

Annual Report, 2018

**Lawyers' Association for Human Rights of
Nepalese Indigenous Peoples
(LAHURNIP)**

Publisher

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Abbreviation

AIPP	Asia Indigenous Peoples Pact
CA	Constituent Assembly
CERD	Committee on the Elimination of Racial Discrimination
EIA	Environmental Impact Assessment
EIB	European Investment Bank
FY	Fiscal Year
GoN	Government of Nepal
IEE	Initial Environment Examination
ILO	International Labour Organisation
INWOLAG	Indigenous Women's Legal Awareness Group
IPOs	Indigenous Peoples Organisations
IPs	Indigenous Peoples
IWGIA	International Work Group for Indigenous Affairs
LAHURNIP	Layers' Association for Human Rights of Nepalese Indigenous Peoples
NCARD	National Coalition Against Racial Discrimination
NEA	Nepal Electricity Authority
NEFIN	Nepal Federation of Indigenous Nationalities
NIDA	Nepal Indigenous Disabled Association
NIWF	National Indigenous Women's Federation
PIL	Public Interest Litigation
SC	Supreme Court
TV	Television
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
YFIN	Youth Federation of Indigenous Nationalities

Preface

By promulgation of the 2015 Constitution and conduction of the three levels, federal, provincial and local level, of elections politically Nepal has entered into the federal democratic republic. But the indigenous peoples could not be satisfied of the newly introduced system as the legal provisions curtailed their rights. The present Constitution is regressive to the 2007 Interim Constitution.

Indigenous peoples are the advocates of federal democratic republic Nepal, indeed. But it has come in the different model that totally denies their identity and rights. Even the constitutional provision regarding formation of autonomous, protected and special regions have been discarded by the political parties and the government. This is severely curtail their aspirations towards self-rule, autonomy and equality.

In this context, the IPs could have been more organized and responsive to the government decisions. But, that could not happened because of the political influences and co-options that would create social injustice and ultimately hinder in peace, harmony and prosperity.

Being a small organisation, advocating for IPs rights, constantly working with the indigenous peoples organisations, policy makers, leaders, activists and human rights defenders to promote and defend Indigenous human rights. We are sure that it is not sufficient. But, we believe, it has played a significant role to advocate from local to international level to advocate the rights of IPs. That might not be reflected into the immediate results. However, we hope, this will have long term effects to ensure the rights of IPs in the policies and practices in-line with the international human rights instruments such as the ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

In this socio-political and economic situation we would urge for the immediate removal of the discriminatory constitutional and legal

provisions and set a state structure where all the historically marginalised communities, including indigenous peoples, feel secure and enjoy their rights without any discriminations and deprivations. This annual report will reflect some of the major achievements of the LAHRUNIP in the fiscal year 2017/018 in the course of working with the indigenous peoples of Nepal in defending their rights.

LAHURNIP would like express its due gratitude to those who have tremendously contributed in our works regarding advocating the rights indigenous peoples in their capacity. Which always encourage us to act sincerely and seriously without any vested interests and prejudices.

Advocate Shanti Kumari Rai
Chair person

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1. Introduction

This annual report includes the progress achieved and challenges encountered by the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) in the fiscal year (FY) 2074/075 (2017/018).

From the very beginning of promulgation of the 2015 Constitution the indigenous peoples (IPs) have expressed their reservations and grievances against the discriminatory provisions of the Constitution. In this light the IPs have been continuously raising their voices through protests and struggles from different quarters. Though movement of the IPs is not in the height and strength as expected and used to be in the past, especially at the time of first Constituent Assembly (CA), due to political co-option and high influence, its essentiality and necessity is still in place. For that a spontaneous and strategic move is necessary to achieve its stipulated goals set by the IPs movement.

Thus the major interventions of LAHURNIP for the year have been concentrated on policy reform through interventions. This includes lobby advocacy, strategic litigations, capacity development and community mobilisations. Further it has also engaged in international solidarity and synergy building. Collective human rights, fundamental freedoms and, business and human rights of IPs are the major issues of interventions in the FY 2074/075.

