“New gender in the constitution: pathways for transgender and third gender individuals”.

First Part: What gave rise to the politics of constitutional recognition of sex or gender distinction in identity?

Traditionally the concept Third gender is not alien in Nepal and South Asia, Many god/goddess are believed to be third gender nature. Transgender/Transsexual/Third gender are called Person of Third Nature; traditionally, historically and mythological; especially in Hindu and Buddhist tradition. In the constitutional Context: Article for Citizens and Citizenship Id has suggested reorganization of Third gender citizens and rights to have Citizenship ID according gender identity. Gender Neutral terminologies are used while defining rights to family, rights to marriage so that no discrimination is ensured for third genders. Non discrimination grounds have included Gender (and Gender is defined as Third gender, women and man now).

Supreme court decision from 21 Dec 2007 ordering government of to issue citizenship ID to Third gender, being part of Constitutional Assembly and Member of Fundamental rights committee I raise the issue frequently and explain if any one has any confusion.

These facts explain the prominence of these specific issues in the constitutional process.

Third gender and its obvious to everyone that Third genders exist in Nepal and they are different than man and woman. The Supreme Court’s decision has not been fully implemented yet; only two person has been issued Citizenship ID as their gender. National Human Rights Commission changed its HR abuse complain form and made inclusive of Third gender as well. Private bank as changed its bank account opening form and added extra one box to allow third gender o open Bank A/C. The High School curricula are in a process of including Third genders in the text while talking about gender and health. Gender Study of TU now have
included course on sexuality and gender and talks about all kinds of sexuality and genders including homosexuality and third genders

So far no constitutional and legal protection from discrimination on the ground of Gender that covers third genders, Third genders didn’t have legal ID, couldn’t go to school, access to health care and job...

The specific constitutional concerns of transgender people are Citizenship ID, Non discrimination, full equality, right to family, rights to health, education and job, social security for poor third gender, Proportionate inclusion in all state parts.

Second part: Which constitutional designs of institutions and processes were or are being adopted in response to these constitutional politics?

The new draft yet constitution does recognize Third gender as separate gender than man and women. Provisions: Legal ID, Inclusion, Non Discrimination, Social security, rights to education, job, pay etc.

There is no of institutional and procedural devices have or are being adopted to recognize sex or gender based identity distinction None, as its obvious that Man, Women and Third genders are visibly different.

In the new draft constitution to effectuate constitutional guarantees in practice

One can take the government to the court if the recognition of third genders, legal ID and fundamental rights are not ensured to Third genders too. There is provision of remedy as well.
Third part: What concrete consequences have been experienced from the constitutional arrangements based on their intended objectives to expand the inclusion of all groups in constitutional governance?

These are the strategies that have been adopted to recognize, respect and also to enforce the rights of transgender people:

The non Discrimination chapter includes gender and sexual orientation as one of the non discrimination grounds, but there is proviso that allows government to make special laws and programs to bridge the gaps and bring the marginalized community (including third gender) into main-stream. Social Justice Article in the fundamental rights ensures especial rights to third genders too.

The constitution has legitimized the third gender identity that has been denied politically and legally for long time but not socially.

· the recognition of rights of individuals to sexual or gender distinction has assisted hugely to create political and civil space for individuals who claim such identity. More and more LGBTI are open to their family and society; Many have joined the different social movement and political parties as well.