

# Do policies change the heart?

A study about policy transposition of Constitutional caste-based discrimination articles on Dalits in **Nepal**

S.L. Meijer  
Bachelor thesis Public Administration  
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## Preface

The beginning and the end of something special: The beginning of the thesis is the start of something special because of an extraordinary subject in the world: the caste system. This thesis has been written to finalize the bachelor public administration of the Radboud University Nijmegen in The Netherlands. After spending three years studying the public sector, I realize more about the wide perspective of the public sector including the vastness of the government and its influence and especially the importance of it. Nationally, but also internationally, people depend on the government in the broadest sense of the word. The insights from Nepal gave me an extra incentive to do something for society. Comprehensive subjects related to the public administration became even more interesting to investigate. The end of this bachelor thesis, means also an end of the research period in Nepal: A period of learning and new experiences. These life experiences mean a start for me as an individual, with a wider perspective of the world and its issues. Meeting new and different people from all over the world gave me an eye-opener in the human beings; the common pursuit of equality and appreciation in people's life.

The reason for this thesis subject is the unfamiliarity and specific focus. The caste system is well-known, but for me it was not part of my knowledge. What is the way of thinking behind the visible rituals? I choose Nepal, because of the non-western and deep-rooted culture; I wanted to learn something different.

The realisation of this thesis was not always easy, mainly because of the unstructured way of living in Nepal. A lot of people supported me during this research and I would like to say thank you. First of all, Ram Humagai: I really appreciated his involvement, support and kindness. Without his support making contact with all the agencies in Nepal and the other communication during the internship, I would never have made this study. Secondly, I would like to thank my lecturer from the Netherlands, Sandra van Thiel. She gave me essential support during my stay abroad by friendly, structured and fast feedback. Furthermore, she gave me constructive advice about the content. Thirdly, I would like to thank the National Dalit Commission, especially Udaya Gautam Ojha and Bimal Bishwakarma. Without their support and kindness I could not find all this information and they made the stay at the office extra pleasant. Of course the others at the office thanks a lot. Fourthly, I would like to thank Ramesh Gautam for his friendly and open information and help with the case study. Fifthly, I would like to thank my host family Pandey: Nardev, Shila, Nasib, Janoeka and Muskan and the other interns. Thanks a lot for all your personal support and hospitality during my stay for the research, it was fantastic. Also many thanks to all the other interviewees for their information: Y. B. Kisan, A. Koirala, A. Nepali, S. Pariyar, L. B. Parlyar, G.H. Paswan and D.K. Thapaliya.

*Stèphan Meijer*

## Summary

The caste system, discrimination and policies are key words in this study. This thesis focuses on the policy transposition of Constitutional caste-based discrimination articles on Dalits in Nepal. This study is about the transfer of non-discrimination articles into other Nepali legislation and offers recommendations for (further) improvement of the transposition. The marginalized group, Dalits, are central in this research.

Dalit people challenge a lot of discrimination in Nepal, for example exclusion or denial into houses or public places or suffer from physical abuse. The Nepali government has set up legislation to abolish the caste-based discrimination. This legislation is mainly written down in the Interim Constitution of Nepal. Article 14 abolishes the discrimination based on caste and acknowledges the untouchability (Dalit discrimination). These provisions should lead to improvement for Dalit community, but the contrary is evident. Most of the conditions for successful transposition are not present in Nepal. Nine of the conditions are lacking and four are partly present and only two can be found in the transposition process of Nepal. An illustration has been given in section 5.5, what is too extensive to mention here in detail.

The reasons for lacking transposition are mainly the Nepali culture and its tradition way of thinking. The culture does not change because of legislation and policies. The deep-rooted traditions and related traditional way of thinking affects the Nepali people in their behaviour and is based in their religion and lack of education. The conditions for successful transposition work only if the mind-set changes and people know in their heart that they are equal.

The Nepali 'world of compliance' is characterised by a long phase of inertia and transposition neglect. Furthermore, the compliance of the governmental administrative bodies is low. The high dependency on the instable government and unreliable implementing officials constrain the transposition even more. Lacking committed and skilful implementing officials and administrative, economic and legislative capacities do constrain the transposition. Moreover, the missing legal structure, timetables and guidelines affect the transposition negative. The lack of monitoring, combined with less power to monitoring organisations, limit policy transposition. The missing fit between the law to be transposed and implementing governmental bodies and individuals strongly affects the lack of transposition.

The transposition process needs improvement by implementing for example an enforcement system and additional acts in order to abolish the caste-based discrimination. But in conclusion, policies do not change the heart, but the heart changes policies.

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## 1. Introduction

This chapter presents an overview of the study. It contains information about the aim and structure of the study (1.1) and also the problem definition (1.2). Furthermore, the relevance of this study is also presented (1.3). This chapter concludes with an outline of the whole report (1.4).

### *1.1 General*

Nepal is the country of infinite heights and a highly diverse culture. The country has undergone several developments in recent years including with respect to the caste system. The caste system originates from the Hinduism (Dalits, 2011), which is the most important religion in Nepal and India. Other countries with this system are India, Bangladesh, Pakistan and Sri Lanka. The caste system has been abolished in Nepal since the Interim Constitution of Nepal from 2006 (UNDP, 2007) and the Civil Rights Act from 1955 (Nepal Law Commission, 2012), but still affects the whole society (World Bank, 2006). Better educated and urban-oriented castes still dominate politics, the public administration and the army, furthermore they control a disproportionate share of natural resources (US department of State, 2010).

The aim of this study is to investigate the relation between governmental policies in Nepal and the official non-discrimination based on castes. How have article 14 and other articles from the Interim Constitution (that prohibit discrimination based on caste) been transposed in regular national policies? The study will focus on a particular group of the caste system, called the Dalits, see section 2.4 for more explanation. This is an interesting subject to study, because the caste-discrimination is a comprehensive matter in Nepal and needs more attention for improvement. Moreover, the governmental policies affect the society and are essential in the pursuit of equality. For additional information about the relevance of this study, see section 1.4. Besides the social relevance, there is also an academic relevance of this study; most of the research on transposition of policies is European minded and does not focus on developing countries (for examples see several studies about transposition: HM Government, 2011; Asensio, 2008). Studies about policy transposition almost always relate to the European Union.

### *1.2 Problem definition*

The problem definition consists of a research goal and research questions, which form the core of the study.

The aim of this study is to:

*Evaluate if and how Interim Constitution articles related to non-discrimination of Dalits are transposed in regular Nepali policies and offer recommendations to (further) improve this transposition.*

The general question is:

*How can the transposition of the Nepali equality articles of the Interim Constitution in regular Nepali policies be improved?*

Sub questions which organise the research and are the basis of the investigation process. The sub questions are:

1. What do the non-discrimination articles in the Interim Constitution entail?
2. What are the conditions for a successful transposition process?
3. Which traces of article 14 and others can be found in regular governmental policies?
4. In case of lacking transposition of Article 14 and others into regular policies in Nepal, how can this be explained?

### *1.3 Relevance for society and science*

This section will speak about the contributions of my study to society and science. The social contribution is an important part of this research, because the caste discrimination is a well-known subject in the world and in Nepal itself. The study can give non-governmental organisations (NGOs) insight in the matter and the importance of the work they (already) doing. Furthermore, the study can function as a summary of the situation in Nepal for people who are interested in this subject as it gives more background information about the situation behind the observable culture. The study provides recommendations for improving equality in Nepal for the government and related organisations. Moreover, the caste system is a deep-rooted way of thinking in society and affects the whole civic and civil society. The government is an indispensable link in the matter around caste-discrimination, because the government can affect the society by making policies and restrictions. So recommendations could affect and reinforce the government and could eventually improve the equality in Nepal. NGOs can use the recommendations as a guideline for affecting the government. All in all, this study gives insight to the contemporary situation of caste based discrimination in Nepal and could serve as a guideline improving equality by NGOs and the government of Nepal.

The academic contribution of this study is also important, because the theory about transposition of policies focuses normally on Europe (for examples see several studies about transposition: HM Government, 2011; Asensio, 2008). Theory on transposition is more familiar in the

European Union context and has not been applied much in developing countries, which means that this study adds a new dimension of the transposition theory. Because of all this, the study is a worthy addition to the science and gives a new insight.

#### *1.4 Outline of the report*

Chapter 1 gave the introduction of this study and the problem definition. In chapter 2 the situation of Nepal will be sketched to serve as background. Chapter 3 discusses the theory about policy transposition and provides conditions for transposition. The study will not go into the actual implementation of policy, but rather focus on the translation of the articles of the Interim Constitution related to the equality of society into regular policies. Implementation will be touched upon, because it is closely related to transposition, furthermore implementation as a concept is more familiar to the Nepali respondents. The research method will be clarified in chapter 4 as well as the operationalization of key variables. After that the results are presented in chapter 5, including a description of some selected policies in Nepal and analysis of the transposition criteria. In the final chapter, conclusions will be drawn, the research questions will be answered and recommendations will be given to improve the transposition of the Interim Constitution articles into Nepalese policies.

To know more about the background of Nepal in order to understand the context of this study, the next chapter provides some information.

## 2. Nepal

This section presents general information about the situation in Nepal. It gives general information about Nepal (2.1). The political situation will be discussed (2.2) and the caste system will be explained (2.3). Minority groups (2.4) and the non-discrimination articles in the Interim Constitution of 2007 (2.5) will be discussed. This chapter concludes with a summary (2.6).

### *2.1 General information*

Nepal is a country in South-Asia and is captured between India and the Chinese province Tibet (CIA, World Factbook Nepal, 2013; Ministerie van Buitenlandse Zaken, 2012). The area is 147,181 square km and is divided in three country parts, from north to south respectively: Mountain area with the Himalaya, the central Hill area and the Terai area, which is a flat area. Nepal is divided in five regions, fourteen zones and seventy-five districts. There are 26,49 million people living in Nepal, whereof 19% lives in urban areas and the rest in rural area (CIA World Factbook, 2013; Central Bureau of Statistics Nepal, 2012). Nepalese people speak several languages, at least 123, but mostly they speak Nepali (Central Bureau of Statistics, 2012). Nepal is one of the less developed countries in the world and the poorest country of South-Asia and three quarters of the livelihood is based on agriculture (CIA World Factbook, 2013). According to the census in 2010, approximately 60% of the citizens of Nepal above the age of fifteen is literate; 73% is men and 48,3% of the women can read and write (World Bank, 2013; CIA World Factbook, 2013).

The country is a very religious state, but the government developed from a Hindu Kingdom to a secularized state since 2007 (Ministerie van Buitenlandse Zaken, 2012). However, people are still very religious and according to the government most people are Hindu (81%), Buddhist (9%), Muslim (4%), Kirat (3%), Christian (1%) and or uphold another religion (2%; Central Bureau of Statistics Nepal, 2012).

### *2.2 Political situation*

The situation around the government in Nepal is changed in the last few years. In the second half of the 18<sup>th</sup> century Nepal was established as a kingdom, before there were several independent mountain states called Gorkha and Prithvi Narayan Shah (Ministerie van Buitenlandse Zaken, 2012). In 1846 the Rana family took over the power of the Shahs, who got a ceremonial function. In 1951 the power of king Tribhuvan Shah was restored and since 1960 a new polity was erected, which was a non-party system. Because of popular demonstrations and economic pressure of India, Nepal changed the polity in 1990 again into a multiparty system. In 1996 the Communist party of Nepal–Maoist (CPN-M) called for a ‘People War’, conflicts escalated and premier Deuba called out the

emergency situation in 2001 (Ministerie van Buitenlandse Zaken, 2012). Parliament was dissolved and when the new premier could not reach an agreement between the political parties and the emergency situation was called out again in 2005. King Gyanendra took over the power of the country and denied his people the freedom of expression, assembly and association. According to The World Bank this postponement of democratic rule delayed the improvement of the rights of all Nepali people, but especially the most excluded populations, mainly women, Dalits and Janajatis (2006). More information about the minorities groups will be presented in the next section. Because of heavy protests and pressure on the King, he had to resign in 2006 (Ministerie van Buitenlandse Zaken, 2012). In November 2006, a coalition of seven parties and the CPN-M agreed to the Comprehensive Peace Agreement (CPA), which ended the civil war. With help from the United Nations an interim government was established in 2007 and the interim constitution could be written. In 2008 first elections were held, which transformed the Constituent Assembly and the polity of Nepal into a Federal Democratic Republic. Parties agreed to finish the constitution within two years (in May 2010). But after several postponements there is still no final constitution. Several subjects such as the number of the Chambers and the form of the government are not settled yet. As a result the political situation is still not stable. Moreover, the public sector of Nepal is one of the most corrupt in the world, placed on rank 139 out of 174 (Transparency International, 2012). Maoists groups call for strikes (*bandhs*) several times a year, lastly on 16 June 2013 (Nepal Bandha, 2013).

### 2.3 Caste system

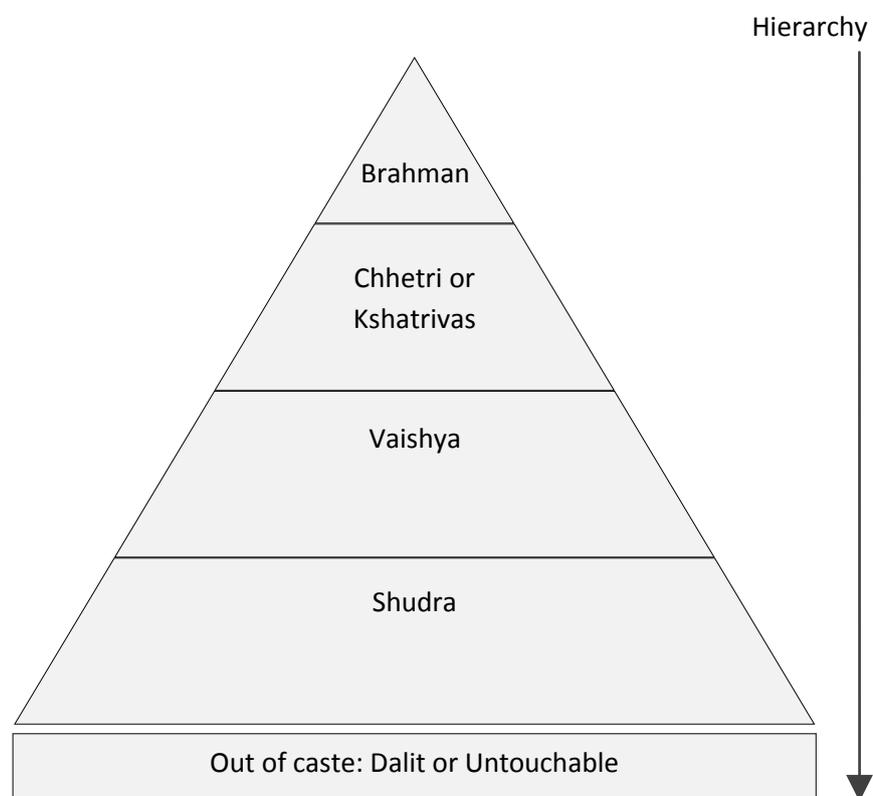
The term 'caste' itself is debated. In theory it is meant to mean 'different things by different people in a variety of situations' (Béteille, 2002, p. 45). But in practice caste is meant to be a small and more or less localised group and sometimes it is a collection of such groups. The position of an individual in the caste structure is determined by birth and is immutable (Béteille, 2002, p. 45). The word 'jat' is the Nepali translation of the English word 'caste', which comes from the Portuguese word 'casta', which means birth or difference (Baral, as cited in Kisan, 2005, p. 5).

The caste in which you are born is assumed to give a social principle, like a hierarchy (Dumont, 1998, p. 2). The hierarchy is mostly about religious ranking, for example the type of task you have in celebrations at festivals or religious celebrations in a temple (Dumont, 1998, p. 65). In the modern age, hierarchy is referred to as social stratification and can be repressing, but it must have been seen as specialised tasks with religion as basis. To be clearer, religion is still the basis of the ranking and one person is better than the other, because he or she is born in a caste higher than the other. The person from the higher caste can act repressive to a person in a lower caste. Also, there is a relationship between caste and profession; it is not simply an identity (Dumont, 1998, p. 92). The profession is linked to status only by religious aspects, but mainly depends on power. People from

higher caste have more power and status than people from lower castes. Castes also structure someone's economic and political position, but this is secondary and isolated. It is possible now to achieve a different economic or political status in spite of the caste or to emerge, but it is still difficult (Béteille, 2002, p. 45; Dumond, 1998, p. 235).

The term caste refers to two concepts (Bayly, 2005, p. 8; Béteille, 2002, p. 46). Firstly to the jati, the birth group which gives identity for such purposes as marriage. Secondly to the varna, which refers to the order, class or kind. This can be divided in four divisions, see figure 1 for an illustration. Firstly, the *Brahmans* are identified with the callings of priests or do mostly mental and philosophical work (Humagai, interview). Secondly, the *Chhetri* or Kshatrivras are people who are associated with warriors or leaders, but also seigniorial people. Thirdly, the *Vaishya* are the merchants and tradespeople, they have commercial occupations. Finally, the *Shudra*, which are the farmers and handwork groups and are associated with servile labourers. Besides there is a group outside and beneath this veme (Indian: varna) hierarchy, called the Dalits or untouchables and this group is the lowest rank of Hindu caste hierarchy. The word Dalit for untouchables is used in public discourse from the 1960s, before it was Harijan or achchuta (Shah, 2001, p. 22). "The word *Dalit* comes from the Sanskrit root 'dal', which means to shatter, to break into pieces and to step on" (Kisan, 2005). The literal meanings of Dalit are (e.g.): shattered, over-burdened, suppressed, squeezed, stepped upon, shamed by being required to bow to someone else's feet. Dalit was originally used as 'Depressed Classes' (Sharma, 2006, p.