2. Major activities and achievements

Following are the major activities and achievements

2.1. National lobby and advocacy

2.1.1 Policy interventions

After promulgation of the 2015 Constitution the GoN is in the process of reviewing the existing policies and introducing new laws and policies. The LAHURNIP engaged intensively in policy interventions during the reporting period. Consequently, some positive results have achieved such as the land use policy, in the policy the rights

2.2.1. The road expansion projects in Kathmandu (traditional homeland of Newar Indigenous Peoples) are in operation violating International Labor Organizations Convention No. 169, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) including national laws. The affected communities launched series of advocacy program against the illegal road expansion projects demanding meaningful participation, consultation, Free Prior and Informed Consent (FPIC) and justifiable composition. The affected communities filed numbers of Public Interest Litigations (PILs) in Supreme Court (SC) and also submitted complaint in ILO. The Supreme Court (SC) made a decision in favor of the affected communities on 28 September 2017.¹ The verdict of the SC apparently indicates consultation, participation, justifiable compensations to the affected among others. Similarly, the affected communities have lodged complaint to the ILO in collaboration with the Nepal Telecom Employees' Union, as it must go through the trade union. The complaint was accepted and decided to form a tripartite committee for the investigation by the 333 session of the ILO.

2.2.2. Khimti-Dhalkebar 220 kV Transmission Line (KDTL) Project was initiated by Nepal Electricity Authority (NEA) in 2003 with the funding of World Bank (WB). The WB approved a US\$84.11 million loan for the Nepal Power Development Project. Around 114,516 people and 21,668 households being affected by the Project.² Despite the Project's potential impact, including on many indigenous households, the communities were not properly informed or consulted.³ The affected communities in Sindhuli, a small segment of the project, have raised persistent concerns about Free

¹ http://www.lahurnip.org/uploads/articles/supreme_166917.pdf

² Executive Summary of Environmental Impact Assessment Report for KDTL, page IV, section 4.3: <http://www.accountabilitycounsel.org/wp-content/uploads/2013/04/Khimti-Dhalkebar-EIA-Summary.pdf>.

³ As confirmed in the Inspection Panel's Final Report, the Bank's "Management did not ensure adequate, timely and meaningful consultations during project preparation and implementation as required by Bank Policy." See, page vi, para 31 at <http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/87-Investigation-Report-Nepal-Power-Development-Project1.pdf>.

Prior and Informed Consent (FPIC), lack of participation and consultation. The communities filed a complaint to WB inspection panel that conducted investigation in 2014/015 and found the violation of Bank operational policies.⁴ The affected communities received 100% compensation in Sindhuli for 3.85 Km stretch in the right of way.⁵ Due to the persistent movement of the affected communities the NEA and affected people went through the independent facilitated dialogue in 2017, but the dialogue could not be concluded with substantive results on health safety and issues related to the benefit sharing.

2.2.3. The 132 kV Transmission Line Project, located in Lamjung district, is operated by the government of Nepal and a Chinese Company called Sino-Sagarmatha Hydropower. The project affects more than 200 indigenous (Gurung, Ghale, Newar) and local community households. The project has not gone through due process of law. The affected communities are demanding meaningful participation, full information disclosure regarding the project and its adverse impact and justifiable compensation of the lands the project acquired. As a result, the Minister of Energy has issued directives in the name of the concerned authorities to resolve the issues in an amicable manner.

2.2.4. 220 kV Marsyangdi Corridor Transmission Line Project, located in Lamjung district, Gandaki province, is being financed by European Investment Bank (EIB), has violated its operational policies, international and domestic laws. The EIB is funding the project as part of its nearly 100 million Euro Nepal Power System Expansion Project ⁶ whereas the NEA is executing the project. The affected indigenous communities are demanding their rights as envisioned by ILO No.169 and UNDRIP and other domestic laws such as FPIC, consultation, participation, information,

⁴ <http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/87-Investigation-Report-Nepal-Power-Development-Project1.pdf>.

⁵ <http://ewebapps.worldbank.org/apps/ip/PanelCases/87Investigation%20ReportNepal%20Power%20Development%20Project.pdf>

⁶ <http://www.eib.org/en/projects/pipelines/pipeline/20130599>

justifiable compensation in particular. Number of dialogues has been held with the NEA and ministry of energy but the concerns of affected communities yet to be addressed. On August 9, 2018 the FPIC & Rights Forum's, organization of affected communities, has sent a letter to the EIB attaching setting out gaps in the EIB's planning, design, and implementation of the Marsyangdi Corridor, and failures to follow international and domestic law, including gaps in existing environmental and social documentation.⁷

2.2.5. Dordi hydro electric project with 12 MW is in operation in Lamjung district, Gandaki Province that is not complied with national and international standers. The project is promoting Lamjung Electricity Development Company (LEDCO). Affected indigenous and local communities are protesting the project demanding full discloser, consolation and benefit sharing. Series of dialogue with the affected communities and company were held. The company is agreed to implement the mitigation **programs** ensuring the participation of affected communities, but the issues related to the benefit sharing is yet to be concluded.

