in HoR, giving the elite a big advantage in 60 % of the representation.

Nepal has ratified<sup>17</sup> the International Covenant on Civil and Political Rights (ICCPR), which states in Article 25:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

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<sup>17</sup> 1991

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

Any quotas imposed on an electoral system will to some extent be in conflict with equal suffrage. However, it is accepted to use quotas as affirmative action in order to create genuine equality. Quotas for women are quite common, and quotas directed toward otherwise excluded groups, would also be accepted. However, quotas for groups, which are already over-represented in the HoR, do not create more equality.

### The Creamy Layers

The definition of the groups being giving quotas is problematic. One problem is that some groups may not be able to stand for elections at all. Another is that within each group, there are big differences. Both in the group Janajatis and Madhesis, there are subgroups, which are doing well without quotas and others that never win seats without quotas. Excluded castes and Janajati groups are not helped by the quotas defined, since even in PR, the seats are filled by the groups winning anyway. For Dalits, most quota seats were filled by hill Dalits and did not benefit Madhesi Dalits a lot.

One may argue that there will always be a creamy layer within a group, regardless how the group is defined. That does not mean that one could not try to target such groups that are genuinely discriminated in terms of representation.

### The Complexity

As shown before, the quota rules are difficult to understand and to administer for election administrators and for parties, and they are difficult to understand for the general public. If one instead of the quotas for all had gone for minimum quotas for excluded groups, the system would have been much easier to implement.

### The Effects on Minority Parties

Parties have been formed in support of groups, which have been discriminated over time, such as Dalits and so-called OBCs (Otherwise backward castes). Such parties will need to include 30 % high caste people on their lists. There was an arrangement for short lists implemented for the CA elections, which in practise made an exception from the quota rules for Madhesi parties based in Tarai. However, other parties eventually used the same rule, which was not carried over to the elections after 2015.

### Transparency

It is still not easy for voters to know who will be elected if the party of their choice win seats. The elected are not filled from the top, even if they cannot bypass candidates of the needed identity. Therefore, the impression left may still be that the PR candidates are selected by parties, rather than elected by the voters.

One comment to PR in general. In Nepal, one often hear the term direct election used only for FPTP. However, PR is also a direct election, and if the voters know who the candidates, which will be elected if a party wins seats the accountability is still strong. With a working party democracy, it would also be possible to follow the process of nominating candidates for both FPTP and PR.

## Possible Solutions

There are ways of introducing quotas without the problems listed earlier. The most important element would be to move from quotas for all, to minimum quotas for excluded only. I will give some examples based upon the analysis of this paper:

### *Option 1: Listing all excluded groups*

Listing all the groups used in this study would mean that the following should have a minimum (not exact) quota in PR:

**Table 10 Option 1 for minimum quotas for excluded groups.**

Group	Minimum Quota in per cent
Hill Dalits	8.8
Hill and mountain Janajatis, excluded only	15.8
Madhesi castes, excluded only	10.0
Madhesi Dalits	4.7
Tarai Janajatis, excluded	2.3
Religious groups (Muslims and Sikhs)	4.9
<b>Total minimum quota</b>	<b>46.6</b>

This is simpler than the current rule since the shares are minimum not exact but it is still quite complicated. It would, however, be targeting those needing affirmative action.

### *Option 2: Listing only few groups*

In the next option, excluded Janajatis and Dalits are combined regardless of being mountain, hill or Tarai.

**Table 11 Option 2 for minimum quotas for excluded groups.**

Group	Minimum Quota in per cent
Dalits	13.5
Excluded Janajatis	18.1
Excluded Madhesi castes	10.0
Religious groups (Muslims and Sikhs)	4.9
<b>Total minimum quota</b>	<b>46.6</b>

This simplifies the system, but it is less targeted. There would be a risk that for example Madhesi Dalits will not be nominated by the main parties but the Tarai based probably will. One big advantage is that regional parties will not be forced to include candidates from other regions. Some are advocating that all parties should have a national view and would therefore not see that as an advantage. On the other hand, parties with a political programme of support to minorities may find this to be better.

### *Option 3: Listing only one group including all excluded*



The simplest solution would be not to specify the groups at all but just require the lists to include at least 46.6 % of the excluded groups, on the lists. This would be less targeted but the quota rules would be reduced to a minimum share of women and a minimum share of excluded groups.

The lists would now be simpler to set up in advance in such a way that the priority can be followed strictly, except for when one needs to compensate for too few women elected by FPTP.

#### *Sunset clause*

The definition in this paper of excluded groups is based upon how well a group is faring in the FPTP race in previous election. It would be a hope that more groups would be included in the future so a re-evaluation needs to be done from time to time. In future analyses one may apply a lower threshold for the classification of “included”, by, for example, stating that if a group wins at least 60 % of their fair share (compared to the population) they are included. The present study has used 90 % but a reduction would have had little effect.<sup>18</sup>

This could for example be done every ten years.

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<sup>18</sup> See Vollan, Kåre (2015): Elections in Nepal: Identifying the Politically Excluded Groups. A study of the parliamentary election results from 1991 to 2013. Kathmandu: Social Science Baha and Himal Books:18. Only Koiri/Kushwaha and Teli (2.7 % of the population in total) of the Madhesi caste group would go from excluded to included, and later studies confirm that.