52), but is now used to refer to those officially categorized within the untouchable castes. The Dalit community itself can be divided in several subgroups (twenty), which have their own hierarchy, for more information see appendix A (Humagai, interview; Kisan, 2005; interview). People of this low-caste are more often significantly poorer and less well educated (Bayly, 2005, p. 11).



**Figure 1.** Caste system hierarchy (based on Yang, 2007).

#### *2.4 Minority groups*

There are several disadvantaged groups in the Nepalese society compared to other groups or castes. The minorities are women, Dalits, Madeshis, Janajatis, religious minorities, disabled people and sexual minorities (e.g. homo- and transsexuals) World Bank, 2006; Support Nepal, 2011). Further marginalised, excluded groups and communities are children, elderly people, people from isolated regions and indigenous groups, e.g. linguistic groups. This research will focus on the minority group of Dalits, because this is the largest and most excluded group in Nepal. Dalits comprise approximately 13 % of the Nepali society (Central Bureau of Statistics Nepal, 2012).

The caste discrimination has been abolished since the interim constitution, but their rights are not equal in comparison to other groups and castes. According to the National Human Rights Commission (NHRC, 2004) Dalits are marginalized in the religion, but also in terms of political rights (representation), economic rights (participation) and in social rights (exclusion). The caste-based discrimination of Dalits is done not only by higher caste Hindus and the indigenous nationalities, but also equally observed among Dalits even today (Bhatt, 2005, p. 234). Discrimination is found for example in (Bhat, 2005, p. 234 & Kisan, 2005):

- denial of entry into the house, hotel, restaurant or temples et cetera;
- service, where the wearing of the sacred thread is not permitted, worship conducted by Dalits is not acceptable and so on;
- access to common resources is denied, e.g. the water tap or pond;
- denial to participate in public activities or entry into public places such as the religious function or governmental function;
- forced labour or discriminatory practice of labour;
- dominance to Dalits in behaviour;
- cruelties, more raping cases to Dalit women;
- social boycott, because of e.g. a marriage between a Dalit and a higher caste or indigenous nationality; and
- behaviour with respect to Dalits, e.g. not attend a classes if the teacher is a Dalit.

According to the World Bank (2006), there are more than two hundred forms of caste-based discrimination identified in Nepal. Discrimination is more entrenched in less-developed areas, especially in the Mid- and Far-western regions, but caste continues to influence inter-personal behaviours throughout the country.

#### *2.5 Non-discrimination*

The discrimination of the Dalits by the state is illegal since the 1950 Constitution, Art. 14(1) (Kisan, 2005, p. 60). Despite several small improvements for Dalits in legislation, the discrimination is still

part of society. The Constitution of 1990 provided a huge step towards more social equality for Dalits. The article reads as follows (Kisan, 2005; Constitution of 1990, Art. 11(4)):

*“No person shall be discriminated against on the basis of caste. No person’s presence shall be prohibited in public places and no person shall be prevented from using public property. Violation of such laws will be punishable”.*

After the 1990 Constitution of Nepal, Dalit organisations asked for a constitutionally guaranteed reservation for Dalits. Reservation in this context means special provisions for Dalits, like quotas for jobs and preferential treatment. The Jatiya Samata Samaj (JSS) for example views reservations as a necessity and temporary solution (JSS, as stated in Kisan, 2005, p. 149). The Constitution of 1990 has also declared it a punishable offense to prevent Dalits from being present in public places, but in practice the presence of Dalits is often still prohibited and there is no decrease in caste discrimination and untouchability (Kisan, 2005, p. 67). According to Kisan the Brahmanistic thinking among the rulers, administrators and leaders of political parties are the root of this problem.

The Nepalese Interim Constitution of 2007 is an update of the Constitution of 1990, adding a non-discrimination article (article 13 (2 and 3), UNDP, 2007). The content of article 14 (1) of the Interim Constitution of 2007 (2063), which focuses on the untouchability and racial discrimination. The whole article is displayed in Appendix B, but the core reads as follows:

*“No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability in any form. Such a discriminatory act shall be liable to punishment and the victim shall be entitled to compensation as provided by the law.”*

The Interim Constitution is not converted in a Constitution, because of the disagreement on some issues by several political parties (see above).

Solving the problem of discrimination of the Dalits needs a combination of action and commitment from all spheres of life, such as Dalit communities, the government, political parties, civil society, NGOs and every citizen of the society (NHRC, 2004). Special attention from the government, bureaucrats and politicians is required, laws against discrimination should be properly enforced and the governmental programs for the increase of the economic and social status of the Dalits should be fully implemented.

## 2.6 Summary

Nepal as one of the less developed countries with a deep-rooted religious culture and encounters several difficulties in society. The unstable political situation affects the overall situation in Nepal. The caste system, divides the whole society in four ranks; Brahman, Chhetri or Ksatriyas, Vaishya and Shudra. The lowest groups are the Dalits or untouchables, who can be seen as out of the caste system or part of the lowest rank. Through the whole society, there are several minority groups as

the Dalits, like Madeshis, Janajatis, religious minorities, disabled people, and sexual minorities. Dalits are marginalized in the religion, but also in terms of political rights, economic rights and in social rights. The caste-based discrimination of Dalits is done by higher caste Hindus, indigenous nationalities, but also among Dalits. The Constitution of 1990 and the Interim Constitution of 2007 gave a better fundament to abolish the caste-based discrimination.

After this background information of Nepal, the theory which will be used in this study will be described in the next chapter.

### 3. Theory

This chapter discusses theory about policy transposition. This will form the basis for the empirical study in Nepal (see chapter 5 for the results). Below I will discuss what several scholars have written about policy transposition and how this theory about policy transposition can be applied in the context of a developing country. Different sections will discuss the definition of policy transposition (3.1), the policy cycle (3.2), the transposition context (3.3), the conditions for effective transposition (3.4) and conclude with a summary (3.5). Furthermore, this chapter replies to the sub-question 2: what are the conditions for successful transposition process?

#### *3.1 Definition of transposition*

The transposition of policies is a well-known subject in the European literature, focusing on the supranational power of the European Union and her member states (Steunenberg, 2006, 2007; Leiber, 2007; Toshkov, 2007a; Kaeding, 2004; Knill & Lenschow, 1998; Steunenberg & Toshkov, 2009; Knill & Lehmkuhl, 2002).

Transposition is the transfer of international directives into national legislation (Sprungk, 2012, p. 300; Börzel, Hoffman, Panke & Sprungk, 2010). Transposition refers to the incorporation of the directive's provisions into national laws and regulations and can be seen as the first stage of implementation (Haverland & Romeijn, 2007). Mastebroek (2007) adds that the process of transforming directives into provisions has to be done by competent legal body or bodies. Versluis (2007) describes transposition as the formal or legal implementation instead of the implementation in the practise. Moreover, Versluis refers to transposition as 'the law in the books', which does not relate to the decisions and regulations which are directly applicable. In case of a supranational power and member states, directives have to be transposed into the legal systems of member states before they can be applied and enforced (Sprungk, 2012). By transposing too late or in case of non-compliance, citizens miss out on important social, economic, or environmental benefits and rights (Mastebroek, 2007, p. 3).

In this study the transposition theory will be adapted to the context of one developing country; the supranational administrative layer will be disregarded. The study will focus on the legislative articles in the Interim Constitution which are transposed into other governmental policies in Nepal. In other words, the transfer of domestic higher order legislation into lower order legislation. Note that I will not address the full implementation of legislation in society. For application to developing countries, the concept of transposition has to be adapted, because of the main focus of transposition literature on countries with a supranational power (Steunenberg, 2006, 2007; Leiber, 2007; Toshkov, 2007a; Kaeding, 2004; Knill & Lenschow, 1998; Steunenberg & Toshkov,

2009; Knill & Lehmkuhl, 2002). Therefore, the ideas and publications of several scholars will be combined. Moreover, ideas about policy transposition, compliance, advise and implementation will be included if relevant as well. In developing countries, the idea of implementation appears to be more well-known. Transposition is closely associated with these other concepts and can therefore help to explain parts of transposition patterns, especially in developing countries. In sum, this study investigates the transfer of higher order legislation (Constitution) into lower order legislation (laws or policies), and not about the transposition of directives.

3.2 Policy cycle

The transposition process is part of the policy process and can be included in the policy cycle model. The most common model can be divided in five phases according to Howlett, Ramesh and Perl (2009): 1. Agenda-setting. 2. Policy formulation. 3. Decision-making. 4. Policy implementation. 5. Policy evaluation (see figure 2 for the illustration of the policy cycle). Other scholars like May and Wildavsky (1978), Jenkins (1978) and Brewer and deLeon (1983) make more and other (sub)divisions, but the five division is the most used nowadays. The five phases describe the steps in the 'life of a policy'; after phase 5 the cycle can restart or will be terminated. The process will be briefly explained, more background information can be found in the book of Howlett et al. (2009).

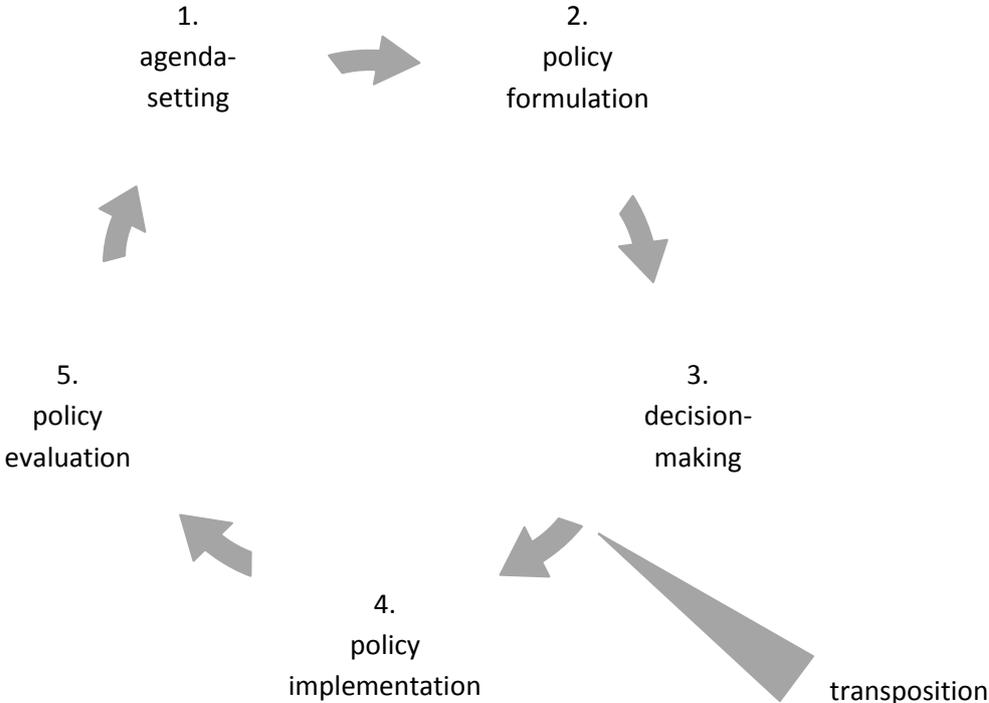


Figure 2. Illustration of the policy cycle (based on Howlett et al., 2009).

The process of policy-making starts with the recognition of a policy problem; a social problem that has been identified which needs state intervention and agenda-setting (Fischer, Miller & Sidney, 2007). The recognized problem has to be put on the agenda. According to Kingdon, the agenda is (Fischer, Miller & Sidney, 2007, p. 45):

*“The list of subjects or problems to which governmental officials, and people outside the government closely associated with those officials, are paying some serious attention at any given time”.*

Agenda-setting includes discussion, debate, and persuasion among policymakers who present a variety of evidence and argument in support of their position (Howlett & Ramesh, 1998). Furthermore, agenda-setting is a process of structuring the policy issue (Fischer et al., 2007).

The next phase in the policy cycle is policy formulation, which transforms problems, proposals and also demands into governments programs (Fischer et al., 2007). Policy is about objectives; what should be achieved with the policy, taking into account different action alternatives.

The following phase is the decision-making process. After gathering information, analysis of the information is required (Fischer et al., 2007). The decision is based on the cost-benefit and the purpose and related instruments.

The fourth phase in the policy cycle is about the implementation of the policy. The enforcement or execution of a policy by delegate institutions can be seen as the implementation (Fischer et al., 2007). The implementation is an important phase and does not guarantee that the decision will be followed by policy makers' aims and objectives. Policy implementation is generally defined as (O'Toole, 2000, p. 266):

*‘What happens between the establishment of an apparent intention on the part of the government to do something, or to stop doing something, and the ultimate impact in the world of action.’*

In sum, the implementation phase can be seen as the phase where the policy on paper has to come in practice by other using provisions or policies. The plan has to work out in practice.

The fifth phase is about the policy evaluation and can result in policy termination or redesign (Fischer et al., 2007). Evaluation does not only take place at the end of the cycle, but during the whole policy process evaluation has to take place, using different perspectives (Fischer et al., 2007, p. 53; Parsons, 1995, p. 545). The evaluation of a policy can lead to the ending of a policy, because the policy problem is solved or the adopted policy measures have been recognized to be ineffective in dealing with policy goals (see Bardach, 1976; Behn, 1978; Kaufman, 1976). The evaluation can also lead to a restart of the policy cycle, because the policy problem is not optimally solved or is not solved at all.

The transposition process has not been mentioned by Howlett et al. (2009), but can be displayed in figure 2. Transposition is taking place after decision-making and before policy implementation. The transposition can be placed between these phases, because the decision has already been made and implementation starts with transposition (Haverland & Romeijn, 2007). because of this the policy implementation is closely related to the theory of transposition. The main difference between implementation and transposition is the focus during the policy cycle (Versluis, 2007). Primarily, implementation focuses on the practise of policies and transposition focuses on the transfer of policies in the policy-making process; the legal or formal implementation. The implementation itself can also be seen as an umbrella concept, but is often used as the 'law in action' (Versluis, 2007). The practical or administrative implementation rather refers to the establishment of administrative agencies, tools and instruments, monitoring and inspecting by regulators and the actual obedience to the law by the regulated (Versluis, 2007). Transposition could still be seen as part of implementation, because implementation in practice could be start with a translation of the law to be transposed in other legislation and both are in essential implementation fragments (Haverland & Romeijn, 2007).

### *3.3 Transposition context*

Successful transposition and ultimately implementation of legislation (regulations or directives) in accordance with the purpose of the law requires several conditions and criteria (Bursens, 2002; Geelhoed, 2010; Versluis, 2007). These conditions can lead to a better fit of the lower order legislation with the intentions of the higher order legislation. Lacking conditions or failures in the transposition process can result in non-transposition which may lead to non-implementation of the law. Ultimately, failed transposition can result in policy failure or symbolic policy; policies that exist on paper, but that do not have any effect in practise.

Falkner, Hartlapp and Treib (2007) developed a typology of compliance with legislation which can be used to deduce conditions for the success of transposition process. They mention three different 'worlds of compliance', comparable to national cultures: a world of law observance, a world of domestic politics and a world of transposition neglects. This is a model of how governments deal with their transposition duties.

In the (first) world of law observance, compliance typically overrides other domestic concerns. These goals dominate even the conflicting national policy styles, interests or ideologies. Nevertheless, citizens are used to complying, hence transposition is supported by a national 'compliance culture'. Non-compliance occurs rarely and only when fundamental domestic traditions or basis regulatory philosophies are at stake. Non-compliance may occur by politicians or major interest groups who openly call for disobedience, but this is exceptional.

In the (second) world of domestic politics the specific fit between the legislation to be transposed and domestic political preferences are dominant. Domestic concerns frequently trump the law to be transposed. Non-compliance is likely when the requirements of the transposing law are in conflict with domestic political interest.

In the (third) world of transposition neglects, administrative non-action plays a major role. Compliance with the law to be transposed is not an objective in itself. The transposition process will be initiated only after an intervention by another institution, but the results are frequently correct after this intervention. Ministerial decrees, instead of laws, are used and literal translation of the higher order legislation often takes place.

Falkner et al. (2007, p. 410) formulate three hypotheses which can lead to more understanding about compliance of transposition in countries:

*Hypothesis 1: If a country belongs to the world of law observance, transposition will typically proceed in a dutiful manner, both administrators and politicians acting according to a culture of respect for the rule of law.*

*Hypothesis 2: If a country belongs to the world of domestic politics, the transposition process will be typically characterised by political negotiations between political parties and interest groups, sometimes leading to swift adaptation and sometimes to resistance.*

*Hypothesis 3: If a country belongs to the world of transposition neglect, the typical process pattern will be long phases of inertia as the administration does not even initiate the transposition process properly, and non-transposition will be the typical outcome, at least until intervention may serve as an external trigger.*

All these patterns seem to be stable over time and to endure governments of opposing ideological orientation.

In line with the aforementioned hypotheses, a distinction can be made of the administrative and political phase in the transposition process (Falkner et al., 2007, p. 407). The administrative phase is in first instance the stage in which the administrative system in the country identifies and initiates a process leading towards the goal attainment. The administrative phase depends on the administrators. The following phase is the political phase; here, politicians, interest groups and other actors interact within a country's political system in order to reach decisions on transposition.

An illustration can be made to give insight into the relation between the phase distinction of Falkner et al. (2007) and the ‘worlds of compliance, see table 1. In the world of law observance the administrative phase and the political phase both obey the law to be transposed. Law-observance is only happening in the administrative phase in the world of domestic politics. In the political phase the law-observance can be more lacking, because the transposition process can be blocked or diverted easily during political contestation (Falkner et al., 2007). In the world of transposition neglect the administration and politics are, but only in the end, compliant to the law to be transposed. The political phase could even start at a different moment than usual and politicians may not treat compliance seriously. The administrative and political phases affect the transposition process, and compliance in the specific worlds and goodness of fit is required during the transposition (Falkner et al., 2007).