2.2.6. Nyadi hydropower project with 30 MW is being operated by the Butwal Power Company and the LEDCO in Nyadi river, Lamjung, Gandaki Province. The project has abused the rights of Indigenous and local communities as they were not properly consulted and participated in all phases of project implementation. The human settlements around the project area are getting damaged due to the explosion carried out by the project. The affected communities are organized and demanding the information on the adverse impact of the project. The demands of affected communities have included full information discloser, participation, and compensation and benefit sharing. The first found of dialogue between project authorities and communities was held but demands of affected have not been addressed from this dialogue.

⁷ <https://www.accountabilitycounsel.org/wp-content/uploads/2018/08/8-9-18-letter-to-eib-from-communities-in-lamjung-nepal.pdf>

2.2.7. 'Upper Trishuli-1', a hydro power project with 216 MW, is set to operate in Rasuwa district (traditional homeland of Tamangs). The project is being developed by Nepal Water and Energy Development Company (NWEDC). The project is a joint-venture with stakes of three Korean companies, i.e. Korea South East Power Company (52%), Daelim Industrial Corporation (16%) and Kyeryong Construction Industrial Corporation (10%), the International Finance Corporation (12%) and Bikesh Pradhanang (10%), a Nepali investor. The project has violated the IFC operational policies including national laws including ILO NO.169 and UNDRIP, 2007. Due to the constant demands of affected communities, the project has initiated FPIC process with technical support of IFC. Now, FPIC committee has been formed and they are in the process of developing Indigenous Development Plan.

2.2.8. The Hongshi Shivam Cement Private Limited Company (HSCPLC) has launched its cement production factory in Beni Manipur of Nawalparasi. The HSCPLC is the joint venture investment of China and Nepal. Limestone is being extracted in from Jyamire of Palpa district which is the traditional homeland of Magar IPs. The company has not giving the information about the adverse impact of the project. The affected were not consulted and denied participation. Now, the affected are organized and demanding FPIC and participation in decision making process. Some rounds of dialogues went between the project and the affected communities. But yet to reach to the logical conclusion.

2.2.9. Chaukune Cement Factory, the biggest cement factory in Nepal, is going to be operated in the homeland of Magar IPs in Surkhet district, western Nepal. The factory is expected to produce 1,500 to 3,000 tons of cement per day. But, the affected communities were not given proper information regarding the project. At the moment the affected communities are demanding full disclosure and forming a struggle committee. Apart from that FPIC and participation in all phases of this project implementation are also the major demands of the affected communities.

2.2.10. Kabeli 'A' hydro-power project operating in eastern Nepal with WB funding has also been contested for the past 4 years. The project has violated the provisions of ILO convention No.169, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) as well as national policies. Due to the consistent voice of affected communities, the project has shared the project information in different mother-tongue languages and has agreed to provide 75% compensation of the land acquired for project.

2.2.11. Drinking water Project in Dharan is operated by the Government of Nepal with the financial support of Asian Development Bank (ADB). The project has occupied the cultural site of Rai and Limbu IPs without the consent of the concerned communities. The affected have been raising collective voices to implement the safeguard policies of the bank and international standards established in ILO Convention No.169 and UNDRIP. The project is committed to addressing the concerns of affected in an amicable manner.

2.2.12. Beer production factory named Shree Brothers Blenders Pvt. Ltd. was established in the village of Tharus in Morang district. The project has not gone through the FPIC process with Tharu IPs. The factory has not provided information related to the project and its adverse impact. After the continuous protest the factory have been shut down.

2.2.13. Poultry Farm A huge poultry farm was established in Soravag of Morang district in 2070 BS (2013 AD) without due process of law. The poultry farm causes environmental degradation and detrimental to human health because of solid waste emerging from the farm. The farm is expected to produce 38,000,000 eggs per year. The farm and affected communities reached an agreement to relocate the farm within the time period of 2 years. The environmental pollution is under control now as per the agreement.

