



Unrepresented Nations and Peoples Organization (UNPO)

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Democratic Republic of Nepal (Nepal)

POLITICAL PARTICIPATION IN MADHESH

The Unrepresented Nations and Peoples Organization (UNPO) is an international membership-based organization created to empower the voice of unrepresented and marginalized peoples around the world and to protect their basic human rights. The peoples represented in UNPO's membership, including since 2017 the people of Madhesh, are all united by a common condition: they are denied equal representation before institutions of national or international governance. As a result, their opportunity to participate in the national or international arena is limited, and they find it difficult to realize their rights to civil and political participation and to control their economic interests, social and cultural development. UNPO acts independently of its members and works on the problems of unrepresented peoples in the world. To that end, it is established a Netherlands-registered non-governmental organization, established as "Public Benefit Organization" under the law of the Kingdom of the Netherlands.

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SUMMARY

1. Via this short intervention, the UNPO wishes to draw the attention of the international community to the recent developments in Nepal with regards to the civil and political rights of the Madheshi people. Specifically, this intervention provides an update the ability of the Madheshi people to participate in public affairs and the democratic process in Nepal on an equal basis with the rest of society. The report notes that while there has been some progress since the last UPR review in 2015, this progress is both highly limited and very much insecure. Because of restrictive citizenship laws, an unfairly-drawn political map, and repressive governmental tactics the Madhesi people's voice in the democratic institutions are is heavily watered down and the government takes efforts to control the Madeshi interest groups' policy agendas.

BACKGROUND

A. The Madeshi People¹

2. The Madheshi are the inhabitants of the Terai region in the south of Nepal at the foothill of the Himalayas on the border to India. The region distinguishes itself from the rest of the country by its plain terrain with subtropical climate, in contrast to the high mountain lands inhabited by the hill people of Nepal.
3. The region is inhabited by 50.3% of Nepal's total population of different ethnicities, many of which share cultural, linguistic and social similarities with Northern Indians rather than with Nepalis. Those ethnic groups speaking Maithili, Bajjika, Bhojpuri, Awadhi or closely related dialects mainly refer to themselves as the Madheshi people and make up the majority of the region's population. The Terai is home to several indigenous groups that lived in the region long before it became an agricultural center and attracted migrants from the mountain region, Pahadis, that now make up almost a third of the Madheshi population.
4. Groups indigenous to Madhesh still make up large parts of the population of the Tera. The largest indigenous group are the Tharus who make up 12.5% of the Terai population. Hindi is the lingua franca of the region, and it is the language that was traditionally used in both administration and education prior to forceful imposition

¹ See UNPO briefings on the Madheshi people, available at <https://unpo.org/members/20426>; <http://unpo.org/downloads/2365.pdf>

of Nepali language in 1950s.

B. Constitutional Reform

5. Nepal was last reviewed in the UPR in November 2015, shortly after a new sweeping constitutional reform came into effect on 30 September 2015. This long-awaited reform replaced an interim constitution from 2007 and was long overdue.
6. The constitutional reform enacted sweeping reforms of the political structure of Nepal. It was, however, widely opposed by many within the Madesh community (and beyond that community) because of a large number of unresolved issues, including related to the political map of Nepal and the citizenship rights of Madeshi people, and the implications that these issues would have on the self-determination rights of the Madeshi people, including their rights to public participation.
7. The past five years have been characterized by a frustrating process of working to resolve these issues, with significant development in the first half of 2020.

MADHESHI POLITICAL PARTICIPATION

8. While legally accorded equal rights to public participation, various structural features of the Nepali Constitutional Order result in an effective disenfranchisement of the Madheshi people. Specifically, restrictive citizenship rights, an unfair political map, and repressive government tactics greatly limit the ability of the Madheshi people to have their voices heard in Nepal.

A. Citizenship²

9. Madeshi people have long been stigmatized and discriminated against in Nepal as a result of their perceived ties to India. They have borne the brunt of long-standing fear by the government of Nepal of ethnic groups living in India migrating into Nepal and changing the ethnic composition of the country. Nepal's citizenship laws have acted as the front-line of this issue and have resulted in millions of Nepal's Madeshi people being left without citizenship and the rights that citizenship entails.
10. Despite many advances that were made in the adoption of a new Constitution in 2015, Article 11 (7) of the Constitution does not allow for the child of a Nepali mother (and a foreign father) the full rights of citizenship passed on by birth. This restriction on a woman's right to independently pass on citizenship to her children is in effect discriminatory and therefore leaves them as second-class citizens to the rest

² See UNPO reports on marginalization of Madeshi women in Nepal, available at <https://unpo.org/article/21151>, <https://unpo.org/downloads/2493.pdf>

of the Nepali population. As the Madheshi population is situated so close to the Nepali-Indian border, Madheshi women very commonly practise cross-border marriage, and this amplifies this problem. Some estimates put the numbers of Madheshi without full citizenship in Nepal at 40%.