**Table 1.** Illustration relation between transposition phases and the ‘world of compliance’ (Falkner et al. (2007, p. 407).

law-observance dominant in	world of law observance	world of domestic politics	world of transposition neglect
administrative phase	+	+	-
political phase	+	-	-

### 3.4 Conditions

The transposition can take place under different circumstances, but effective transposition needs optimal conditions. The literature lists many such conditions (e.g. Bursens, 2002; Dimitrakopoulos, 2001; Duina, 1997; Geelhoed, 2010; Haverland & Romeijn, 2007; König & Luetgert, 2009; Mastenbroek, 2007; Steunenberg & Kaeding, 2009; Versluis, 2007).

I have re-organized these conditions into three categories: substantive, institutional and procedural conditions. This distinction structures the transposition in successive phases and clarifies the main overarching conditions. Furthermore, the division splits the transposition into applicable sections. The distinction is structured as follows: the conditions related to the basis of the transposition and the making of higher law and lower law (substantive). This will be followed up by the transposition conditions related to the executive bodies (institutional). The transposition process strongly depends on institutions and other related agencies and finalizes the transposition (Dimitrakopoulos, 2001). The last conditions are about the process of transposition after the basis and institutional conditions have been satisfied and the requirements for a smooth transposition

process (procedural). The overarching conditions are ranked from the core of transposition to a wider perspective of transposition.

As explained before, this study is not about transposition of directives of a supranational power; we are talking about transposition of higher order legislation into lower order legislation. See for additional information the method chapter 4. The overarching divisions and the related conditions will be further clarified in the following sections.

#### *3.4.1 Substantive conditions*

The substantive conditions cover the criteria and circumstances in the transposing article itself. More clearly, the law which has to be transposed needs optimal settings and requirements in order to attain the pursued objective (Bursens, 2002; Geelhoed, 2010; Mastenbroek, 2007; Versluis, 2007). The substantive conditions are as follows:

Firstly, effective implementation of the legal objectives in other policies depends on clear and consistent objectives (Downs, Rocke & Barsoom, 1996, p. 380; Haverland & Romeijn, 2007, p. 18; Sabatier, 1986). This ambiguity and complex laws are to be transposed can result in transposition deficits and implementation problems in general. Dimitrakopoulos (2001, p. 10) argues that the formulation of the law affects the transposition process. New concepts which are alien to the existing legislation are more difficult to transpose than coherent concepts (Dimitrakopoulos, 2001). In addition, legal complexity and ambiguity also complicates the policy transposition (König & Luetgert, 2009). Legal language comes in varying degrees of specificity (Chayes, 2003, p. 189): “the broader and more general the language, the wider the ambit of permissible interpretations to which it gives rise”. So precisely and demarcated legal objectives are necessary in order to fulfil the legal goal that is pursued.

Secondly, the density and content of existing (antithetical) legislation affect the compliance in the transposition (Dimitrakopoulos, 2001). It can be argued that the density refers to degree of influence on the legislation to be transposed, based on the general interpretation of Dimitrakopoulos (2001). In the political arena it is easier to expand existing law than to scale them down. It can be argued that the density of existing legislation has to be low and the content has to be limited in order to have a smooth transposition. This condition is related to the third institutional condition, see more additional information in the section 3.4.2.

Thirdly, the higher order law which has to be transposed must incorporate all legal rules and has to be binding (Mastenbroek, 2007, p. 99). All prohibitions or obligations have to be incorporated, even if they are of a procedural or a substantive character. The measures also have to take the form of binding provisions of internal law. The binding character is reflected by the fact that the states have to transpose the fragments of law into other (existing) legislation (Mastenbroek, 2007, p. 2).

Judicial protection is related to the binding character of the law and refers to the principle that transposing measures must have the same legal force as those measures initially regulating the subject matter (Mastenbroek, 2007, p. 25). Moreover, the government has to provide legally grounded mechanism for monitoring and verification (see also section 3.4.3).

### *3.4.2 Institutional conditions*

Institutional conditions cover the situations, settings and criteria in the organisational and executive context. The conditions are as follows:

Firstly, successful transposition depends on the relation between the law to be transposed and the institution it targets (Duina, 1997). The greater the transformation being pursued, the more difficult implementation in institutions is (Duina, 1997; Dimitrakopoulos, 2001). Consistency with current institutional arrangements will improve the success of the transposition. Duina makes a distinction between two kinds of institutions. Firstly, the organisation of some interest groups, like how many resources they have, their degree of centralization and the number of members. Secondly, policy legacies, that is the national legal and prior policies. Additionally, the history embodied in national institutions, will affect implementation patterns of laws; this effect is known as path dependency. This is the manner in which earlier decisions affect the future path by altering the context in which future decisions are made (Howlett, Ramesh & Perl, 2009, p. 196, 200).

Secondly, states are obliged to choose the most appropriate form and method to ensure that lower law has its intended effect, given its object (Geelhoed, 2010, p. 337). They are obliged to adopt all measures of the Constitution that are necessary to implement legally binding regular policies. Countries should guarantee that the higher order law is transposed fully and accurately and cannot restrict themselves to transposing it for the most part. States must ensure the full application of the higher order law and the legal situation arising from those article(s) must be adequately clear and precise where the law to be transposed intends to create rights for individuals. Moreover, the beneficiaries must be able to ascertain the full extent of their rights and rely on them before the national court. The provisions have to be transposed into regulations that are at least as binding as existing regulations.

Thirdly, an important factor in the further implementation and performance of higher law largely depends on the fit between the change promoting institution and domestic political preferences (Toshkov, 2007b; Falkner et al., 2007, p. 396). This fit can be different over time, in different policy sectors and even within policy sectors for different laws. There will be no transposition if there are objections to the higher order law (Mastenbroek, 2007). Applied to the transposition in a developing country, the national government can be seen as the change promoting institution. Domestic governmental bodies (such as other governmental agencies and interest groups

in specific policy sectors) can be seen as the other domestic political preferences, with their own vision and perspectives.

Fourthly, the transposition process needs committed and skilful implementing officials (Sabatier, 1980, 1986; Lipsky, 1971). Because of the unavoidable discretionary authority of implementing officials and policy makers, their commitment to policy objectives and skills in utilizing available resources are critical, but not self-evident. Implementing officials have to persist in developing new regulations and procedures and enforce them when there is resistance from target groups and have to develop compliance literature for reluctant public officials to transpose the mandated changes. Furthermore, implementing officials have to support statutory objectives and need political and managerial skills (Sabatier, 1980, p. 553). Political skill consists of the ability to develop a good working relationship with sovereigns in the institutional subsystems (related working field organisations), to convince opponents and target groups that they are being treated fairly, to mobilize support among latent supportive constituencies, to agile present the institutional cases through mass media. Managerial skills entail developing adequate controls so that the purposes are not subject of charges of fiscal mismanagement.

Fifthly, the level, authority and performance of governmental bodies have to correspond with the law to be transposed (Duina, 1997; Haverland & Romeijn, 2007; Sabatier, 1986). The transposition literature and related subjects as compliance and implementation, talk about the performance and attitude of a country towards the law to be transposed (Duina, 1997, p. 160; Haverland & Romeijn, 2007; Mastenbroek, 2007), see also the worlds of compliance (section 3.3). The extent to which laws are obeyed depends on the attitude of the administrators (Toshkov, 2009). The literature focuses on the willingness to transpose and to apply higher order law, which affect the likelihood that higher order law will be implemented. I suggest that in countries without a supranational power, the attitude of all the governmental bodies, administrators and other related governmental and non-governmental agencies could be play a major role in the compliance of the law. It could be argued that the transposition of the law depends on the attitude, perception and performance of the governmental bodies. The willingness of the country is essential in the compliance of transposition (König & Luetgert, 2009).

Sixthly, governments have to have a strong administrative, economic and legislative capacity to transpose legislation effectively and smoothly (Börzel, 2010; Bursens, 2002; Downs, Rocke & Barsoom, 1996; König & Luetgert, 2009; Lampinen & Uusikyla, 1998; Mastenbroek, 2007; Tallberg, 2002). For example, governments and related actors have to work efficiently in accordance with the instrumental logic of cost–benefit calculations (Börzel, 2010; Steunenberg & Kaeding, 2009). The administrative capacity of a government correlates with the amount of laws which has to be transposed (Mastenbroek, 2007; Steunenberg & Kaeding, 2009). Limited power of governments can

lead to transposition delay or non-compliance. Besides administrative capacity and also economic capacity can be obstructive (Tallberg, 2002). Economic capacity problems arise when financial limitations affect the state's ability to fulfil the obligations of the law. Even resource limitations can directly impact compliance efforts and also macroeconomic factors are affecting compliance by setting the economic and political framework within which public and private actors operate. Legislative capacity limitations arise when the state declares itself to be 'unable' to comply (Tallberg, 2002). This could be because of the interest group pressure, even though the government still has the ultimate decision-making power. Interest groups express influence by trying to put their issue on the political agenda. All in all, administrative, economic and legislative capacity limitations could result in non-compliance of transposition.

Seventhly, countries that transpose laws, must have effective and stable political institutions and a system of collaboration that integrates interest organisations into political decision making (Lampinen & Uusikyla, 1998, p. 248). Successful transposition increases in countries with a high level of trust and political stability combined with efficient and flexible political institutions. This increases the capability to transpose the law. This criterion can be seen as too positive and idealized for developing countries, because of the western mind-set of efficiency and stability of institutions (Minogue, 2002). Issues of appropriateness and adaptability arise by using western methods in developing countries. Regulation depends on cultural and institutional complexes and is more an organic regime than an autonomous set of rules (Wilks, as cited in Minogue, 2002). According to Minogue (2002, p. 661), regulatory models established in developed countries transferred into a context less environment, as a developing country, is absurd. This idealized blue-printing may result in 'implementation deficits', which is characteristic of many policies in developing countries. According to Minogue (2002, p. 661), there may be a need to adapt idealized models of regulation to particular forms of the market, since there are different forms of capitalism and therefore different interactions of capitalism and regulation. All in all, the pursuit of effective and stable political institutions and a system of collaboration is positive, but need a critical note.

### *3.4.3 Procedural conditions*

The procedural conditions contain the criteria for the procedure of the transposition, in order to have a smooth start of the implementation. It presumes several circumstances and requirements for effective and smooth transposition and compliance.

Firstly, the preparatory phase and legitimacy are essential to effective transposition (Bursens, 2002). These criteria are combined, because legitimacy can be seen as part of the preparatory phase. A successful preparatory phase increases the chances for correct and timely transposition. This phase is the start-up stage of eventual formal implementation and this phase ensures that the countries'

mandate is supported by a large community of public and private stakeholders via the parliament. The preparatory phase is the basis of the transposition and compliance. According to Börzel et al. (2010, p. 1370), legitimacy is also important in the transposition process. This is because of the correlation between the degree of compliance and the extent to which rule addressees accept the legitimacy of the rule of law and so consider compliance with legal norms as demanded. The national legal culture relates to compliance with the higher law (Gibson & Caldeira, 1996). Legal cultures involve three elements: (1) the characteristics of legal awareness, (2) general attitudes toward the supremacy of law and (3) general attitudes toward the judicial system and cultural values (Gibson & Caldeira, 1996, p. 59). Concluding, the domestic culture of law-abidingness and support for the rule of law is highly important for successful transposition (Börzel, 2010).

Secondly, governments have to monitor the transposition of the higher law (Mastenbroek, 2007). Several scholars and studies approve the necessary existence of monitoring in the transposition process (Bursens, 2002; Duina, 1997; p. 170; Haverland & Romeijn, 2007; König & Luetgert, 2009, p. 165; Zubek, 2011). Implementation agencies have to be familiar with the monitoring and supervising tasks they received and the target groups must be informed about the law to be transposed (Haverland & Romeijn, 2007, p. 760). They need to know their rights and obligations and their behaviour has to be monitored. Tallberg (2002) suggest that monitoring increases transparency and exposes possible defectors during the transposition. Mastenbroek (2007) also suggest that governments have to appoint national agencies responsible for the application of the higher law and delegate a clearly and specifically described task to these agencies and determine sanctions and provide for legal protection of citizens. According to Sabatier (1980, p. 547), there are mechanisms to enforce transposition compliance. First of all, the responsibility for transposition can be assigned to agencies whose policy orientation is consistent with the law and which will give the transposition high priority. Newly established agencies could give an incentive to the compliance, because this agency will necessarily give the highest priority and gives opportunities to supporters of the law. An existing agency could perceive the same responsibility by a new mandate. Secondly, the law could impose conditions requiring top implementing officials who support the legislation's objectives.

Thirdly, an extra incentive to enforce transposition compliance is to structure the implementation process legally (Pressman & Wildavsky, cited in Sabatier, 1986). Examples of establishing legal mechanisms are sanctions and incentives to overcome resistance and the assignment of programs to implementing agencies. Tallberg (2002) adds that sanctions make non-compliance a less attractive option. In case of non-compliance, behaviour has to be sanctioned (Haverland & Romeijn, 2007; Bursens, 2002, p. 175). According to Toshkov (2007b), compliance tends to depend, in the three types of compliance worlds of Falkner et al. (2007), on different factors: first

of all culture, secondly the fit with domestic preferences and thirdly the administrative non-action. Monitoring together with sanction could minimize the capacity to deter defections and to compel compliance. For more information about monitoring, see the previous condition.

Fourthly, Falkner et al. (2007) and Tallberg (2002, p. 627) suggest that under certain conditions, the existence of considerable adaptional pressure may have a positive effect on transposition performance and compliance. Under these conditions, like permanent administrative overload, transposition of higher order legislation that requires more important changes may be treated with higher priority than measures that demand only minor changes. Besides, political adaption pressure by political parties and interest groups can change the behaviour of political decision makers and policy makers to adapt to the demand of the law (Bursens, 2002).

Fifthly, the timetable according to which compliance has to be achieved has to be adequate and in balance with the purposes that have to be achieved (Börzel et al, 2010). A good timetable for transposition processes is challenging to make general and depends on the amount of laws to be transposed.

The aforementioned conditions can now be summarized. In table 2, a systematic overview of the conditions is given.

**Table 2.** Overview of the conditions for successful transposition.

	conditions
substantive	<ul style="list-style-type: none"> <li>- clear and consistent objectives</li> <li>- low density and limited content of existing legislation</li> <li>- incorporate all legal rules and has to be binding</li> </ul>
institutional	<ul style="list-style-type: none"> <li>- consistent relation between the law to be transposed and the institution it targets and her arrangements</li> <li>- using the most appropriate form and method to transpose</li> <li>- existence fit between the change promoting institution and domestic preferences</li> <li>- committed and skilful implementing officials</li> <li>- level, authority and performance of governmental bodies has to correspondent with the law to be transposed</li> <li>- existence of a strong administrative, economic and legislative governmental capacity</li> <li>- effective and stable political institution and integration of interest organisations in the decision making</li> </ul>
procedural	<ul style="list-style-type: none"> <li>- successful preparatory phase, including legitimacy</li> <li>- monitoring of the transposition process</li> <li>- structuring of the implementation process legally</li> <li>- existence of considerable adaptional pressure by administrative overload and actors</li> <li>- adequate timetable and in balance with the purposes</li> </ul>

All these conditions are essential in the transposition process within states and affect the process itself as well as the further path of the policy cycle.

### *3.5 Summary*

All in all, the aforementioned conditions are essential in the transposition process, as well as for compliance and further implementation of the law in the society. It can be concluded that the government itself plays the most important role in the transposition process. The government has to initiate, prepare and develop legislation well. Furthermore, compliance and practical implementation are essential as well. A good transposition process is inseparably linked to implementation and compliance. The transposition context and the institutional and regulatory conditions may explain transposition delays and provide criteria to transpose laws effectively and smoothly.

After discussing the transposition theory, the research design will follow in the next chapter.

## 4. Method

In this chapter the research methodology will be discussed. First, the operationalization indicates what will be actually measured (4.1), using the selected research methods (4.2). The validity and reliability will also be discussed in this chapter (4.3). Finally, a number of limitations will be discussed, also to give recommendations for further research (4.4). The chapter is concluded with a summary (4.5).

### *4.1 Operationalization*

The operationalization refers to the translation of a variable into concrete measurements to determine whether, and to what extent, the characteristics of a variable can be observed (Boeije, 2005; Vennix, 2009). In this section several definitions and indicators of theorized conditions will be discussed. Not all of the conditions need much explanation; the theoretical chapter has already offered most definitions for example. The variables are all explained in table 3, from page 28. The definitions are all based on the theory from chapter 2. These definitions are literally mentioned in the theory or are generated from the information discussed. This study is realized in difficult circumstances, especially because of the language barrier (see more information about the limitations in section 4.4). The poor circumstances of the study, may affect the operationalization and its use. Regularly Nepali people do not have enough command of the English language, which affect the operationalization. The chosen measurements and definitions cannot always used properly during interviews. Moreover, several definitions are not familiar for the Nepali people, but are essential in the research. This affects the operationalization and derivative interview questions. I will go into a couple of examples to illustrate the process of operationalization.

A first example is the operationalization of the variable 'effectiveness', which refers to the transposition process. The effectiveness is the extent to which a purpose is achieved. Related to the transposition, the effectiveness involves the extent to which the higher order law purpose is achieved via the transfer to lower order legislation. The transposition is successful if the purposes are accomplished and can be fully implemented in practice. The effectiveness can be measured by the presence of clear objectives. Furthermore, the extent to which the higher order legislation can be executed and the extent of compliance, determine the degree of effective transposition. This can be measured by a decreasing percentages or cases of cast-discrimination in society (1) and an increasing amount of Dalit on higher post in the labour market (2).