2.2.14. A sub-highway of 8 KM in Dharan Sub-Metropolitan City of Sunsari has planned by the government of Nepal has planned to construct. Around 1,500 households with 7,000

populations are estimated to be displaced due to the project. The project was initiated without consultation to the IPs and local communities who are being directly affected. The communities are demanding alternative solutions rather than accepting the project. The concerned project authorities are committed to addressing the concerns of communities.

2.2.15. 4.8 MW hydro power project operated in the land territories of Magar Indigenous Peoples (IPs) in Naumule of Dailekh district has violated the FPIC, right to information and participation. Due to the constant protest of the affected community, the project has provided 100% compensation of the land of the affected based on current market value. In addition the communities are also demanding for free share from the project benefits. But the project agreed to allocate 10% share investment for the affected communities. Furthermore the project and affected communities have agreed to carry out a programme under the Corporate Social Responsibility (CSR) with full and effective participation of the affected community. Basically, the CSR includes the capacity development of affected regarding income generation and other development activities such as support to roads, schools etc.

2.2.16. Traditional institution of Tharu IPs called Badghar in Kothiya Gaun of Bardiya district revitalized. A slaughter house is a serious issue in Kothiya Gaun where around 80 to 200 buffaloes are killed per day and the meat is supplied outside the country. The environment around the village is much polluted due to the slaughter house. The slaughter house violates the rights to lands and deteriorates the health of the communities residing surroundings. Apart from that the FPIC and participation of affected peoples in the decision making is also discarded. The Badghar, revitalized a traditional institution in this Village, and is mobilizing the communities to defend their human rights. The traditional institutions are active in social, political and economic issues of providing leadership to the communities. Apart from that the traditional institutions are also effective in conflict mitigation at the community levels. The revitalization of such institutions gives space for the communities for dialogue with the development projects on-behalf of the affected communities.

2.2.17. Kabeli Corridor 132 kV Electricity Transmission Line Project is under construction with the support of the WB. Communities in Siddhi Thumka of Ilam district, eastern Nepal, are struggling against the Kabeli Corridor 132 kV Electricity Transmission Line Project. As in other parts of the country the project did not follow due process of law. It is supposed to erect 11 pillars in the Siddhi Thumka village to transmit electricity. After a series of protests by the affected communities the project has agreed to have a dialogue with the communities. The dialogue is expected to take place soon. Major demand of the affected is either rerouting the transmission line or justifiable compensation.

2.2.18. Gitang Drinking Water project is supposed to be installed in the border of Jamuna and Maipokhari villages (lies under Sandakpur Rural Municipality in the new local level structure) of Ilam district to supply drinking water to urban citizen of the district, including district headquarters. Initially, the project was funded by the ADB. After the protests of the affected communities the ADB has withdrawn its funding. But a household-survey is conducted by the municipality of the affected communities to resume the project on its own. The Municipality has showed its commitment to address the issues of the affected communities regarding drinking water, irrigation, support to mini hydro projects, health, education etc.

2.3. Legal support and advocacy

Pro bono legal system is one of the core areas of intervention of the LAHURNIP to ensure the rights of IPs in Nepal. In the FY it has supported to the communities lodging cases to the courts at the various levels and providing legal supports continuously. Following are the cases supported by the LAHURNIP in the FY:

Table 1: Status of court cases

SN	Issue	Case No	Type of Cases	Area/ Location	Court	No of Cases	Status
1	Writ-Land Policy (Gopal Dahit Et al)	074-FN-0104	Land		Supreme Court		decided on 14 Feb 2018
2	Road expansion						
2.1	Ranibari	073-WO-0007	Land	Ranibari	" "	5	
2.2	Thankot		Land	Thankot	" "	1	
2.3	Kalanki		Land	Kalanki	" "	1	
2.4	Sanepa		Land	Sanepa	" "	1	
2.5	Harisiddhi		Land	Harisiddhi	" "	1	
2.6	Badegaun		Land	Badegaun	" "	1	
2.7	Chapagaun		Land	Chapagaun	" "	1	
2.8	Ram Krishna						
	Maharjan						
	Samet Godawari	074-WO-0674	Land	Godawari	" "	4	
	Ram Saran						
	Dangol-Kalimati	072-WO-0943	Land	Kalimati	" "	1	
3.1	Mangol Mulbasi		General Human Rights		" "	2	

