

**14th session of the Expert Mechanism on the Rights of Indigenous Peoples
Joint Statement from Indigenous Peoples of Nepal**

From 12-16 July 2021.

**Non-implementation of our Rights to Self-determination as Provided by
UN Declaration on the Rights of Indigenous Peoples**

**by
Ms. Amrita Thebe
*On behalf of the Indigenous Peoples of Nepal***

Respected Chair,

The right to self-determination is an inherent and the pre-condition for us to enjoy human rights and fundamental freedom, true democracy and self-determined development. Unfortunately, the government of Nepal has failed to protect our right to self-determination, contradicting the ICCPR, ICESCR, the ILO Convention No. 169, and the UN Declaration on the Rights of Indigenous Peoples that Nepal is a party to.

The government of Nepal has failed to substantiate the recommendation of the CEDAW (CEDAW/C/NPL/CO/6) made in 2018 on its 16th Session to amend the Constitution to incorporate the right to Self-determination. Back in 2008, the Federal Limbuwan Party and the government of Nepal agreed to form Autonomous Limbuwan with the right to self-determination by institutionalizing it in the constitution. But, the Constitution of Nepal fails to guarantee autonomy and self-governance with a right to self-determination.

The constitutional provision to form a Special, Protected, or Autonomous Region to protect cultural or economic development, by the Federal government (Article 56(5), has not been implemented, even though the case of Bhuwan Baram vs. Prime Minister of Nepal (W.N. 074-WO-0239) the Supreme Court of Nepal has issued a directive order to implement it.

Mr. Chair

The article 56 (5) of the Constitution 2015, directly contradicts the notion of the right to self-determination, which doesn't guarantee political rights including freely pursue economic, social, and cultural rights.

Nepal has failed to respect the Concluding observations of the Committee on the Elimination of Racial Discrimination (CERD/C/NPL/CO/17-23) to Nepal, dated 11 May 2018, recommended to ensure the participation of Indigenous Peoples in government bodies under article 42 of the Constitution is effectively respected and that indigenous peoples freely choose their representatives and obtain the free, prior and informed consent of indigenous peoples prior to the approval of any project affecting the use and development of their traditional lands and resources.

Our lands, territories, and natural resources are under threat due to the disintegration of the Indigenous Peoples' Lands and Territories while demarcating the provincial boundary and aggressive development initiatives. The State not only failed to recognize our rights to lands, territories, and natural resources, it also continues the historical legacy of the colonization by

expropriating our lands, territories, and natural resources without our consent in the name of development, relocation of the outsider, settlement of the squatters, etc. The recently formed land commission has been aggressively dispossessed indigenous peoples from their customary lands which they have the pre-existing right. No free prior and informed consent has been taken in this regard.

Twelve national parks, one wildlife conservation, one hunting reserve, six protected areas, and 13 buffer zones occupy 23.39 percent of the total lands of the country. All occupied areas fall under our ancestral lands. We have been displaced and we lost our livelihoods and food security. In this regard, the government has completely failed to implement the recommendation of the Special Rapporteur on the Rights of Indigenous Peoples- SRIP (A/HRC/12/34/Add.3) to rectify all existing laws related to the Protected Areas (PA) in line with the ILO Convention No. 169 and UNDRIP to respect Indigenous Peoples right to control and access on the ancestral and cultural lands and resources, including free participation on the management of the PA.

Mr. Chair

I would like to draw your attention to the emerging jurisprudence of the Economic Social and Cultural Rights (CESCR) titled General Comment No. 26 (2021) relating to land and economic, social, and cultural rights, that fundamentally contradicts the UNDRIP and jeopardize its implementation. This will create a disaster to exercise a minimum standard of human rights and fundamental freedoms to Indigenous Peoples

In the light of the above situation, we would like to draw the attention of the EMRIP, to urge the Government of Nepal for urgent action on the following;

- Amend the constitution as recommended by the CEDAW recommendation made in the sixth periodic report of Nepal.
- Formally recognize autonomy and self-governance of IPs in-laws that respect the right to self-determination in their ancestral lands and territories in accordance with the agreements between Indigenous Peoples and the State.
- Implement the recommendations of the Committee on the Elimination of Racial Discrimination (CERD), Recommendation of SRIP, and the Committee on the Elimination of Discrimination against Women (CEDAW)
- Recognize IPs' rights over lands, territories, and natural resources that they have occupied customarily owned and used traditionally.
- Ensure free, prior, and informed consent of indigenous peoples prior to develop, design, plan to implement, and evaluating any development projects in the lands and territories of IPs.
- Ensure benefit sharing on the benefit emerge out of the commercial activities that exploit resource available in the lands and territories of IPs.
- Ensure protection of IPs' collective way of life that adversely affects by business-related activities. Stop development aggression in the lands and territories of IPs.
- Recommend the Committee on the Economic, Social, and Cultural Rights (CESCR) to incorporate and avoid any inconsistency that jeopardizes the implementation of the UNDRIP in the emerging jurisprudence the General Comment No. 26 (2021) on land and economic, social, and cultural rights.

Thank you, Chair.

List of Organizations

1. Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), Anamnagar, 29, Kathmandu, Metropolitan city, Nepal, Contact: +977-1-5775510, (www.lahurnip.org)
2. Nepal Federation of Indigenous Nationalities (NEFIN), Kusunti, Lalitpur, Nepal, Contact: +977-9851005691, (www.nefin.org.np)
3. National Indigenous Women's Federation (NIWF), Baneshwor, Kathmandu, Nepal. Contact: +977-9851044419, +977-1-4781492, (www.niwf.org.np)
4. Youth Federation of Indigenous Nationalities, Nepal (YFIN, Nepal), Contact: +977-9851001946
5. NGO Federation of Nepalese Indigenous Nationalities (NGO-FONIN), Maitidevi, Kathmandu, Contact: 977-9841330475, (www.ngofonin.org.np)
6. Nepal Indigenous Disabled Association (NIDA), Bhawani Mandal, Lalitpur, Nepal, Contact: +977-9841173881, (www.nidanepal.org.np)
7. Federation of Nepalese Indigenous Nationalities Journalists' (FoNIJ), Anamnagar, Kathmandu, Nepal. Contact: 01-4256569 (www.fonij.org)
8. National Indigenous Disabled Women Association Nepal (NIDWAN), Kusunti-4, Lalitpur, Contact: +977-9841457270, (www.nidwan.org.np)
9. Indigenous Women Legal Awareness Group (INWOLAG), Kumaripati, Lalitpur Contact: +977-1-5008706 (www.inwolag.org.np)
10. National Indigenous Women Forum-NIWF, Kathmandu, Nepal, Contact: 9841546029
11. Aathpahariya Kirat Samaj, Dhankuta-5, Dhankuta, Contact: 9851199501
12. Yamfu Kirat Samaj, Lalitpur, Contact: 9851200469
13. Nepal Bote Mahila Samaj, Bharatpur 11, Chitwan, Nepal. Contact: 9845144875
14. Nepal Chhantyal Association, Manmajju, Kathmandu, Contact: 9841962449
15. Nepal Majhi Women Upliftment Association, Kathmandu, Contact: 9843242905
16. Nepal Pahari Mahila Bikash Sangh, Lalitpur, Contact: 9841515029
17. Nepal Santhal Aadibashi Utthan Sangh, Morang, Contact: 9842043867