Another example concerns the operationalization of the variable 'consistent relation between law to be transposed and institution'. The definition of this variable is already discussed in the theory and can be described as 'corresponding arrangements between law to be transposed and

the targeted institution. This can be operationalized as 'no contrasting legislation and institutional perceptions'. This can be measured by written antithetical perceptions compared to the law to be transposed (1) and asking for opinions of people working in related (transposition) institutions (2).

An operationalization of the variable 'legitimacy' is as follows. The definition according generalised from general public administration literature and the literature mentioned in the theory, is the extent to which actors support the objectives or policies or parts. The operationalization in this study can be seen as: 'the legislation to be transposed and consequent policies are supported by the majority and initiated by actors'. This variable can be measured by asking opinions of related actors and target groups (1). Furthermore, by written opinions of actors and target groups (2) and an actual check if the law is performed in practise (3); checking if implementers comply.

Other variables are conceptualized in the same way as explained above. All operationalizations are summed up in table 3, on the next pages.

**Table 3.** Illustration of the operationalization.

<b>variable</b>	<b>Definition</b>	<b>operationalization</b>	<b>measurement</b>
transposition	transfer of international directives into national legislation	translation higher order legislation in lower order legislation	1. repetitions of the law in policies  2. references to the Constitution article
substantive effectiveness	achieving goals	purposes are accomplished after transposition	1. decreasing percentage or cases of caste-discrimination in society 2. increasing amount of Dalits on higher post in the labour market
clear and consistent objectives	precisely and demarcated legal objectives	unambiguous goals without necessarily explanation	1. references to quotes about the objectives in literature  2. ask for opinions
density of existing legislation	degree of influence of existing legislation	amount of existing laws in literature	1. existing constraining written legislation
binding legislation to be transposed	obligation to transpose the fragments of law into other legislation	obligation to transpose the fragments of Dalits in law into other legislation	1. explicit mentioning of Dalits rights in written legislation
institutional consistent relation between law to be transposed and institution	corresponding arrangements between law to be transposed and the targeted institution	no contrasting legislation and institutionally perceptions	1. written antithetical perceptions compared to the law to be transposed 2. opinions of people working in related institutions
appropriate form and method	suitable or right form and method for a particular situation or occasion	suitable form and method (initiated by the government) for optimal results for Dalits	1. opinion of experts and related people

<b>variable</b>	<b>definition</b>	<b>operationalization</b>	<b>Measurement</b>
institutional fit (sequel)	suitable for a particular purpose or activity	correspondence between institution and political preferences	1. written contrasts between political preferences and purposes of institutions
committed	persistent, enforcing and support statutory objectives	purposes are leading in working processes	1. opinions of related experts about implementers and governmental employees 2. amount of laws to be transposed
skilful	possess political and managerial capacities	capable to work in good relationship with different actors and develop controls	1. opinions of related experts about implementers and governmental employees
level, authority and performance correspond with law to be transposed	attitude of a country towards the law to be transposed and the content of that law has to be equal	the willingness of governmental bodies towards the law to be transposed has to be correspond with the purposes	1. opinions of people working or related to governmental bodies
administrative capacity	the ability of administrative agencies	to what extent the administrative agencies can transpose the law	1. opinions of experts or legislators
economic capacity	the possibilities within the economic situation	to what extent the economically situation does not constrain the transposition of the law	1. the actual financial situation written in a document 2. opinion of experts
legislative capacity	to what extent the law can be transposed	to what extent the law to be transposed can be transposed in practise, without constraining actors of influences	1. no actual contrasting actors or legislation 2. opinions of experts

<b>variable</b>		<b>definition</b>	<b>operationalization</b>	<b>measurement</b>
institutional (sequel)	stable political situation	reliability of the government and the law is leading	no volatility in political situation and continuous governmental bodies	<ol style="list-style-type: none"> <li>1. written analyses of Nepal (historical and contemporary)</li> <li>2. opinions of experts</li> </ol>
procedural	legitimacy	extent to which actors support the objectives or policies or parts	the legislation to be transposed and consequent policies are supported by the majority and initiated by actors.	<ol style="list-style-type: none"> <li>1. ask opinions of related actors and target groups</li> <li>2. written opinions of actors and target groups</li> <li>3. check if it is actually performed in practise</li> </ol>
	successful preparatory phase	phase before initial process, in order to achieve optimal purposes	the phase before the transposition process entails legitimacy in order to achieve the purposes of the law	<ol style="list-style-type: none"> <li>1. written documents which declare bargaining with stakeholders and target groups</li> <li>2. expert opinions which declare agreement during the phase before transposition</li> </ol>
	monitoring	managing and controlling	managing, controlling, supervision, reporting and accountability of the transposition process by the government	<ol style="list-style-type: none"> <li>1. documents which describe governmental management and control</li> <li>2. target groups are familiar and aware of the non-discrimination laws and provisions</li> <li>3. a body designed (new or existing) for supervision and control of the transposition process</li> </ol>

<b>variable</b>	<b>definition</b>	<b>operationalization</b>	<b>measurement</b>
procedural monitoring (sequel) (sequel)			4. assigned body whose policy orientation is consistent with the law.
legally structured process	the process is structured in legislation and official documents	the transposition process is structured in legislation and official documents, e.g. deadlines et cetera are prescribed	1. written documents describe the transposition process and/or deadlines 2. experts refer to written documents about the process
adapational pressure	forcing to achieve changes	forcing to achieve changes in institutions by bargaining of interest groups and administrative requirements	1. referrals to administrative requirements or involvement of interest groups 2. opinions of experts or interest groups which entails influence space
adequate and balanced timetable	time schedule which corresponds with the time needed to fulfil the purposes	a suitable time schedule which corresponds with the time other policies can be made	1. opinions of experts which declare a suitable and feasible time schedule for transposing the law in other policies 2. written documents as the Interim Constitution or other legislation

#### *4.2 Research methods*

This is a qualitative study with a number of research methods (mixed method design). A qualitative approach is chosen because of the complexity of the subject (Boeije, 2005; Reulink & Lindeman, 2005). The caste-system, caste-based discrimination and governmental policies are complex and a very broad subject. Moreover, the study subject describes common situations in Nepal and can be investigated by qualitative research. Furthermore, the problems behind the visual and daily matters make sense (Rijksoverheid, n.d.). This core information can be made visible by specific methods which are common in the qualitative research.

Additionally, the research is about the interaction between the government, other governmental agencies and eventually the society. Qualitative research is an appropriate choice to find out these interactions in these institutions and the society (Reulink & Lindeman, 2005). A specific reason for the choice of qualitative research is the sensitivity of the topic (Reulink & Lindeman, 2005). Discrimination is not an issue which can be found in the literature and can only be found by depth-interviews and looking for the core of the problem in the related setting (Rijksoverheid, n.d.). Qualitative information is necessary and leading in sensitive subjects.

There are several difficult circumstances during this research, also mentioned in section 4.4. The language barrier and knowledge limitations are the main problems. Because of this, the research method requires adaptability to collect actual information about the discrimination issues. Especially interviews and the case study have to adapt to the poor circumstances by using sometimes more simple and familiar formulated questions and definitions.

This study is a prescriptive research (Voordt & Lans, 1999). The purpose is to prescribe improvements for the transposition of the Nepali equality articles of the Interim Constitution in regular Nepali policies (see general study question in chapter 1). By describing the problems of the Nepalese society and government regarding the transposition of legislation on the caste system and caste-discrimination, this gives eventually a basis for prescribing recommendations and possible solutions for improving the transposition process.

This study is a unique case study; it gives insight into the circumstances around the discrimination issue in Nepal, with other words a social phenomenon in its natural context (Boeije, 2005, p. 21). This is the place where the discrimination against Dalits is the worst. The case study gives insight in the under-exposed side of the policy process and focuses on the empirical reality rather than paper policy plans. Information from people from the Dalit community gives first-hand information and is indispensable for this study.

In this case study, three methods are used: content analysis of documents, interviews and a case study. At first, an extended literature search was carried out to collect background information,

because of the unfamiliarity of the researcher with the casus Nepal. This also gives insight into existing policies on caste-discrimination. Data sources are official documents and the academic literature. The case study took place in Kathmandu valley, which is the area around Kathmandu in Nepal. In the villages Changu Narayan and Pikhel interviews were held, see more information about the interviewees, organisations and case study locations in appendix C.

Interviews have however given most and more updated and accurate information (Boeije, 2005). Fourteen interviews were held with people who are closely associated with the topic. Some of the interviewees are simultaneously interviewed, but can be seen as different interviews. The chosen interviewees consist of NGO's, lawyers and government officials, which give insights from different angles. For more information about the interviewees and their profession, see appendix C. The respondents are chosen based on their relation to the subject and their knowledge. The interviewees come from different agencies to give a broad view of information. Five interviews were held during the case study, but more than five people were involved because of the interactive way of interviewing. The semi-structured interview has been used (Boeije, 2005). The questions are most of all structured before the interview starts, but are not totally fixed. This is because of the language barrier in Nepal. Not all of the Nepali people speak proper English or understand the questions, consequently additional information and questions are required to obtain accurate data. A topic list of what is discussed is added in appendix D. These questions are not all literally derived from the operationalization, but are also adapted to the actual circumstances during the interview, see section 4.4. Furthermore, questions are often written more easily or deviate from the literal operationalization in order to fit in with the interviewees. The key information required for this research is retained and still remains the basis.

#### *4.3 Validity and reliability*

The validity of the research is limited, because Nepal is a unique and a difficult case to investigate (Boeije, 2005; Universiteit Leiden, n.d.). The culture and knowledge of people can limit the outcomes. The problems in this study are difficult to investigate, because the social problem is hidden in thoughts and unspoken issues. The hidden characteristics are inherent to the caste system and related policies (a more extended explanation is given in section 4.6). Policies can be studied, but the unstructured society and government restrict the study and affects its validity. In order to raise the validity, the interview questions focus on thoughts behind the visible problems and procedures. This interpretation underpins the difficulty, but also the contribution to this study. Asking questions which resemble universal issues and asking the same questions to multiple persons increases also the validity of the study (Landsheer & Boeije, 2010; Boeije, 2002). This triangulation is highly important

and essential for the validity of this study. Several resources and methods (interview, case study and literature study) have been used.

The reliability of the study is also limited, because most of the information comes from interviews (Boeije, 2005; Universiteit Leiden, n.d.). The use of an interview topic list (appendix D) will increase the reliability of the study. Increasing the reliability is also accomplished by adding a comprehensive method description and offering recommendations for a following study (see below).

Finally, this transposition study is deductive, because the problems around caste-based discrimination will be analysed by means of the transposition theory and its conditions (Vennix, 2009). I cannot test hypotheses, but the theorized conditions will guide all steps during the research.

#### *4.4 Limitations*

Every study has got limitations. In this part the limitations, shortcomings and weaknesses will be discussed for this study. The first limitation is the information quantity and availability. Nepal is a developing country where organisations and information resources are not structured and up to date. A lot of information resources in the libraries of NGO's or other agencies are outdated and incomplete. Recent information in books and articles is lacking and employees do not know enough about the subjects. The thesis cases and writing in Nepal makes the communication and interaction with the Netherlands and the available resources of people and literature restrictive and limited, which affects the progress of the study. Furthermore, the information about discrimination against Dalits and coherent policies are limited and unilateral. The subject is also not well-studied, which all together makes the accessible information more important, but can affect the outcome of the study.

The second limitation of this study is the culture of Nepali people. Nepal has got a culture where people do not speak frankly during an interview. People answer the question and do not speak about related issues around that. Nepali people are not used to ask questions and stay with the asked matter, instead of adding more relevant information. This makes the interviews more challenging and additional information while asking questions is necessary. Suggestions are unavoidable and can affect the collected information.

The third limitation is the language in Nepal and also the command of the English language of the researcher. The Nepali language is a barrier, because interviewees cannot always speak proper English and cannot always understand the questions of the researcher. This can result in different outcomes or less information during interviews. Moreover, the English language is not the mother tongue of the researcher, which can affect the interpretation of the collected information. The English language barrier could also play a role during the interviews. The English formulated answers can be misinterpreted by the researcher and affect this understanding of the subject. Even the translators can neglect or interpret information different. Besides, they can combine their own

opinion and the given information while translating and without knowing for the researcher. The English interview questions have to be easy formulated, so that it is understandable for the interviewees. The interviewees do not ask what the questions mean and always give an answer to avoid disappointment. These more simple questions can affect the outcome by missing the core of the research during an interview.

The fourth limitation is the source of information and the type of problem. Interviews, literature research and a case study cannot cover the real core of the social problem and the related policies in the country. The caste-system and -discrimination are impossible to measure and people's thinking is hard to clarify. The information sources are in this case limited and too little to put the finger on the core issue. The problem is hidden (taboo) in the Nepalese culture. The caste-system is part of the society, but related problems are not discussed. The issues are too sensitive and could also be seen as normal, which makes the subject more difficult to speak about. These barriers could affect the outcomes of the study.

The fifth limitation is the working environment of the study in Nepal. The study was conducted in an unstructured environment, without one agency that commissioned this research. That would have given more structure in the process, but could also offer more information about the subject besides interviews. When the research would have taken place in cooperation with a related agency, the research would have been more applicable and useful. An agency could give more focus instead of the overall view of this research.

The sixth limitation is the unfamiliarity of the term transposition in Nepal. The interviewees and other important related people in this study do not know the term transposition, even after explanation they do not acknowledge the term. The term implementation has been used more often during an interview and that could affect the result negatively. Transposition is the right term in the literature, but has to be changed during the interview and case study in order to get to the same level of the interviewees. The term transposition has been used in a descriptive way during questions, but the unfamiliarity limits the understanding and outcome of the study.

#### *4.5 Summary*

This qualitative and deductive study is aimed at prescription. Data methods comprise literature research, interviews and a case study. Validity and reliability are vulnerable also because of some limitations: information quantity and availability, the culture of Nepali people, the Nepali and English language, the sources of information, the working environment of the study and the unfamiliarity of the term transposition. Triangulation may be improving the validity of the research.

The next chapter presents the results of my study in Nepal.

## 5. Results

This chapter discusses the results of the empirical study. In chapter 2 the situation of Dalits was discussed, but for sake of completeness the situation after the Interim Constitution of 2007 will first be briefly discussed here. The importance of this period gives the period after the Interim Constitution more perspective. This chapter starts with an overview of the contemporary situation (5.1), followed by the structure of related institutions to policies and Dalit issues (5.2). The legal provisions (5.3) and the Nepali transposition context (5.4) are explained after that. The conditions for successful transposition (5.5) are the core of this chapter. A summary (5.6) concludes this chapter.

### *5.1 Contemporary situation*

Several conversations with experts and scholars prove that the situation of the caste-based discrimination has improved, but still exists in Nepal after the Interim Constitution of 2007, despite of the legal basis (Kisan, interview; Gautam, interview A & B; Koirala, interview; Ojha, interview; see appendix C for the list of interviewees). Also several studies give evidence to the existence of the discrimination against Dalits (Kisan, 2005; 2006; Purkoti, Pariyar, Bhandari & Sob, 2009; Support Nepal, 2011; National Dalit Commission, 2013; Nepal NGO Coalition Submission, 2010; Bhatta, 2012). The selection of referred studies could be expanded, but gives a brief overview. Even inclusion policies in the Armed-Police Force, Civil service, local bodies and Nepal Police from before the Interim Constitution, did not proportionally increase the non-discrimination; they are not adequately implemented (Kisan, 2006).

Caste-based discrimination cases, mentioned in section 2.4, are still happening nowadays (Kisan, 2006). Recent cases are for example found at a local festival (Koirala, interview). A Dalit woman could not enter the temple for her prayers, but she wanted to go on the festival day. She entered, but after that she was beaten by some village people and had to go to the hospital for several days. Another example is that people had to wash their drinking glass before or after using it, because they belong to the Dalit community (Koirala, interview). Besides, Dalit people have more difficulties to get a house, because owners do not want to have Dalit people in their houses. The most conspicuous in rural areas, is the fact that people from higher castes do not mind that animals, like chickens and goats, walk into the house, but they do not want to have Dalit people entering their house (Gautam, interview B). It can be concluded that these animals are seen as higher than human beings from the Dalit community. Generally, the Dalit community is facing caste-based discrimination and exclusion in labour market, occupation, educational institutions, political/social/cultural rights, policy and programs of government and non-government sectors, government and NGO offices, religious and cultural activities (Pukorti et al, 2009). Similarly, Dalits are suffering from dominance, various types of

cruelties, social boycott and cast out, direct and attitudinal untouchability. According to Kisan (as cited in Bhattachan, 2006, p. 30), there are 205 existing practises of caste-based discrimination identified:

*“whereof 54 related to denial, which include: 10 related to entry into premises; 14 to service; 6 to access to common resources; 10 to kinship and other relationship; and 14 to participation. Out of the 205 existing practices of caste based discrimination, 9 are related to force and discriminatory labour; 20 are related to dominance; 20 to cruelties; 3 to social boycott; and 18 to attitudinal untouchability. Out of the 205 existing practices of caste-based discrimination, 81 are discrimination in different fields, which include: 18 related to occupation; 11 to educational institutions; 10 to political rights; 14 government policy and programs; 7 to government and NGO offices; 13 to development programs and 8 to religious and cultural activities. The Dalits are economically poorest, educationally null-literate, socio-culturally boycotted and excluded from the state governance as well as non-state sectors”.*

Caste-based discrimination itself has not changed much over the years, but people from urban areas and more educated people changed their attitude more (Kisan, interview). This originates in the existence of reservations for Dalits. People from higher castes can get jealous, because they think a Dalit is taking their job; there are no reservations for themselves and they feel deprived.