3.2	Mangol Mulbasi		General Human Rights		Special Court	2	
3.3	Mangol Mulbasi		General Human Rights		High Court, Patan	2	
3.4	Mangol Mulbasi (Organize Crime)	073-CR-0069	General Human Rights		District Court, Bhaktapur	1	
3.5	Mangol Mulbasi		General Human Rights		District Administration Office	1	
3.6	Mangol Mulbasi		General Human Rights		District Court, Taplejung		
4	Chhaya Devi Commercial Complex		Human Rights BHR Thamel		Supreme Court	1	

5	Bekharam Maharjan samet Harisiddhi Bricks	068-WO-0692	BHR	Harisiddhi	" "	2	
6	Khadgi-Citizenship		Identity		" "	1	
7.1	Khimti Dhalkebar	069-WO-0749	BHR	Sindhuli	" "	4	
7.2	Khimti Dhalkebar	069-WO-1100	BHR	Sindhuli	High Court	4	
7.3	Khimti Dhalkebar	069-WO-1188	BHR	Sindhuli	District Court	1	
8	Local Bodies Restructure		Identity		Supreme Court	2	
9	Minorities		Identity		" "		
10	CTEVT-Hayu and others		Identity		" "		
11	Birat Poltry Form		BHR		" "		
12	Ram Hari Shrestha (NHRC Inclusive)	070-WO-0638	Group Rights		" "	2	
	Bhim Rai samet (NHRC) Inclusive Sifarish	071-WO-0231			" "		

13	Constitution- Regulation	071-WO-0231	Group Rights		" "	1	
14	Ram Dulari Rana		General Human Rights		District Court, Kanchanpur	1	
15	Byasi saukha	073-WO-1333	Minorities		Supreme Court	2	
16	Tajpuriya		Local Restructure		" "	2	
17	Bhawani Baral	073-PC-5102	Civil case	Kathmandu	District Court Kathmandu	1	
18	Kamal Tigela	074-WO-0235	Civil Criminal Case	Kathmandu	District Court Kathmandu		
19	Bhawani Baral	074-WC-0011	Writ	Kathmandu	Supreme Court		

2.4. Collaboration and cooperation

Collaboration and cooperation with local, national and international institutions and organisations is one of the strategies of the LAHURNIP to strengthen lobby and advocacy activities at various levels. During the reporting period it has extended cooperation and coordination with several ministries, National Human Rights Commission (NHRC), Nepal Telecom Employees' Union, NEFIN, NIWF and other various local and national level organisations. Similarly, it has also cooperated with the United Nations Office of the High Commissioner for Human Rights (OHCHR), International Work Group for Indigenous Affairs (IWGIA), Accountability Counsel (AC), CERD and other various likeminded organisations. Those collaborations and coordination supported to raise IPs issues at different levels effectively.

2.5. International lobby advocacy

International lobbies and advocacies are key to create pressure to the State for effective implementation of international human rights instruments Nepal is party to.

2.5.1. Alternative report to the Committee on the Elimination of Racial Discrimination and concluding observations

In the 95th session of the Committee on the Elimination of Racial Discrimination (CERD) the LAHURNIP has submitted the alternative report in-behalf of the indigenous peoples. It has coordinated with the Nepal Federation of Indigenous Nationalities (NEFIN), National Indigenous Women's Federation (NIWF), Youth Federation of Indigenous Nationalities (YFIN), Nepal Indigenous Disabled Association (NIDA), National Coalition Against Racial Discrimination (NCARD) Indigenous Women's Legal Awareness Group (INWOLAG) and other IPs organisation in the process of preparation and submission of the report. Mainly the report accommodated the issues of the IPs of Nepal pertaining to Social justice, meaningful participation of IPs in the decision making process, criminalization of IPs culture and traditions, limitation for IPs on political opportunities and participation and the issues of IPs women and persons with disabilities (*see annex I*).