11. Because of their lack of citizenship, these Madheshi are unable to obtain higher posts within the Nepali administration and security forces. This also disenfranchises large segments of the Madheshi population, depriving them of their rights to public participation and greatly watering down the voting weight of the Madheshi.
12. Rather than moving in a positive direction, Nepal appears to be moving towards more restrictive measures, which will have further restrictions on the voting weight of the Madhesh population in Nepal. June and July 2020 have seen increased public protests related to an amendment of the citizenship law that will further limit the ability of foreign women marrying Nepali men to gain citizenship, making the process harder and longer (include a seven year waiting period). Again because of the prevalence of cross-border marriages within the Madheshi community, this will impact the Madheshi community more than any other.

B. Political Participation

13. The political participation of the Madheshi people is heavily watered down in Nepal. The 2015 Constitution created a Federal structure in Nepal. Such a structure, if reasonably and fairly applied could have served as a strong force for granting greater political participation and self-determination rights for the historically-marginalized Madheshi community. The 2015 Constitution, however, failed significantly in this regard.
14. The Federal Parliament of Nepal consists of a lower house (the “House of Representatives”) and an upper house (the “National Assembly”). The House of Representatives consists of 275 members: 165 members are elected from single-member constituencies by first-past-the-post voting and 110 elected through proportional electoral system. The Assembly has 59 members: eight members are elected from each of the seven provinces by an electoral college of each province, and three are appointed by the President on recommendation of the government.
15. Madheshi’s are highly under-represented in the Federal Parliament. While Madheshi people make up close to 50% of the population of Nepal, recent estimates place the number of Madheshi representatives in Parliament at less than 17%.³ Two factors

³ The Record, *Dalits and Women the Most Under-Represented in Parliament*, available at <https://www.recordnepal.com/data/dalits-and-women-the-most-under-represented-in->

cause this: *first*, the limitations on citizenship rights in Nepal result in a lower proportion of the Madheshi population being able to vote, reducing their weight in the proportional representation part of the election process; *second*, the political map of Nepal is drawn up in such a way as to waterdown the Madheshi vote.

C. Repressive Tactics⁴

16. Beyond the legal and constitutional limitations on the right to equal participation in the Nepal, the government of Nepal has been consistently engaged in a campaign to restrict the basis on which the members of the Madheshi community are allowed to participate in politics. There is, for instance, a strong self-determination movement for the Madheshi people. During the past five years, particularly in the period between 2016 and 2018, this movement was placed under significant pressure by the criminal justice system in Nepal.
17. For instance, leaders of the non-violent struggle for self-determination in Nepal were arbitrarily arrested and detained several times over the course of the three year period between 2016 and 2018 and were placed under 24-hour surveillance during this period. These leadership have often been detained for many months, either without charge or on charges of high crimes, such as treason or sedition, merely for holding peaceful rallies in public spaces, chanting slogans such as “we need freedom!”, or writing books on the Madheshi people or their self-determination.
18. After a significant campaign in this regard was waged in the period between October 2018 and April 2019, resulting in lengthy detentions, these leaders were eventually released from detention and even permitted to form political parties and participate in elections in Nepal, albeit on grounds restricted by the government. Pressure was even levelled against such activists to leave membership-based organizations such as the UNPO itself.

CONCLUSION

19. The net result of these laws and repressive tactics is that access to the Nepali democracy is highly limited, with the democratic rights significantly curtailed for the Madheshi people. While on its face the 2015 Constitution provides for equal

parliament/

⁴ See UNPO Reports on arbitrary arrests and detentions of self-determination movement activists in Nepal, available at <https://unpo.org/article/21144>, <https://unpo.org/article/21167>; <https://unpo.org/article/21286>; <https://unpo.org/article/21449>.

participation rights for all people, the people of Madesh are not accorded those rights in practice, resulting in their effective disenfranchisement.

RECOMMENDATIONS

20. In view of the above-mentioned human rights situation in the Federal Republic of Nepal, the Unrepresented Nations and Peoples Organization urges the Government of Nepal to:
 - **Revise the Constitution and laws of Nepal to allow for equal citizenship rights removing all discriminatory laws and practices that target women and the children of Nepali citizens married to foreigners, or that disproportionately impact the Madheshi people.**
 - **Revise the Constitution and political map of Nepal to guarantee true equality in representation across Nepal, and in particular to ensure that the Madheshi people are accorded equal representation in the institutions of governance.**
 - **Cease any and all activities suppressing people for non-violently seeking the right to self-determination of the Madheshi people and allow for unrestricted political participation, freedom of opinion and of association of organizations working non-violently for the self-determination of the Madheshi people.**