Most cases of discrimination at this moment are in the western part of Nepal, but the discrimination happens in whole Nepal (Kisan, interview; Gautam, interview B; Koirala, interview). These differences in regions depend on the economic situation and the awareness of the people in the remote areas. The western part of Nepal is geographically difficult to reach because of no or less roads, which highly affects the economic situation and increases dependence on the local area. Especially regions in the mountains are unreachable and less developed and aware of the political situation. Gautam (interview B) adds, that Nepali people in the remote areas in the western part of Nepal ask how the King is doing in Kathmandu, not knowing that the King has been murdered. The western part is also less aware of the situation of discrimination and the consequences. People are less educated, because they have to provide the necessities of life.

## *5.2 Related institutions*

The transposition process and Dalit issues are related to several institutions. In this section the most important institutions and actors will be clarified. The National Dalit Commission (NDC) was established on March 19, 2002 by the Prime Minister (National Dalit Commission, 2013; Ojha, interview). This was done to achieve improvement for the Dalit community, because even after ten years of restoration of democracy, there was no concrete sign of liberation from the suppression experienced by the Dalit community nor could ordinary laws solve the severe problem. The National

Dalit Commission represents the Dalit community in the Nepali government and the main purpose is to put pressure on the Nepali government and to monitor the districts in Nepal (Bhattachan, Sunar & Bhattachan, 2009; Paswan, interview; Piriya, interview; Nepali, interview). Furthermore, the NDC makes awareness programs, provides advisory support to victims and formulates policies and strategies for the government to empower Dalit community politically, economically, socially and economically (Bhattachan, Sunar & Bhattachan, 2009; National Dalit Commission, 2013).

There are approximately two hundred Dalit NGOs in Nepal and the number is still increasing (Kisan, 2005, p. 162). These NGOs are working with general goals or raising the economic, social, cultural and educational status of Dalits. According to Kisan (2005), the goals differ from the awareness and consciousness of Dalit communities, raising issues of caste-discrimination and untouchability at national and international forums, determining Dalit socio-economic situations, publicizing and broadcasting incidents of untouchability and caste discrimination, exerting moral pressure on the government and mobilizing human rights activists and intellectuals to take up the Dalit cause. According to Gautam (interview B), these different NGOs in Nepal do not cooperate to provide more improvement for the Dalit community. These NGOs do not have a common vision, which can affect the improvement of Dalit. Some aim for freedom for every individual without a caste system. Others want to continue the caste system, because these employees are afraid to lose their job (Gautam, interview B). There is also disagreement about mentioning the definition of a Dalit in the existing Interim Constitution and the coming Constitution. Gautam argues (interview B), that mentioning Dalit in the Constitution makes it more difficult for NGOs to work. Without the definition the discrimination issue is solved faster, because the definition suggests that it has been solved and abolished. The discrimination issue seems to be over, because it has been abolished according to the (Interim) Constitution; which gives less priority to the issue. The used definition brings the issue figuratively lower in the elimination process, because the definition will be circulating long in society and legislation and will become more difficult to get rid of. An example of this are the reservations for Dalits in India. These policies should have been used for maximum ten years, but are still active (Gautam, interview B). Gautam adds that NGOs do not have enough power to strongly affect the government in Dalit issues. The National Dalit Commission has got the most influence, but does not cooperate closely with NGOs.

The Central Development Office (CDO) and the Village Development Committee (VDC) are local governmental agencies, which implement policies and solve small cases of caste-based discrimination (Bishwakarma, interview C; Gautam, interview B). These agencies have to inform citizens in their district and/or village, but in practice they do not know about the Untouchability Act (see more information about this act in section 5.3; Ojha, interview). If victims want to go to the court, then they can receive legal advice from these agencies. Furthermore, there could be

counselling between the offender and victim. They also help with the FIR (application form for investigation) which is the start of filing a lawsuit. VDC and CDO can case a file and suggest to the policy if necessary. The VDC organises gatherings and meetings, but almost no-one is going. If someone is going then it is one person of the family only and he or she does not pass the (right) information to their relatives. Reasons for not joining the programs are the poverty and electricity cut/lack. People have to provide in their basic needs first and do not have the time to go to a meeting.

### *5.3 Legal provisions*

This section mentions the legal provisions for Dalits made in Nepal, it also mentions briefly the implementation thereof nowadays in society, because this is closely related to the transposition process. The government of Nepal has made several legal provisions, most of which are mentioned in the Interim Constitution of 2007. Dalits are mentioned explicitly seven times in the Interim Constitution.

The first non-discrimination article is established since the Constitution of 1990, but since 2007 the special Untouchability Act is added (article 14; see page 14 and appendix B). In 1990 the Fundamental Rights were incorporated into legal provisions. After the Interim Constitution of 2007, the main improvement is the specific new Untouchability Act, in the Constitution of 1990 there was only a non-discrimination article (Kisan, interview; Gautam, interview A). The human rights were incorporated into legal provisions. The Constitution of 1990 declared a punishable offense to prevent Dalit presence in public places (Kisan, 2005, p. 67).

Another important attribution to the abolishing of the caste-discrimination is article 13 (4), which declares that the state shall not discriminate among citizens on ground of religion, race, caste, tribe, sex, origin, language or ideological conviction or any of these. It also says that (Interim Constitution of Nepal 2063 (2007; Art. 13 (4); UNDP, 2007):

*“nothing shall be deemed to prevent the making of special provisions by law for the protection, empowerment or advancement of the interests of women, Dalit, indigenous ethnic tribes, Madhesi, or peasants, labourers or those who belong to a class which is economically, socially or culturally backward and children, the aged, disabled and those who are physically or mentally incapacitated”.*

Article 21 of the Interim Constitution has ensured that the economically, socially or educationally backward women, Dalit, indigenous nationalities, Madhesi communities, oppressed classes, poor farmers and workers have the right to take part in the structure of the State on the basis of the principle of proportional inclusion (Kisan, 2006; Purkoti et al, 2009; UNDP, 2007).

Article 33 (D) describes that the state carries out an inclusive, democratic and progressive restructuring of the state by eliminating its existing form of centralized and unitary structure in order to address the problems related to women, Dalits, indigenous tribes, Madhesis, oppressed and minority community and other disadvantaged groups, by eliminating class, caste, language, sex, culture, religion and regional discriminations.

Article 35 (10) of the Interim Constitution mentions that the State shall pursue a policy which will help to promote the interest of the marginalized communities and the peasants and labourers living below poverty line, including Dalits, by making reservation for a certain period of time with regard to education, health, housing, food sovereignty and employment (UNDP, 2007).

The Three Year Interim Plan 2007 AD launched Dalit Enlistment and Development Program. The Constituent Assembly Member Election Act, 2007, Section 7(3) ensured proportional representation of Dalits (13%) within PR system (Purkoti et al., 2009, p. 9). Civil Service Act, 2007, reserved nine per cent seats for Dalits within 45 per cent of total open recruitment seats. Nepal Police Regulation, 2007, reserved 15% seats for Dalits within 45 per cent of total open recruitment seats. The Armed-Police Regulation, 2007, reserved 15% seats for Dalit within 45 per cent of total open recruitment seats (Purkoti et al., 2009).

Furthermore, the main achievement after the Interim Constitution of 2007 is the accomplishing of the 'Caste Based Discrimination and Untouchability (Offence and Punishment) Act 2068 (2011)' (see appendix E for all details, after this mentioned as Untouchability Act (2011); Bishwakarma, interview B & C; Gautam, interview B; Kisan, interview; Koirla, interview). This act describes the definition of the caste-based discrimination, description of the equal rights for untouchability, gives a guideline to case a file if someone is victim of caste-based discrimination and contains a general punishment description. This act is the only real legal written document written after the Interim Constitution, but is not sufficient enough to solve the discrimination against Dalits (Bishwakarma, interview C). Legally, the act covers every form of discrimination and should lead to equality (Koirla, interview; Bishwakarma, interview C). After the Interim Constitution there was no discrimination left in governmental laws and policies, but the laws focus only on public places and do not cover the private domain (Bishwakarma, interview C). The established Untouchability Act 2011 specifies also discrimination in private places. The basis of abolishing caste-based discrimination has been made, even though the Dalit discrimination still exists (Purkoti et al., 2009).

Another achievement happened after the parliamentary elections of Nepal in 2008, when a proportioned Assembly started (Koirla, interview). Lower castes were included in the Assembly and society got better represented in the government. The representation took place because of high pressure by NGOs.

The reservations for Dalits are not written down in the Interim Constitution (Paswan, interview). They are written down in the Social Inclusive Act (on draft now) and the Public Service Act (9% for army, police, school), but this has to be shared with Janati and woman (Bishwakarma, interview A & C; Ojha, interview). But it is not a formal law until now. The suggestions for the new Constitution are to ask 13 + 7 %, because according to the last census Dalit are 13% of the population and 7 % will be for compensating the lack (Central Bureau of Statistics Nepal, 2012). This also has to be amended in the law.

#### *5.4 Nepali transposition context*

Falkner et al. (2007) made a typology for compliance of the law in different political worlds, which specify the general condition for the transposition process, see section 3.3. They mention three different worlds of compliance: a world of law observance, a world of domestic politics and a world of transposition neglects. Applied to the Nepali government and her transposition process, the world of transposition neglects is the best applicable to the Nepali situation, but it also has similarities of the world of domestic politics. This conclusion can be drawn based on my research and the interviews mentioned in appendix C. A further explanation of the non-compliance and the transposition process will be given below.

The compliance of the governmental administrative bodies is low in Nepal (Bishwakarma, interview B; Gautam, interview B; Thapaliya, interview). The main problem is the compliance in practice; in making new policies and provisions after the Interim Constitution. The law to be transposed is transposed in other policies and acts, but this is marginal. So there is no comprehensive compliance. Administrative non-action after the laws and provisions have been made is common, because Nepal is not a country organised by a lot of rules and citizens are not used to comply (Gautam, interview B). An example Gautam gave, which typifies the culture in Nepal, is the compliance with traffic laws. The traffic in Nepal is completely chaotic and without structure. There are rules that people cannot cross the street everywhere they want, but this is still happening. Likewise, people who discriminate make arrangements with the victim (Gautam, interview B; Bishwakarma, interview B). Discriminators think they do not get a punishment, because of these mutual agreements. Or Dalits withdraw their case before filing, because of social pressure or by the police or lack of time, because Dalits need to fulfil their basic needs and have to work on their field (Gautam, interview B). Discriminators assume that it is the normal procedure and they are not afraid of the law and they think they can challenge the law.

Domestic actors, like NGOs, INGOs and even employees from the National Dalit Commission call for more obedience and compliance with the Interim Constitution non-discrimination articles (Ojha,

interview, Gautam, interview A). The transposition and further implementation of the non-discrimination articles strongly depend on the policy-makers and implementers, which can lead to less compliance and transposition (Gautam, interview A & B; Koirla, interview; Ojha, interview; Bishwakarma, interview A, B & C; Thapaliya, interview). The non-discrimination articles have to be elaborated by implementers and policy-makers, which it makes sensitive to their own interpretations and input. There is room for discretion, because not everything is specified in concrete applicable provisions; further provisions are drafted at the moment (Bishwakarma, interview A & C; Ojha, interview).

So, hypotheses 3 is most applicable to the situation of Nepal. NGOs function as pressure groups and important actor in affecting the government and her behaviour (Bishwakarma, interview C; Gautam, interview B; Nepali, interview; Pariyar, interview; Parlyar, interview). This third hypothesis suggests that the administration in the country will have a long phase of inertia and does not always initiate the transposition process (Falkner et al, 2007). These circumstances can be found in the Nepali government. According to Ojha (interview), the Untouchability Act 2011 took a long time until passed the Constitutional Assembly. Furthermore, as mentioned before, the NGO function as an external trigger for intervention in the transposition process (Bishwakarma, interview C; Gautam, interview B).

The administrative and political phase in Nepal are both lacking in the transposition process, but the administrative phase does not act fully conform the administrative phase of the typology of Falkner et al. (2007; section 3.3). The Nepali administrative body initiates the first steps in the transposition process by drafting the Untouchability Act 2011 and the drafting of the specific policies. This is all co-initiated by the National Dalit Commission, but is certainly in progress. But still the whole lacking transposition process depends strongly on the administrators (Bishwakarma, interview C; Gautam, interview, A & B; Kisan, interview; Ojha, interview). The political phase may cause lacks in the transposition process, because some interest groups or even politicians can affect the process negative. Those people do not want that the Dalit issues get solved or they want as less as possible provisions (Gautam, interview B; Kisan, interview). These people want to 'protect their caste', so they are not unbiased which can affect the transposition process because of their profession and position in the process.

The world of domestic politics, described by Falkner et al. (2007), is also partial applicable to Nepal. The specific fit between the legislation to be transposed and domestic political preferences are dominant. The unstable political situation in Nepal makes the transposition of the non-discrimination articles less important. The main important issue in the government is the formation

of a new Constitution, which dominates most of the other issues in the political debate (Gautam, interview B). There is disagreement about dividing Nepal into several states with every caste having their own state in which the ruling caste can dominate the other castes. According to Gautam, this is not possible in practice because of the high amount of castes. Besides, people would have to move to other areas, but this is not applicable. Many people own land in several districts for agriculture, so they would lose all their privileges. This discussion dominates the political discourse and it is possible that the abolishing of the caste-discrimination gets less focus. The second hypothesis is therefore only partially applicable to the situation in Nepal. This hypothesis is about possible adaptations of the transposition process by political negotiations between political parties and interest groups (Falkner et al., 2007). This can be explained by the high pressure of INGOs and NGOs on the government. They interact with each other in making policies for Dalits; this happened while making the Untouchability Act 2011 (Bishwakarma, interview C; Thapaliya, interview).

### *5.5 Conditions for successful transposition*

The conditions mentioned in the section 3.4, predict successful transposition. In this chapter these conditions will be tested in the situation of Nepal. The conditions will be mentioned in the same order as before. The conditions overlap each other quite often, so there are several referrals to other parts in this chapter to avoid repetitions of information.

#### *5.5.1. Substantive conditions*

The law to be transposed (article 14; see appendix B), is according to experts in several interviews clear enough (Bishwakarma, interview C; Koirala, interview; Ojha, interview; Thapaliya, interview). The non-discrimination articles in the Interim Constitution are not formulated ambiguously, but do not cover all the caste-based discrimination cases and consequences (Bishwakarma, interview C; Koirala, interview). They cover only caste-based discrimination occurring in public places and not in private places. The private sector is excluded as the Interim Constitution articles focus on the public sector. To form a good basis for abolishing caste-based discrimination, several additional acts have to be submitted; one of these is already submitted by the Constitutional Assembly (Untouchability Act 2011; Bishwakarma, interview C; Koirala, interview; Ojha, interview). This act functions as a transposed law, but is more an addition to the incomplete non-discrimination articles of the Interim Constitution. According to Koirala (interview), this Untouchability Act 2011 is sufficient enough to get more equality and covers all the issues of Dalit discrimination. But most of the experts say the opposite and explain that even the Untouchability Act is insufficient and needs specific applications and procedures, like that similar offences result in similar punishments. Furthermore, the practice of the caste-based discrimination case files shows clearly that the law to be transposed is too general.

According to Ojha (interview), court decisions can be different for the same offence, which can decrease the impact of the Nepali legislation on citizens and their trust in the legislation. The different jurisprudence depends on the personal perception of the judge, because punishments are not written down in the legislation and are ambiguous. In conclusion, the law to be transposed has been clearly and unambiguous written down, but does not cover all the Dalit issues and can be translated in the jurisprudence in different ways.

The second condition is about the density and content of existing constraining legislation. From an international perspective, the government of Nepal is obligated to take measures to prohibit caste-based discrimination and untouchability under international human rights law (The Office of the High Commissioner for Human Rights in Nepal (OHCHR) & National Dalit Commission of Nepal, 2010). Non-discrimination and equality are core international human rights principles, binding for all states. Furthermore, under the International Convention on the Elimination of All Forms of Racial Discrimination, to which Nepal is a State party since 1971, the Nepali government is obligated to prohibit discrimination based on ancestry, which includes caste-based discrimination, as a form of “racial discrimination”. The Convention further obligates the government to take all appropriate measures, including: enacting legislation to ban all forms of discrimination; preventing, prohibiting and eliminating practices of segregation in housing, education and employment; and securing the right to access for everyone to any place or service intended for use by the general public. Generally, the literature, several studies and interviewees do not mention any constraining legislation in Nepal. After the Interim Constitution there was no discrimination in provisions and policies and most of it was implemented in governmental bodies, but the problem is that those bodies not act according to these laws in practice (Koirla, interview). It can be concluded that legally speaking there is a solid basis for abolishing of the cast-based discrimination. The interviewees give a positive view about the existing legislation. Kisan (2006, p. 31) elucidates in his research that there are altogether 17 constitutional and legal provisions are self-contradictory, inequitable, prejudiced and discriminatory for Dalits. An example is Article 23(1) of the Interim Constitution of Nepal, 2007, which entails (UNDP, 2007, p. 9):

*‘Every person shall have the right to profess, practise and preserve his/her own religion as handed down to him/her from ancient times having due regards to the social and cultural traditional practices (...).’*

This is ambiguous, because it clarifies that social and cultural traditional practices may be practised, so indirectly also exclusion of Dalit as it fit with the traditional practices of the Hinduism. Other examples are: Preamble of Muluki Air (National Civil Code); section 7(A) of Citizen Rights Protection Act 1955; Section 10 of Old Heritage Conservation Act, 1956 (Kisan, 2006). These contradictory

provisions are confusing to Dalits and law enforcement agents and agencies as well. Those weak and paradoxical laws can be problematic for Dalits' inclusion and for equitable society. International and domestic legislation are almost sufficient and not constraining. So the density of existing legislation is low (also because of the affirmative international legislation) and the constraining existing law is limited. In sum, this does not affect the transposition process negatively and can be seen as a partial confirmatory factor for a successful transposition process.