After the intensive review of the committee it has issued the concluding observations in...The concluding observation has critically examined the State report and made recommendations (see *annex II for the full text of the concluding observation*). The recommendation included the serious and critical issues of IPs. Following are the major issues raised and recommended by the committee to the Government of Nepal (GoN):

- Recalling its general recommendation No.23 on indigenous peoples (1997), the Committee recommends that the State party:
 - (a) Ensure that its domestic legislation formally recognizes all indigenous peoples in Nepal;
 - (b) Ensure that the right of indigenous peoples to participate in government bodies under article 42 of the Constitution is effectively respected and that indigenous peoples freely choose their representatives;
 - (c) Find an adequate negotiated solution to resolve the dispute regarding the rights of indigenous peoples over their traditional lands and natural resources, including by revising its legislation on this issue and taking into account ILO Convention No. 169;
 - (d) 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;
 - (e) Take all necessary measures, including legislative measures, to guarantee that evictions are carried out in accordance with international standards, and provide remedies and adequate alternative housing to those affected by eviction;
 - (f) Ensure the safety of indigenous peoples who have been subjected to threats, harassment, and other arbitrary and violent acts by government agents and/or private individuals; and take measures to prevent and investigate such acts and punish the perpetrators.
- The Committee also invites the State party to repeal laws that criminalize aspects of indigenous cultures in order to respect the rights of indigenous peoples (Adivasi/Janajati) to freely exercise their cultural and religious rights.

The aforementioned recommendations to the GoN is instrumental for promotion and protection rights of the IPs in Nepal as they have been facing discriminations historically and that has not come to the end ever after the new political and administrative system of Nepal. The federal democratic republic is also has not appears in favor of IPs as the newly introduced constitutions, laws, policies, plans and regulations do not have sufficient space for IPs to enjoy their economic, political and social rights.

2.5.2. Complaint to the ILO

LAHURNIP has facilitated to submit complaint to ILO Geneva on the issue of road expansion projects in Kathmandu valley. For submission of the complaint it has supported to the affected indigenous Newar community in coordination with the Nepal Telecom Employees' Union as it is the mandatory to submit complaints to the ILO via trade union.

2.5.3. Complaint to the EIB

LAHURNIP with the support of Accountability counsel support the community of Lamjung affected by the 220kV transmission line project to submit a complaint to the mechanism of the European Bank.

2.5.4. Forum on business and human rights

The representatives of the LAHURNIP have participated the session of the Forum of Business and Human Rights. It has been useful to learn and share the experiences of human rights violations caused by the business relate activities in Nepal in the international forum.

2.5.5. Participation in UNPFII

One of expert advisor of LAHURNIP has participated the session of UN Permanent Forum on Indigenous Issues held in NewYork. The issues of IPs in Nepal has shared in the side event and interventions were made by the representatives of the LAHURNIP in the main event of the session.

3. Media advocacy

Media plays a vital role to sensitise the IPs and policy makers regarding the rights of IPs. During the reporting period LAHURNIP has intensively worked with the medias to cover the issues of IPs constantly. Basically, it has mobilised Radios, TV and social Medias. Apart from that it has also used in-house publications and website to disseminate the information related to IPs rights and movements.

3.1. Audio Video programme

During the reporting period 20 episodes of audio programmes on IPs rights, in particular lands and natural resources, have been produced and aired through FM radio across the countries via more than 30 stations in collaboration with the Indigenous Media Foundation (IMF). Apart from that TV programmes on the various issues of IPs has broadcasted from indigenous Television. The collaboration with the IMF and indigenous TV continuous. Apart from that LAHURNIP has been also mobilising other print Radio, TV and print medias to encourage them to cover the issues of IPs in their respective medias. Some of the audio visual materials are available on the website of indigenous TV.

3.2. Research

In the reporting period LAHURNIP have done researcher on the pertinent subjects and issues. Two researches were focused on the traditional institutions of the indigenous peoples. Those researchers made focusing the traditional institutions of Tharu, Thakali, Limbu and Santhal. Similarly, a research was carried out on the issue of Upper-Trishuli 1 hydropower project of Rasuwa district. A policy analysis was accomplished focusing the issue of indigenous women and business and human rights.

3.3. Documentaries

Five documentaries have produced during the reporting period to create awareness among the IPs and other stakeholders regarding issues and rights of IPs. Those documentaries are also available of the website of LAHURNIP; www.lahurni.org

Table 2: Documentaries prepared

SN	Documentaries
1.	A documentary on Chhayadevi Business Complex, Kathmandu, Nepal.
2.	A documentary on the adverse impact of Birat poultry farm in Soravaga of Morang district.
3.	A documentary on land grabbing of Santhals, Morang
4.	A documentary on Khimti-Dhalkebar Transmission Line Project, Sindhuli.

2.4. Publications

In-house publications have been instrumental to create awareness and engage in lobby and advocacy activities. Following publications have made during the reporting period:

Table 3: Publications

SN	Publication	Language
1.	Annual Report, 2017	English
2.	Nepalma Aadibasi Adikar Hananka Ghathana	Khas-Nepali
3.	Traning Manual Business and Human Rights	Khas-Nepali
4.	Uper Trishuli-1, 216 MW Hydropower Project On The Indigenous Communities of Rasuwa	English Khas-Nepali
5.	Indigenous Peoples Community Base Justice System in Nepal (Limbu and Santhal)	English
6.	Calander, 2075	English/ Khas-Nepali

3. Challenges

Following are the major challenges encountered in the course of implementation of the projet:

- Indigenous communities are divided in line with the different political ideologies that hindered to building unity of the project affected communities.

- The private companies made efforts to dividing the communities.
- The political parties, who are against the rights of IPs, found challenges on implementing this project.
- The project implementing partner and CSR monitors who are keys to this project were blamed as anti-development elements.
- The government of Nepal and its administrative units are reluctant to implement human rights based approach to development.
- IPOs and IP communities are not well aware on their human rights and fundamental freedoms.

4.Lessons learned

Below mentioned are the lessons learned during project period:

- Mobilization of development project affected communities via CSR monitors was found to be effective
- Mobilization of non-IPs communities in the rights campaign was effective
- Coordination with NHRIs, UN mechanisms, likeminded organizations, media outlets , journalists and IPOs made the advocacy strong
- Coordination with political leader and parties who are positive to IPs rights have been fruitful
- Documentation based advocacy made effective advocacy
- Experts advices made the arguments and dialogues effective and strong
- Mobilisation of media is instrumental Use of community movements, dialogues, lobby advocacy and legal battle simultaneous is most effective

BRS Neupane & Co.
Chartered Accountants
Kumari Marg, House No. 43
P.O. Box 8137, Naxal,
Kathmandu, Nepal

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**BRS Neupane
& Co.**

September 11, 2018

To,
Mr. Tahal Thami
Director
Lawyers' Association for Human Rights of Nepalese Indigenous People (LAHURNIP)
Anamnagar, Kathmandu
Nepal

Re: Submission of Audit Report of "Lawyer's Association for Human Rights of Nepalese Indigenous People (LAHURNIP),"

Dear Sir,

We are pleased to submit the audit report of "Lawyer's Association for Human Rights of Nepalese Indigenous People (LAHURNIP) for the period from 1st Shrawan 2074 to 32nd Ashad 2075 and a summary of significant accounting policies and other explanatory information.

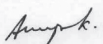
The submission includes:

1. Independent Auditor's Report
2. Financial Statements with related schedules and explanatory notes.
3. A Management Letter of the audit observations and recommendation, together with the response from the management.
4. Tax Return for the fiscal year 2074.75.

While preparing the said reports, the comments and suggestion given to us have been duly considered.

Thanking you.

Yours sincerely,



CA. Anup K. Shrestha
Managing Partner

BRS Neupane & Co.
Chartered Accountants
Kumari Marg, House No. 43
P.O. Box 8137, Naxal,
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**BRS Neupane
& Co.**

INDEPENDENT AUDITOR'S REPORT

We have audited the accompanying Financial Statement of Lawyer's Association for Human Rights of Nepalese Indigenous People (LAHURNIP) for the period from 1st Shrawan 2074 to 32nd Ashad 2075 and a summary of significant accounting policies and other explanatory information.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Generally Accepted Accounting Principles. This responsibility includes: designing, implementing and maintaining internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

Our responsibility is to express an opinion on this Fund Accountability Statement based on our audit. We conducted our audit in accordance with Nepal Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement.

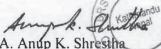
An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion the financial statements give a true and fair view of the financial position of LAHURNIP as at 32nd Ashad 2075 and the results of its operations for the period then ended, in conformity with Generally Accepted Accounting Principles where stated otherwise in the notes to the financial statements.