The third theoretical condition is the incorporation of all the legal rules and the binding character of the legislation to be transposed. As mentioned in the first condition of this section, the law to be transposed does not contain all the legal rules which are necessary for a successful transposition, because the articles are incomplete (Bishwakarma, interview C; Koirla, interview; Ojha, interview). The legal rules, mentioned in article 14 (see appendix B), do not entail a procedure of the further transposition or implementation. This lack has to be filled up with additional laws, which can be seen as an explanation for the incomplete non-discrimination articles (example: the Untouchability Act 2011). Generally, it can be said that the Constitution is binding, but the non-discrimination articles are not fully binding (UNDP, 2008, p. 6). The Interim Constitution has provisions for affirmative action, but they are on the whole not binding, merely declarations of policy. This makes the non-discrimination articles weak and difficult to comply with during a transposition process. None of the interviewees talk about a legally grounded mechanism for monitoring and verification of the transposition of the non-discrimination articles of the Interim Constitution by the government of Nepal, neither written document give approval in that direction. Bishwakarma (interview C) describes that there is not any planning or mechanism for the transposition process (see also section 5.4.3 condition 3 and 5).

#### *5.5.2 Institutional conditions*

Firstly, the relation between the law to be transposed and the institutions it targets is moderate. Article 14 from the Interim Constitution is the first law which labelled exclusion as illegal and punishable (Kisan, interview). The introduction of this specific article is new and therefore more difficult to transpose. The non-discrimination article existed already since the Constitution of 1990. In that year the Fundamental Rights were incorporated into legal provisions. It can be concluded that the institution the law to be transposed targets on, is the government itself. This institution is responsible for the further transposition of the non-discrimination articles. Indirectly the interest groups the Dalits and generally all Nepali citizens are important target groups, but institutionally the government is the main group of interest. The resources of the government are good enough according to Bishwakarma (interview, 06 June 2013). The government has enough (economic)

capacities, but uses them not in the right way; the government is rich and the people are poor. Moreover, the law to be transposed depends on path dependency, because the deep-rooted culture of Nepal affects the way of thinking of the institutions and her employees (Ojha, interview; Thapaliya, interview). This mainly traditional thinking strongly affects the discrimination issues. More about this traditional thinking in the third and fourth condition of this section.

Secondly, the government used the most appropriate form and method to abolish the caste-discrimination in Nepal (Bishwakarma, interview C; Ojha, interview). According to Bishwakarma, the demand of Dalits are not fully covered by policies which are made after the Interim Constitution. As said before, the punishments are not clear and consistent and even the provisions are not fully implemented in all policies. Reservations for example are not formally and legally acknowledged. Furthermore, not all Nepali Dalits benefit equally (Bishwakarma, interview C). People from the lowest status and in rural areas do not benefit much, while people in accessible areas benefit more from the Dalit policies. The way in which the government is trying to abolish the caste-based discrimination is part of the right way, but it is under process. According to Ojha, the way of transposing and implementation is acceptable, but the Dalit community needs specific acts and high provisions. After that the National Dalit Commission can really start to abolish the discrimination. Rising problems in this context are the corrupt and unreliable Court and the constraining existing legislation, which limit the rights of the Dalit (see more information about these aforementioned problems in section 5.4.1, the first and second condition). Even the binding legislation is not fully applicable in this case (see also before).

The third and fourth condition are strongly related, so they will be discussed together. These conditions are the fit between the change promoting institution and domestic political preferences and the committed and skilful implementing officials. Underlying cause is the mind-set of the officials and politicians. The promoting institution can be seen as the government in total and the drafting committee, National Dalit Commission and the cabinet which made the Interim Constitution together (Kisan, interview; Koirla, interview). The policy-makers, chief officers, implementers and other related public administrators' mind-set does not correspond with the law to be transposed (Bishwakarma, interview C; Gautam, interview A & B; Kisan, interview; Koirla, interview; Thapaliya, interview; Ojha, interview). This is the main problem and the core of the caste-based discrimination issue, the transposition process and the implementation. Gautam (interview A) describes the mind-set of the governmental administrators and even general Nepali citizens as follows:

*'they say we are equal, but from the core of the heart they think; he is a Dalit.'*

The policy-makers are inspired by the traditional way of thinking and base their vision on that. Consequently that affects their behaviour and how they act during the transposition process. Politically the caste-based discrimination is acknowledged, but because of different (traditional) perspectives of civil servants, practice is different. The caste system is part of the culture and affect people's behaviour (Humagai, interview). According to Ojha (interview), the Untouchability Act 2011 and other policies cannot change that culture. These perceptions of Nepali people could become objections against the law to be transposed. According to the theory, this complicates successful transposition or even hinders transposition. Because of that, the commitment of officials is also highly important for transposition. The discretionary authority gives the officials space to interpret, because the law to be transposed does not contain all the legal rules, compare section 5.4.1 on the third condition (Bishwakarma, interview C; Koirla, interview; Ojha, interview). Governmental officials have to enforce the law and develop new policies, but this enforcement is lacking, so there is no compliance (Bishwakarma, interview B). Reports and interviewees do not point to interest groups who want to constrain the transposition process. Moreover, the civil servants say they comply with the law to be transposed, but in practice they do the opposite (Gautam, interview A; Thapaliya, interview).

The political and managerial skills of the public officials in Nepal are lacking (Bishwakarma, interview C; Thapaliya, interview). Especially the necessary capacities are lacking, for example there are no capacity criteria for the members of the National Dalit Commission. Political parties and the cabinet decides who becomes member. It is like nepotism; people are chosen because that is beneficial for both sides (Gautam, interview A & B). Additionally, the members are representatives of political parties and are selected by political leaders, without a real application. Not all political parties are represented, mainly people from the Maoist party, but everyone is from the Dalit community. According to Bishwakarma (interview C), members of the National Dalit Commission function as a 'toy car' for the politics. This is however not recognised by the Commission members (Nepali, interview; Pariyar, interview; Parlyar, interview). According to them, political preferences do not affect the acting and outcomes of the National Dalit Commission. But according to the legal adviser of the National Dalit Commission (Bishwakarma, interview C), it does affect their point of view in the Commission. When we zoom in on the Nepali society, even the Nepali citizen are linked to political parties from birth (Gautam, interview B; Ojha, interview). People do not change political party, because they receive benefits from their party. So, the staff selection at the National Dalit Commission is lacking and needs improvement. Their ideas and visions should be the same, but in practice it is the opposite. These individual differences can affect the capacity of the National Dalit Commission, but needs further research to know to what extent it affects the capacity (Bishwakarma,

interview C). Political skills are lacking in communication to other institutional subsystems, for example: policy-makers rarely communicate to the lower level (VDC or CDO; Thapaliya, interview). Frequently they are even not aware of all the policies; they need more education on laws, constitutional provisions and other provisions, but the capacity for this is also lacking. So, it can be suggested that convincing and mobilizing of latent supportive constituencies rarely happens, which should be part of skilful implementing officials. Furthermore, managerial skills are lacking in the way that there are no controls for achieving the purposes (Kisan, 2006). There is no strong provision and institution to fulfil effective monitoring and feedback system for effective enforcement of Dalit related laws, so there can be concluded that public officials are not controlling the transposition process.

Fifthly, the level, authority and performance of governmental bodies has to correspond with the law to be transposed. In Nepal this is not fully applicable, because of the lacking compliance of public officials (Kisan, interview, 03 April 2013). This overlaps somewhat with the aforementioned condition about the traditional way of thinking and the deep-rooted culture (see above). According to the interviewees the attitude, perception and performance of the governmental bodies is different than the law to be transposed (Bishwakarma, interview C; Gautam, interview A & B; Kisan, interview; Koirla, interview; Thapaliya, interview; Ojha, interview). This traditional thinking affects the practice of the policy-making; making of policies and doing/acting like that is a different thing (Thapaliya, interview). According to Bishwakarma (interview C), public officials are willing to cooperate in the transposition process, but in practice this willingness is not going anywhere. Kisan (interview) states that public administrators, chiefs and officers have not changed their perspectives and do not want to implement anti-discrimination laws. Nepal needs a movement of Dalits from the grassroots up (Thapaliya, interview). This local level movement has to convince and inform all people door to door. This gathered group of people can be enforce a change in the culture and way of thinking, eventually to reinforce the National Dalit Commission in her weak position.

Besides these aforementioned lacks, there are progresses. The situation of Dalits has improved and there is more awareness of the law among Dalits and non-Dalits than before the 'People War'. Furthermore, the Untouchability Act 2011 has been established (see for additional information section 5.1 and 5.2). Article 21 of Interim Constitution 2007 and the latest amended and added legal provisions and official statements offer evidence that the state is willing to declare itself open to more Dalits inclusion (Kisan, 2006). These are important steps toward creating an atmosphere for Dalits inclusion; however there remains a large gap between the feelings in these statements and the actual practice of inclusion.

Sixthly, the Nepali government has to have a strong administrative, economic and legislative capacity, but this capacity shows shortcomings. The administrative capacity is not enough to fulfil all the obligations of the law to be transposed and to completely achieve the goals (Ojha, interview). The National Dalit Commission, which is mainly responsible for the monitoring and the Ministry of Federal Affairs and Local Development, who got the final responsibility, are not regularly communicating with each other about the transposition of the non-discrimination articles (Thapaliya, interview). Meetings and email or phone contacts are not regularly, so actual progress in transposition is lacking. The communication is about the budget and projects and supervision of the local authorities. The National Dalit Commission does not have enough power to achieve the best for the Dalit community. Their rights are to investigate, supervise and to submit reports to the government (Ojha, interview). This monitoring is not enough to abolish the caste-based discrimination. An often heard recommendation is to make the National Dalit Commission a statutory body by law (Kisan, 2006; Kisan, interview; Gautam, interview B; Ojha, interview; Thapaliya, interview). Then the Commission become more powerful by sanctioning discrimination offenders by filing a lawsuit. Nowadays the National Dalit Commission has to put pressure on the CDO VDC and police in order to arrange caste-based discrimination cases. The Educational Bill states that 9% of the members has to be Dalit in every institution (governmental and semi-governmental; Ojha, interview). All committees must have Dalit representatives. If there is no Dalit participating, the National Dalit Commission and the government can supervise and put pressure on the agency. According to Thapaliya (interview), the administrative capacity is moderate and could be better structured. Activities relating to education, income generation and advocacy are limited in their coverage largely due to budgetary constraints as well as low capacity of the Committee to plan and implement activities (Bhattachan, Sunar & Bhattachan, 2009).

The economic capacity is not sufficient (Bishwakarma, interview C; Thapaliya, interview). The National Dalit Commission receives the money from the government for reports and supervision, but that budget is too low; they want to do more case studies about the contemporary situation of Dalits (Ojha, interview). The responsible Ministry reserved a budget for Dalit development; from planning process to local process (Thapaliya, interview). The entire budget goes to Dalit areas, collecting their demands and try to fulfil these. There is also budget for awareness centres in every district. However, the budget is low and not sufficient to achieve the goals of the National Dalit commission. The Commission can protect the rights of the Dalits, but cannot do much more than that (Ojha, interview).

Seventhly, the government of Nepal is not stable at this moment (Gautam, interview B; Ministerie van Buitenlandse zaken Nederland, 2012). See also more about the instable political situation in section 2.2. Nepal needs a stable government which makes a Constitution and improves law enforcement. Political organisations and civil society organisations seem sensitive about the material inclusion of Dalits (Kisan, 2006, p. 22). They are quick to apply the concept of social inclusion in a 'cosmetic' form (symbolic or head counting) rather than in its real form. Being in Nepal for almost five months, has given me an overall impression of people thoughts. Generally, Nepali citizens do not trust the government, because of its corruption and unreliability. Furthermore, there is no system of collaboration that integrates interest groups. This is collaborated by the non-transparency of existing NGOs and INGOs in Nepal, that do not have a shared vision nor cooperate with each other (Gautam, interview B; Ojha, interview; Thapaliya, interview).

### *5.5.3 Procedural conditions*

Firstly, the preparatory phase of the law to be transposed proceeded well, because of its strong legitimacy (Kisan, interview). The preparatory phase entailed the phase of making the non-discrimination articles (especially Article 14) of the Interim Constitution. The articles against caste based discrimination was made by a Drafting Committee. All political parties were involved, for example the Maoists. However, the transposition of the non-discrimination articles of the Interim Constitution is poor, because the law and acts (for example the Untouchability Act 2011) are prepared at central level which have been approved by the Constitutional Assembly and the parliament (Thapaliya, interview). Furthermore, people from higher castes neither know about the Dalit policies. So, if the government involve those people, then they become part of policy-making and the legitimacy and familiarity will grow. According to Thapaliya (interview), the government provides equal opportunities and uses positive discrimination. He acknowledges that transposition and implementation have to be in harmony, without divisions. Social integration, harmony and cooperation are important. An example of the cooperation of Dalit people is the budget allocation. Demands of Dalit people are collected and this will be used as input for the allocation (Thapaliya, interview). Even the National Dalit Commission collects information from the field by writing reports about the contemporary situation of Dalits (Bishwakarma, interview C). By submitting these reports to the government, the transposition can be affected. But these reports are often not used by the government, so this legitimacy does not reach the actual policy-making and -decision domain. The domestic culture of law-abidingness and support for the rule of law is completely missing in Nepal (see section 5.3; Gautam, interview B). Nepali people do not respect the law, are not aware of the legislation and think they are superior to existing law. This attitude is reinforced by weak legal provisions and procedures and a lack of punishments to, for example, discriminators (Kisan, 2006).

The second, third and fifth condition are closely related and are discussed together. The monitoring of the transposition process shows major shortcomings. The government of Nepal appointed the National Dalit Commission as responsible for the application of the higher law (National Dalit Commission, 2013). According to the theory, this newly established agency could give an incentive to the compliance, because it will necessarily give it highest priority and can give opportunities to supporters of the law. But in practise the National Dalit Commission is limited (Ojha, interview). The government did not set up a clear monitoring process for the National Dalit Commission and the law to be transposed do not impose requirements for top implementing officials who support the legislation's objectives. The tasks are clear, but they cannot fully accomplish and are restricted (see section 5.4.2, condition 6). There are no sanctions for governmental bodies for not transposing the non-discrimination articles and because of the instability and limitations of the Commission, transposition is limited (Thapaliya, interview). The Commission has got poor data bases and this can also limit the appropriate monitoring.

The target groups, Dalit and non-Dalit, are not all aware of the non-discrimination law, Human Rights and consequences of caste-based discrimination (Bhattachan, Sunar & Battachan, 2009; Bishwakarma, interview A & C; Kisan, interview; Koirla, interview; Gautam, interview A & B; Ojha, interview; Thapaliya, interview). Especially people in remote areas and the western part of Nepal. Additionally, a victim from remote areas is often not aware of the procedure and cannot challenge against the offender or he or she ignores the discrimination leading to no punishment for the discriminator (Gautam, interview B). Victims are often convinced to withdraw their complaint before filing their case. Furthermore, society has often got its own unofficial law and ignores the non-discrimination articles. So, awareness improvement would be recommendable. Awareness is one of the outcomes of good monitoring, so these practices approve the lack of monitoring. In the Kathmandu valley and the eastern part of Nepal discrimination occurs often less than in the western part, because those parts are more developed economically and socially. For example, the eastern part has got several good working industries (Bishwakarma, interview B). Dalits in the Kathmandu valley are more aware of the laws and know their rights (case study, 09 June 2013). Education has to be the main priority of the government and the monitoring bodies, because that can probably change the tradition thinking and culture, according to Ojha (interview). Schools discuss the punishable caste-based discrimination, but this depends on the quality of the teachers and their knowledge (Ojha, interview). The National Dalit Commission is co-responsible for giving sanctions and punishments to discriminators, but they cannot properly establish this because the punishment depends on the court (see more about this in section 5.4.1, condition 1). Judges are mainly from upper castes and when there is a crime offence committed by a person from a higher caste, the

judge want to 'save' and protect their higher caste. The offender gets a minimum punishment, which ranges from three years until five years imprisonment and between 500 and 25.000 Nepali Rupee compensation for the victim (approximately between € 4 and € 200; Gautam, interview B; Ojha, interview). Worthwhile to mention; is that the punishment boundaries as set by parliament are lower than recommended by the National Dalit Commission (Bishwakarma, interview C). NDC wanted to have twenty years for discriminators and 10.000.000 Nepali Rupee. This punishment was too high according to the parliament which raises questions about the willingness of the government to take action. All in all, these circumstances do not enforce transposition compliance. Furthermore, the missing legal structure of the implementation process does not enforce transposition compliance either (Bishwakarma, interview C; Thapaliya, interview). There is no legal working plan, no deadlines and no specific responsible person for transposition of the law. There is no timetable (condition 5), so there is a misbalance in the process and the achievement of the goals. These aspects, mentioned by Falkner et al. (2007), are all applicable on Nepal; the culture, no fit with domestic preferences and regular administrative non-action constrain the transposition compliance.

Fourthly, there is no adaption pressure by governmental administrative overload; the government did not set up a structure or administrative procedure (Thapaliya, interview). So, the need to adapt to the law is lacking. But there is adaption pressure by NGOs. Interest groups can establish a positive change in favour of Dalits and internationally in favour of the Nepali law. This pressure entails proposing suggestions. This is not enough; the government is not implementing the suggestions. But this influence of NGOs is still necessary, without pressure the cabinet and parliament will not make progress in this discrimination issue. According to Ojha (interview), the government gives high priority to the Dalit discrimination, but others say that the government and political parties focus differently (Bhattachan, Sunar & Bhattachan, 2009; Bishwakarma, interview C; Gautam, interview B; Ojha, interview). If the pressure really affects in practice is the question, because reports (even from the National Dalit Commission) are often not implemented (Thapaliya, interview).

The conclusions about the presence of conditions for successful transposition of the non-discrimination articles of the Interim Constitution in Nepal are summarized in table 4, on the next page. The aforementioned conditions are successful (+), lacking (-) or moderate (+/-).

**Table 4.** Presence of transposition conditions of the non-discrimination articles of the Interim Constitution in Nepal.

	conditions	presence
substantive	- clear and consistent objectives	+
	- low density and limited content of existing legislation	+/-
	- incorporate all legal rules and has to be binding	-
institutional	- consistent relation between the law to be transposed and the institution it targets and her arrangements	+/-
	- using the most appropriate form and method to transpose	+
	- existence fit between the change promoting institution and domestic preferences	-
	- committed and skilful implementing officials	-
	- level, authority and performance of governmental bodies has to correspondent with the law to be transposed	-
	- existence of a strong administrative, economic and legislative governmental capacity	-
	- effective and stable political institution and integration of interest organisations in the decision making	-
procedural	- successful preparatory phase, including legitimacy	+/-
	- monitoring of the transposition process	-
	- structuring of the implementation process legally	-
	- existence of considerable adaptional pressure by administrative overload and actors	+/-
	- adequate timetable and in balance with the purposes	-

*The transposition conditions are: successful/present (+), lacking (-) or moderate/partly present (+/-).*

In conclusion, the transposition process is lacking on nine of the fifteen conditions, four of the fifteen are moderate, so those conditions have shortcomings and two of the fifteen are found in the transposition process in Nepal. This suggests not very successful transposition of the non-discrimination articles.

### 5.6 Summary

The situation of Dalits is improving, but caste-based discrimination still exists in Nepal. Even with established institutions as the National Dalit Commission, VDC and CDO the improvement is really slow and lacking. Nepal belongs to the world of transposition neglect. Most conditions for successful transposition are not found in Nepal. Only two conditions are present. Nine conditions are absent and four have some positive aspects, but show several shortcomings. All in all, the transposition process is highly lacking showing less successful transposition of the non-discrimination articles.

The next chapter presents the overall conclusion.

## 6. Conclusion and recommendations

This final chapter gives an answer on the general question of this research and gives an overview of the circumstances of the transposition process of the non-discrimination articles of the Interim Constitution of 2007. Firstly, the sub questions will be answered and secondly, the general question will be answered (6.1). This section concludes with recommendations based on the results and my own insights. This chapter presents also a substantive and personal reflection (6.2) and recommendations for further research (6.3).

### 6.1 Research questions

The problem definition is as follows:

*Evaluate if and how Interim Constitution articles related to non-discrimination of Dalits are transposed in regular Nepali policies and offer recommendations to (further) improve this transposition.*

The questions are:

#### 1. What do the non-discrimination articles in the Interim Constitution entail?

The non-discrimination articles in the Interim Constitution focus on Article 14, which entails:

*“No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability in any form. Such a discriminatory act shall be liable to punishment and the victim shall be entitled to compensation as provided by the law.”*

Other articles (13; 21; 33; 35) in the Interim Constitution focus on the strengthening of the minority groups by including them specifically in the government and give specific rights and offer a basis for equality. These articles together form the start of abolishing the caste-based discrimination.

#### 2. What are the conditions for a successful transposition process?

According to the literature, the conditions for successful transposition process are as follows:

- clear and consistent objectives; which was found in the empirical study;
- low density and limited content of existing legislation; which was partly present in the empirical study;
- incorporate all the entire legal rules and has to be binding; which was not present in the empirical study;
- consistent relation between the law to be transposed and the institution it targets and her arrangements; which was partly present in the empirical study;

- using the most appropriate form and method to transpose; which was found in the empirical study;
- existence fit between the change promoting institution and domestic preferences; which was not found in the empirical study;
- committed and skilful implementing officials; which was not found in the empirical study;
- level, authority and performance of governmental bodies has to correspondent with the law to be transposed; which was not present in the empirical study;
- existence of a strong administrative, economic and legislative governmental capacity; which was not found in the empirical study;
- effective and stable political institution and integration of interest organisations in the decision making; which was not present in the empirical study;
- successful preparatory phase, including legitimacy; which was partly present in the empirical study;
- monitoring of the transposition process; which was not present in the empirical study;
- structuring of the implementation process legally; which was not found in the empirical study;
- existence of considerable adaptional pressure by administrative overload and actors; which was partly present in the empirical study;
- adequate timetable and in balance with the purposes; which was not found in the empirical study;

### *3. Which traces of article 14 and others can be found in regular governmental policies?*

The major trace of article 14 can be found in the Untouchability Act of 2011. This act entails further specifications of the caste-based discrimination and punishment. This act is highly important, because it covers also the private domain instead of only the public domain. New provisions are drafted at the moment in cooperation with the National Dalit Commission, other actors and the parliament. Further traces can be found in reservations for Dalit Public Service Act, but this is still an informal law and is also drafted at this moment. Also the Social Inclusion Act is drafted at this moment and generally not implemented yet.

### *4. In case of lacking transposition of Article 14 and others into regular policies in Nepal, how can this be explained?*

Transposition is lacking because nine of the fifteen conditions are lacking, four show shortcomings and only two are found in Nepal. Causes for the lacking transposition are: partly other existing legislation, which can counteract the law to be transposed, missing incorporated legal rules because

of the incomplete non-discrimination articles of the Interim Constitution and the necessity of additional acts. Furthermore, real binding legislation is missing, which makes the non-discrimination articles weak and difficult to comply with during a transposition process.

There is a difference between the change promoting institution preferences and (cultural) domestic preferences. The policy-makers, chief officers, implementers and other related public administrators' mind-set does not correspond with the law to be transposed. They do not really want to implement the non-discrimination articles. Furthermore, the level, authority and performance of governmental bodies do not fully correspond with the law to be transposed. Their traditional thinking affects the practice of the policy-making; making of policies and doing/acting like, that is a different thing. Public officials are willing to cooperate in the transposition process, but in practice this willingness is not going anywhere. Besides, the implementing officials are not committed and lack managerial and political skills. The traditional way of thinking is also primary in this context. Nepotism, underrepresentation of marginalized groups and the linkage to political parties, constrain the performance of implementing officials. Communication between the legislative and executive powers is lacking and the control of implementing official by measuring the achievement of the purposes is also missing.

The administrative capacity is weak, because of the lacking communication and the not given status of the National Dalit Commission as statutory body by law. The economic capacity is also weak, because of a shortage of fund. The legislative capacity is adequate, because the government is able to comply without constraining interest group pressure. This pressure exists, but does have a positive effect on the transposition process.

Furthermore, the political situation and institutions in Nepal are instable during the last years and this is still going on, which highly affect the transposition process. Nepal needs a stable government which makes a Constitution and improves law enforcement.

The preparatory phase is mostly lacking in the elaboration of the legitimacy. The transposition of the non-discrimination articles of the Interim Constitution is poor, because the law and acts are prepared at central level which have been approved by the Constitutional Assembly and the parliament. There is legitimacy during the preparatory phase, by collecting the demands of Dalit people. This does not positively affect the further transposition, because the input is not used properly. Furthermore, the domestic culture of law-abidingness and support for the rule of law is completely missing, which reinforce the lacking legitimacy.

The monitoring of the transposition phase is highly lacking. The established National Dalit Commission does not have enough power to monitor well. The government did not set up a clear monitoring process. The tasks are clear, but they cannot fully accomplish and are restricted. There are no sanctions for governmental bodies for not transposing the non-discrimination articles. The

National Dalit Commission has got poor data bases which limit appropriate monitoring. Furthermore, the monitoring is not working properly because of the high dependency on the government. Punishments are too low or offenders never receive a punishment because of mutual agreements between the victim and the offender. Besides, Nepali people do not always know about the non-discrimination legislation, more education in this is necessarily in order to improve the Dalit issues in Nepal.

NGOs can affect Dalit issues by putting adaptional pressure on the government, but the adaptional pressure by administrative overload for implementing bodies is missing.

The implementation process of the transposition laws are not legally structured; there is no working plan, adequate timetable, specific responsible person for transposition of the law and no guidelines.

The typology of Falkner et al. (2007) for compliance of the law in different political worlds, typify the lack of transposition in Nepal in a context. Applied to the Nepali government and her transposition process, the world of transposition neglects is the best applicable to the Nepali situation, but it also has similarities of the world of domestic politics.

The world of transposition neglect does have a long phase of inertia and does not always initiate the transposition process; this can also be found in Nepal. Furthermore, the compliance of the governmental administrative bodies is low. The main problem is the compliance in practice; in making new policies and provisions after the Interim Constitution. Administrative non-action after the laws and provision have been made is common, because Nepal is not a country organised by a lot of rules and citizens are not used to comply. The transposition and further implementation of the non-discrimination articles strongly depend on the policy-makers and implementers, which can lead to less compliance and transposition. The non-discrimination articles have to be elaborated by implementers and policy-makers, which it makes sensitive to their own interpretations and input. Besides, NGOs function as a pressure groups and important actor in affecting the government and her behaviour. The administrative phase is lacking because of the strong dependency on the administrators. The political phase is lacking because some interest groups or even politicians can affect the process negative by performing unbiased. Those people do not want that the Dalit issues get solved or they want as less as possible provisions.

The world of domestic politics is also partial applicable to Nepal. The specific fit between the legislation to be transposed and domestic political preferences are dominant. The unstable political situation in Nepal makes the transposition of the non-discrimination articles less important. The formation of a new Constitution dominates the political debate. The existence of high pressure of

INGOs and NGOs on the government improves the transposition marginal. These worlds clarify another part of the lack of transposition in Nepal.

Generally, the core problem is the culture and the traditional way of thinking. The culture does not change because of legislation and policies. The transposition process is lacking, because of the umbrella problem; culture. This deep-rooted traditions and related traditional way of thinking affects the Nepali people in their behaviour and is based in their religion and lack of education. Superiority is common and well-known for all individuals, but this is more dominant in the Nepali culture. The conditions for successful transposition work only if the mind-set changes and people know in their heart that they are equal and behave like that, instead of only rational thinking. These constraints will slowly disappear and in the next generation the situation will be more inclined to open-minded thinking. This core problem can improve by several recommendations, which will be mentioned after the general question has been answered.

The main question is as follows:

*How can the transposition of the Nepali equality articles of the Interim Constitution in regular Nepali policies be improved?*

According to the results, recommendations for successful transposition can be made. These recommendations can be seen as idealized and ambitious, especially because of the deep-rooted culture of Nepal. This affects every aspect of the society and marginalises the recommendations. The recommendations are still necessary to improve the Dalit rights, but are strongly influenced by the culture of Nepal. The recommendations are as follows:

- transform the National Dalit Commission into a statutory organisation, which improves their power to abolish the caste-based discrimination;
- establish a stable government and a stable political situation, which improves the accountability and representativeness;
- transform the National Dalit Commission to an independent body and where commission members are selected based on capacities;
- finishing of the new Constitution, which underpin the stability of Nepal;
- establishment of an independent judiciary system, which is only based on the law and without nepotism, which underpins the accountability;
- focus on the educational system; through education people can get a wider perspective, which changes the culture and their way of thinking;
- focus on law enforcement and compliance by making strong legislation and provisions;

- using advertisement and promotion in order to change the traditional way of thinking;
- launch a legally structured transposition process; including a timetable, monitoring requirements, clear task descriptions for the monitoring organisation, interaction with target groups and actors and sanctions in case of non-compliance;
- the government has to ensure appropriate, effective and equal access of Dalits' to the decision-making process in all levels and sectors of the State and society. For this purpose the government has to give special rights, proportionate rights and reservation policies;
- establishment or inclusion of Dalit agencies need to be obligatory to ensure law enforcement;

Through these recommendations, the transposition of the non-discrimination articles of the Interim Constitution focused on Dalits in Nepal can improve, but the idealisation of the elaboration of the recommendations in practice has to be taken into account. Together with the change of the heart of Nepali people and improving governmental support, accountability and consistency, the situation for the Dalit community will grow to equality.

Policies do not change the heart, but the heart changes policies.

## *6.2 Reflection*

At the end of this study the choices made will be reflected. First of all, the theory could be applied to the practice of Nepal, but it was not easy to use. The theory is a comprehensive part of the study and contains many conditions and specific aspects, which are essential for successful transposition. The situation of Nepal and the culture made it difficult to investigate. The theoretical conditions are sometimes difficult to find in practice or definitions are unfamiliar for interviewees. These conditions were often constraining the progress. For example the definitions were difficult to use during an interview, because of the unfamiliarity. To solve this problem, the definitions were formulated easily by using familiar words. Especially the word transposition was difficult; the word implementation was used as a replacement. This transformation of theoretical definitions can affect the outcome of the interview, but by using key information from the theory the information could be transformed again according to the theoretical definitions after the interview. This simplification of the theory made it often more difficult to apply the theory on the Nepali circumstances. Another difficulty was the usage of the transposition theory, which focuses mainly on European countries. The theoretical transformation from developed to developing countries made it sometimes difficult to use in practice, because the theory for developing countries is not fully consistent with the theory about developed countries. The conditions may be idealized. The outcome of the conditions in practice would be predictable, because western conditions are difficult to blueprint in developing countries. Some conditions seem a bit farfetched, but could be used by asking specific aspects. For example, the adaptional pressure by administrative overload is a criterion, which seems to be cryptic. But by using the theory about adaptional pressure by interest groups, the conditions could be more easily applied.

The different circumstances during my stay in Nepal may also affect the theory and results. The unstructured environment and the shortage of books, may affect the outcome of the research. The outcome could be unilaterally, because the resources should be based on internet resources and available interviewees. The case study should be more extensive, but this was not possible because of the circumstances in Nepal. Firstly, an appropriate organisation could not be found and later on the traveling to the western part of Nepal could not continue, because there was a strike and afterwards the project was postponed. But still LANCAU Nepal helped a lot by finding correct information. Finding the most knowledgeable interviewees or organisations is difficult in the unstructured array of INGOs and NGOs. For me it was sometimes difficult to find the correct information for the theory, because many resources were contrasting or could not be applied to developing countries. Furthermore, the correct information about the contemporary situation in Nepal was difficult to find, because the resources were difficult to get or were outdated. The results mainly depend on the interviewees, but their reliability and knowledge is difficult to determine. But

after several interviews and conversations with my lecturer (R. P. Humagai) in Nepal incorrect information could be filtered.

The literature and the interviews were mainly in English, which made the research more challenging but also more difficult. The English literature was sometimes difficult to understand, what made the interpretation more meticulous. During my stay in Nepal, my English improved a lot what made the language barrier smaller. The Nepali language was more constraining during the interviews. Not all of the interviewees could speak English, what the communication limited. If required, a translator was with me during an interview. A problem here was the lack of clarity that all information was translated.

The academic relevance of this study is still important, now the research is completed. The transposition focus on developing countries has been clarified and is not common in other transposition studies.

All in all, the research was an interesting challenge, which made my perspective wider and my knowledge more extensive. The opportunity to go abroad was a great extra challenge, but made the thesis writing also more difficult. I have learned to be more independent and my self-discipline has challenged me greatly. The experiences and the stay abroad gave me great insights in the state of affairs of the world. In conclusion, the abroad challenges and opportunities were lifetime experiencing and a great addition to my academic experience and career.

### *6.3 Recommendations*

Every study does have limitations, which result in recommendations for further research. I would recommend making an extra dimension of the implementation of the non-discrimination articles. A focus on the implementation in practice at governmental bodies would be a great addition. Other recommendations are adding more case studies and more input of the Dalit community, which places this study in a wider perspective.

I would like to end this thesis with a quote of Thomas Paine (1737-1809), an English-American philosopher and political thinker.

*“Give to every other human being every right that you claim for yourself - that is my doctrine.”*

— Thomas Paine, 1794 —

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## Appendix A Subdivisions Dalits

*Resource:* Kisan, Y. B. (2005). *The Nepali Dalit social movement*. Lalitpur, Nepal: Legal Rights Protection Society Nepal.

The Dalits community can be divided in several categories, which are the officially identified Nepali Dalit castes. The categories Damai, Kami and Sarki are the caste groups which are generally understood in the Nepali Dalit caste groups. The Dalit caste groups extend deeper than these three major categories.

Badi	Dhobi (Rajak)	Kami	Pasi
Bantar	Dom	Kori (Byadha)	Sarki
Chamar	Dusadh	Khatwe	Sharvang
Chidimar	Gaine	Khatik	Tatma (Das)
Damai	Ghara	Musahar	Halakhor

The Newar community (living in the Kathmandu valley, hill region) have another division of Dalit sub-castes. These are:

Deula (Kuchikar/Pujari/Mettar)	Kasai (Khadgi/Khadge/Shai/Shahi)	Napit
Dhobi (Maghaiya)	Kulu	Pode (Chyame)
Harhur	Kusule (Kapali/Darshandhari)	

Surnames which are very common for Dalit families are different between the different sub-castes. Dalit surnames are for example: Kami, Lohar, Sarki, Charmakar, Damai, Darji, Dholi en Gaine. Dalit surnames such as Acharya, Bhattarai, Koirala and Poudel are the same as Brahman surnames. Names like Shahi and Bohara are the same as Kshatriya surnames. In the cases of these surnames, a non-Dalit person married a Dalit person and retained his or her surname, but he or she and his or her children would be considered untouchable. So the surname could be would remain the same, but the caste status could be changed. Another reason for the same surnames is that the surname reflects their place of origin (e.g. Achhami, Pokharel and Purkotli).

## **Appendix B Article 14 Interim Constitution 2063 (2007)**

*Resource: UNDP (2007)*

Special Act about the untouchability and racial discrimination, added in 2007.

### **14. Right against untouchability and racial discrimination**

(1) No person shall, on the ground of caste, descent, community or occupation, be subject to racial discrimination and untouchability in any form. Such a discriminatory act shall be liable to punishment and the victim shall be entitled to compensation as provided by the law.

(2) No person shall, on the ground of caste or tribe, be deprived of the use of services, conveniences or utilities available to the public, or be denied access to any public place, or public religious places, or be prevented from performing any religious act.

(3) No person belonging to any particular caste or tribe shall, in relation to the production or making available of any goods, services or conveniences, be prevented from purchasing or acquiring such goods, services or conveniences; and no such goods, services or conveniences shall be sold or distributed only to members of a particular caste or tribe.

(4) No one shall be allowed to purport to demonstrate superiority or inferiority of any person or a group of persons belonging to any caste, tribe or origin; or to justify social discrimination on the basis of caste and tribe; or to disseminate ideas based on caste superiority or hatred; or to encourage caste discrimination in any form.

(5) Any act contrary to the provisions of clauses (2), (3) and (4) shall be punishable in accordance with law.

## Appendix C List of interviewees, organisations and case study

### Overview of interviewees

- **Humagai, Ram** 17 February 2013, Bhatbatheni, Kathmandu, Nepal
  - Several interviews as journalist in Nepal during the internship in Nepal. He is a (photo) journalist for NepalNews, freelance researcher and studied a Master in Rural Development under Social Science Faculty at the Tribhuvan University in Kathmandu.
  
- **Paswan, Gaya Hajara** 21 February 2013, Jawalakhel, Lalitpur, Nepal
  - Member of the National Dalit Commission, Government of Nepal.  
The National Dalit Commission (Government of Nepal) is created in 2007 and her goal is to create an environment conducive to Dalit community to enjoy the rights and privileges without any discrimination as a citizen of Nepal and ensure self-esteem and rights to Dalit community through initiation to secure proper (proportional) representation of Dalit community to the state mechanism along with additional rights.
  
- **Kisan, Yam Bahadur** 03 April 2013, Baluwatar, Kathmandu, Nepal
  - Lawyer, author, researcher and human rights activist. He has dedicated his life for the betterment and safeguard of human rights in Nepal and especially of the disadvantaged people from the Dalit community.
  
- **Gautam, Ramesh** A 28 March 2013, Anamnagar, Kathmandu, Nepal  
B 17 April 2013, Anamnagar, Kathmandu Nepal
  - Executive director and lawyer at LANCAU Nepal.  
LANCAU Nepal is a lawyers' national campaign for elimination of caste discrimination. The organisation is dedicated to ending the crime of untouchability through legal advocacy, research and training to work towards elimination caste discrimination and implementation of existing anti-discriminatory laws and policies. Furthermore, they file cases related to caste discrimination and related incidents and free legal treatment to the victims of caste discrimination.

- **Koirala, Ananda** 17 April 2013, Anamnagar, Kathmandu Nepal
  - Lawyer at LANCAU Nepal. More information about the organisation, see *Ramesh Gautam*.
  
- **Bishwakarma, Bimal**

A	07 May 2013, Jawalakhel, Lalitpur, Nepal
B	17 May 2013, Jawalakhel, Lalitpur, Nepal
C	06 June 2013, Jawalakhel, Lalitpur, Nepal

  - Legal adviser and lawyer at the National Dalit Commission, Government of Nepal.  
For more information about the National Dalit Commission, see *Paswan, Gaya Hajara*.
  
- **Ojha, Udaya Gautam** 09 May 2013, Jawalakhel, Lalitpur, Nepal
  - Woman Development Officer at the National Dalit Commission, Government of Nepal.  
For more information about the National Dalit Commission, see *Paswan, Gaya Hajara*.
  
- **Pariyar, Santosh** 10 May 2013, Jawalakhel, Lalitpur, Nepal
  - Member of the National Dalit Commission.  
For more information about the National Dalit Commission, see *Paswan, Gaya Hajara*.
  
- **Nepali, Amrit (Sarki)** 10 May 2013, Jawalakhel, Lalitpur, Nepal
  - Member of the National Dalit Commission, Government of Nepal.  
For more information about the National Dalit Commission, see *Paswan, Gaya Hajara*.
  
- **Parlyar, Lal Bahadur** 10 May 2013, Jawalakhel, Lalitpur, Nepal
  - Member of the National Dalit Commission, Government of Nepal.  
For more information about the National Dalit Commission, see *Paswan, Gaya Hajara*.

- **Thapaliya, Dinesh Kumar**      11 June 2013, Singhadurbar, Kathmandu, Nepal
  - Joint secretary and spoke person of the Ministry of Federal Affairs and Local Development, Government of Nepal.

This ministry is responsible for the planning and foreign aid coordination and responsible for the Dalit issues and the National Dalit Commission. Dinesh Kumar Thapaliya also got a lot of experience with Dalits, because of his previous professions as a chief of the Village Development Committee and other occupations related to social inclusion.

### **Case study; overview of interviewees**

09 June 2013; Changu Narayan & Pikhel, Nepal

- Sunita
- Sanani Bayalkhuti
- Shyam Bamadur Nepali
- Sarita Mangrati
- Group of Dalit people; no names specifically

### **Overview of visited organisations**

- Jagaran Media Center;
  - [www.jagaranmedia.org.np](http://www.jagaranmedia.org.np)
- LANCAU Nepal;
  - [www.lancau.org.np](http://www.lancau.org.np)
- Ministry of Federal Affairs and Local Development;
  - [www.mofald.gov.np](http://www.mofald.gov.np)
- National Dalit Commission;
  - [www.ndc.gov.np](http://www.ndc.gov.np)
- Office of United Nations high Commissioner for Human Rights in Nepal (UNHCR Nepal);
  - [www.nepal.ohchr.org/en/index.html](http://www.nepal.ohchr.org/en/index.html)
- SNV Nepal;
  - [www.snvworld.org/en/countries/nepal](http://www.snvworld.org/en/countries/nepal)
- Tribhuvan University, Public Administration Campus;
  - [www.pactu.edu.np](http://www.pactu.edu.np)

## Appendix D Interview topic list

In this appendix, there is an overview of the interview questions. These questions are (not all literally) derived from the operationalization (table 3). Not all the used questions are added:

- What is the content of your work for the Dalits?
- Which sort of cases do you have? Is there a change in this cases?
- What has been changed for the Dalits after the Interim Constitution of 2007?
  - How was the process? Was the composition of the members right and legal?
- To what extent are the objectives, mentioned in the Interim Constitution of 2007, clear and consistent?
- How and who made the Article of caste-based discrimination against Dalits in the Interim Constitution?
  - Who was involved?
  - Is there common agreement?
  - Does it contain all the legal rules?
- What are the governmental provisions to prohibit caste-discrimination against Dalits?
  - Which policies are made to improve equality? And is there a punishment of the offenders and compensation for the victim according to the law?
  - Is there progress / improvement? Thoughts, behaviour, young/old et cetera?
  - Where are the quotas and preferential treatment written down?
  - Do people know about the policies and the law?
- Which policies are made to improve the equality for Dalits?
  - Are there quotas or other preferential treatments for Dalits?
- Does Nepal has constraining written legislation? Yes? Which legislation?
- What is the reason of non-compliance and lack of policies for Dalits?
  - Legal barriers? Is the law not sufficient enough? Or is the purpose unclear?
  - Institutional barriers? Lack of power / Education / economic situation / access in politics?
  - Do they really want to change? Jealousy and barriers?
- To what extent are the Dalit rights and legislation binding?
- To what extent does the government has committed and skilful implementing officials?
- To what extent correspond the way of working of implementing officials with the law to be transposed?
- Is there a balance between the non-discrimination purpose and the time that the government takes to make policies?

- Is the way the government act the most appropriate way to abolish the caste-discrimination?  
Why?
- How is the communication between the policy-makers and implementers?
- Is the transposition process legally structured? Yes, how? No? Why?
- Is the government monitoring the implementation? Yes, how?
- What is the status of the of the political situation in Nepal in general?
- In what extent is there adaptional pressure by administrative overload or from (interest) group pressure?
- Which administrative capacities does the government have?
  - Economic capacity? Are there any written documents available?
  - Legislative capacity?
- Do you have recommendations for improvement of the equality for Dalits?

## **Appendix E Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2068 (2011)**

Date of Authentication and Publication 2068.2.18 (1 Jun 20011)

Act Number 4 of the year 2068 (2011)

### **An Act made to provide for provisions on caste based discrimination and untouchability**

**Preamble:** Whereas, acknowledging the principle that each person is equal in terms of rights and human dignity, it is expedient to provide timely provisions to protect the right of each person to live with equality, freedom and human dignity by creating an environment where no untouchability and discrimination prevails on the ground of caste, race, descent, community or occupation in the name of custom, tradition, religion, culture, ritual or any other name, to make punishable to the acts of untouchability, exclusion, restriction expulsion, contempt or any other discriminatory act that is against humanity, to provide restitution(compensation) to the victim of such acts, to keep intact the national unity by strengthening the relationship subsisting among general public and to create an egalitarian society. Now, therefore, be it enacted by the Constituent Assembly in the capacity of the Legislature-Parliament pursuant to Article 83 of the Interim Constitution of Nepal.

#### **1. Short title and Commencement:**

- (1) This Act may be called "Caste Based Discrimination and Untouchability (offence and punishment) Act, 2068 (2011).
- (2) This Act shall be extended throughout Nepal and also applicable to Nepalese citizen residing outside Nepal having committed an offence pursuant to this Act against Nepalese citizen.
- (3) This Act shall come in to force immediately.

#### **2. Discrimination:**

Unless the subject or context otherwise requires; in this Act,

- a) "Cast-based discrimination and untouchability" means the act as referred to in Section 4.
- b) "Offence" means the act as referred to in Section 3.
- c) "Public Place" means place used for public purpose such as governmental or non-governmental office, education or industrial institution, antique monument memorials, inn, tap, well, pond.

- d) Dais (*Chautari*), road or way, vehicles of public transport, graveyards, garden, religious sites of any kind or and this term includes any other places where products or services are sold or distributed publicly.
- e) "Public Service" means governmental or non-governmental offices, public institutions, transport, industrial or educational institute, company, firm, shop, hotel, resort, lodge, restaurant, cafe, film hall or theatre and this term also includes any service or facility to be provided by any government or non-government agency for public use or utility.
- f) "Public occasion" means publicly organized feast or party, worship ceremony, religious offering, birth ceremony, naming ceremony, marriage ceremony, death ritual and religious, social or cultural ceremony of any kind.
- g) "Public-post holder" means a person holding the post where he/she is authorized by the constitution, other prevailing laws or the decision or order of the concerned body or authority or who has to fulfil public duty or obligation and this term also includes any incumbent officials or employee holding any position in public organisation.
- h) "Prescribed or as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

**3. Restriction on caste based discrimination and untouchability:**

- 1) No one shall commit or causes to commit caste-based discriminations and untouchability.
- 2) No one shall aid, abet or provoke anyone to commit caste based discrimination or untouchability or shall attempt to commit such an act.
- 3) If anyone commits an act pursuant to Sub-sections (1) or (2) shall be deemed to have committed an offence pursuant to this Act.

**4. To be deemed to have committed cast-based discrimination and untouchability:**

- 1) If anyone commits or cause to commit any act as referred to in this Section on the ground of custom, tradition, religion, culture, rituals, caste, race, descent, community or occupation shall be deemed to have committed caste-based discrimination and untouchability.
- 2) No one shall, on the ground of custom, tradition, religion, culture, rituals, caste, race, descent, community or occupation, commit or cause to commit the following act in public or private sphere (place) against a person by making caste based discrimination or untouchability.
  - a) To prevent, control or restrict anyone in any way from entering, attending or participating.

- b) To expel anyone individually or collectively from public place or public occasion or to commit social exclusion or discrimination of any kind or to impose restriction on such act or to demonstrate any other kind of intolerant behaviour.
- 3) No one shall, on the ground of caste, race, descent, community or occupation, deprive a person of using or enjoying public service.
  - 4) No one shall, on the ground of caste, race, descent, community or occupation, deprive a person of organizing public occasion or performing any act to be organized publicly.
  - 5) No one shall instigate or provoke anyone to commit an act that causes caste-based discrimination or untouchability or abet any one to commit such act, or knowingly participate in such act.
  - 6) No one shall, on the ground of caste, race, descent, community or occupation, prohibit any one to carry on profession or business or compel any one to carry on any occupation or business.
  - 7) No one shall, on the ground of caste, race, descent, community or occupation, deprive or cause to deprive any one of performing any religious act.
  - 8) No one shall, on the ground of caste, race, descent, community or occupation, prevent or cause to prevent anyone from producing selling or distributing any goods, services or facilities.
  - 9) No one shall, while producing, selling or distributing any goods, services or facility, produce, sell or distribute any goods, services or facility only for particular caste or race.
  - 10) No one shall, on the ground of caste or race, exclude any member of family or prevent him/her from entering in to the house or evict him/her from the house or village, or compel him/her to leave the house or village.
  - 11) No one shall, on the ground of caste race, descent or community, prevent a person of marriageable age pursuant to prevailing law from getting inter-caste marriage; or shall deny to perform naming ceremony for the person born from such marriage or compel or cause to compel for divorce.
  - 12) No one shall, by dissemination, publication or exhibition of audio visual materials, articles, pictures, figure, cartoon, poster, book or literature or by any other means, denote hierarchical supremacy of a person belongs to particular caste or race or commit an act that justifies social discrimination on the ground of caste or race or transmit the views based on caste- supremacy or hatred or use derogatory words or indicate thereof, by his/her conduct, gesture or behaviour, or instigate or abet or cause to do so in any manner that promotes caste based discrimination.

- 13) No one shall, on the ground of caste, race, decent or community, deny anyone to provide employment or discriminate in remuneration or cause to do so.

#### **5. Complaint:**

- 1) A person who finds that someone has committed or is going to commit an offence as referred to in section 4, may lodge a complaint in nearby police office as prescribed.
- 2) Notwithstanding anything contained in Sub-section (1), if any one commits an offence as referred to in Section 4 outside Nepal, complaint shall have to be lodged in nearby police office of the area where the victim resides or of the district where the defendant resides.
- 3) If the concerned police office fails to register the complaint lodged pursuant to Sub-section (4) or (2) or fails to precede the complaint as per prevailing law, the concerned person may complain to National *Dalit* Commission or local body in prescribed manner.
- 4) The National *Dalit* Commission or local body shall forward the complaint received pursuant to Sub-section (3) to the concerned police office in prescribed manner.
- 5) After receiving the complaint pursuant to Sub-section (4), the concerned police office shall make an inquiry in to the complaint and shall initiate necessary proceeding on such complaint as per prevailing law.

#### **6. Cooperation may be sought in the investigation of the case:**

While making investigation of any case under this Act, the investigating authority may seek cooperation as per necessity from *Dalit* community, local leaders, civil society or representative of organisation working for the right and empowerment of victim of the caste-based discrimination or untouchability.

#### **7. Penalty:**

- 1) The following penalty shall be imposed on the person who commits the following offence;
  - a. Whosoever commits an offence pursuant to Sub-section (2), (3), (4), (5), (6) or (7) of section 4 shall be liable to the punishment of imprisonment for a term from Three months to Three years or the fine from One Thousand Rupees to Twenty Five Thousand or the both.
  - b. Whosoever commits an offence pursuant to Sub-section (8), (9), (10), (11), (12) or (13) or section 4 shall be liable to the imprisonment for a term from one month to One year or the fine from Five Hundred Rupees to Ten Thousand Rupees or the both.

- c. Whosoever aids, abets or instigates anyone to commit caste-based discrimination or untouchability or attempt for such act shall be liable to half of the punishment prescribed to the principal offender.
- 2) If a person holding public post commits an offence pursuant to Sub-section (1) shall be liable to the punishment of an additional Fifty percent to the punishment as mentioned in that Sub-section.

#### **8. Penalty to person causing hindrance or obstruction:**

If a person hinders or obstructs in the inquiry or investigation of an offence punishable under this Act, the court may, on the basis of the report of the investigating authority may impose him/her half of the punishment prescribed to the offender.

#### **9. Restitution:**

- 1) If a person is convicted for the offence pursuant to this Act, the court may order the offender to provide restitution to the victim from Twenty Five Thousand to One Hundred Thousand Rupees.
- 2) Besides the restitution pursuant to Sub-section (1), if the offender is found to have made harm or loss to the victim, the court may, on the basis of such harm or loss, order the offender to provide medical treatment cost or reasonable cost of additional damage or harm to the victim.

#### **10. Limitation to file case:**

Case shall have to be filed for the offence pursuant to this Act, within three months from the commission of the offence.

**11. Government of Nepal to be plaintiff:** Government of Nepal shall be plaintiff in the case filed pursuant to this Act and such case shall be deemed to have included in the Schedule-1 of the Government case Act, 2049.

**12. Summary procedure to be followed:** Any case pursuant to this Act shall be proceeded and disposed by following the procedure as provided in Summary Procedure Act, 2028.

**13. Penalty to be imposed as per prevailing law:** If an act considered as an offence pursuant to this Act is also an offence pursuant to other prevailing law, it shall not be deemed to have created any obstacle by any matter written in this Act in order to file a suit in such offence pursuant to prevailing law.

**14. To be in accordance with this law:** The matters set forth in this Act shall be governed by this Act and other matters shall be governed by the prevailing law.

**15. Duty to extend Co-operation:** It shall be the duty of all concerned to co-operate in the investigation of the case pursuant to this Act.

**16. Power to frame Rules:** The Government of Nepal may frame necessary Rules to implement the objectives of this Act.

**17 Repeal:** Number 10a of the Chapter of Decency (*Adal*) of *Muluki Ain* (General Code) is, hereby, repealed.

“Give to every other human being every right that you claim for yourself - that is my doctrine.”

— Thomas Paine, 1794 —



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