Date: 6th September 2018
Place : Kathmandu, Nepal


C.A. Anup K. Shrestha
Managing Partner



Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)
Balance Sheet
As on Ashad 32, 2075

Particulars	Sch.	Current Year (NPR.)	Previous Year (NPR.)
Liabilities			
Accumulated Fund Balance		20,861,396.09	11,638,110.11
Current Liabilities			
Payables	27	516,410.73	305,887.80
Total		21,377,806.82	11,943,997.91
Fixed Assets	28	-	-
Office Assets and Furniture		52,500.00	1,659,854.20
Less: Charged to Expenses		(52,500.00)	(1,659,854.20)
Current Assets			
Cash	25	4,010.00	41,975.00
Bank	24	21,089,796.82	10,951,492.91
Receivables/Advances	26	284,000.00	950,530.00
Total		21,377,806.82	11,943,997.91

Significant Accounting Policies and Notes to-
Accounts

29

Schedule and explanatory notes form an integral parts of Financial Statement
As per our report of even date



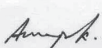
Asim Sunuwar
Admin & Finance Officer



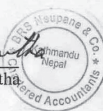
Advocate/Bhim Rai
Treasurer




Tahal Thami
Director



CA. Anup K. Shrestha
Managing Partner
BRS Neupane & Co.
Chartered Accountants

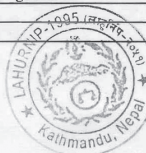


Date: 6th September 2018
Place: Kathmandu, Nepal

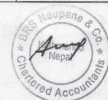
Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)
Income and Expenditure Statement
For the year ended Ashad 32, 2075

Particulars	Schedule	Current Year (NPR.)	Previous Year (NPR.)
Income			
Grant Income	21	32,309,411.88	23,476,656.44
Contribution from Members	22	12,450.00	334,236.00
Interest Income	23	213,151.73	42,988.89
Total Income		32,535,013.61	23,853,881.33
Expenditure			
Programme Cost (A)			
GGF-I	1	680,198.00	17,838.00
GGF-II	2	513,355.00	-
Governance Facility (GF)	3	1,392,500.00	-
RoLHR	4	1,891,709.90	-
UUSC-II	5	1,671,272.00	272,683.00
Natioanl policy dialogue	6	67,800.00	3,384,084.70
CSR	7	7,417,393.50	7,011,375.30
PILLAR-3	8	859,195.00	-
Defending Ips' lands rights	9	230,000.00	-
3-days workshop	10	521,380.00	-
National consultation on CERD	11	204,636.00	-
Ips' Navigator (PILLAR-I & II)	12	2,674,264.00	635,188.00
LAHURNIP CORE	13	-	-
Strengthening Indigenous People's Rights in Nepal (SIPHRN-II)	14	-	426,704.00
Strengthening Indigenous People's Rights in Nepal (SIPHRN-I)	15	-	1,351,727.00
Asia Indigenous Peoples Pact Foundation (AIPPF)	16	-	348,269.00
Unitarian Universalist Service Committee (UUSC-I)	17	-	1,343,181.43
Land is Life (LIL)	18	-	319,350.00
NITI	19	-	600,000.00
Total Programme Cost (A)		18,123,703.40	15,710,400.43
Administrative Cost (B)			
GGF-II	2	-	100.00
Governance Facility (GF)	3	393,370.00	
RoLHR	4	675,810.00	
Unitarian Universalist Service Committee (UUSC-II)	5	768,895.00	456,103.00
CSR	7	2,876,521.00	3,042,778.00
Defending Ips' lands rights	9	30.00	-
PILLAR-I & II	12	291,045.00	
LAHURNIP CORE	13	139,364.34	653,378.00


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


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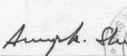
Particulars	Schedule	Current Year (NPR.)	Previous Year (NPR.)
Strengthening Indigenous People's Rights in Nepal (SIPHRN-II)	14	42,988.89	1,080,383.00
Strengthening Indigenous People's Rights in Nepal (SIPHRN-I)	15	-	860,694.00
Unitarian Universalist Service Committee (UUSC-I)	17	-	609,144.00
NITI	19	-	100,000.00
LAHURNIP (Global IME Bank)	20	-	150.00
Total Administrative Cost (B)		5,188,024.23	6,802,730.00
Total Expenditure (A+B)		23,311,727.63	22,513,130.43
Surplus fund balance over expenditure		9,223,285.98	1,340,750.90
Surplus fund carried from pervious Year		11,638,110.11	10,297,359.21
Surplus fund balance for next year Transferred to Balance Sheet		20,861,396.09	11,638,110.11


Asim Sunuwar
Admin & Finance Officer


Advocate Bhim Rai
Treasurer




Tahal Thami
Director


CA. Anup K. Shrestha
Managing Partner
BRS Neupane & Co.
Chartered Accountants



Date: 6th September 2018
Place: Kathmandu, Nepal

Annexes

Annex I

Alternative Report of the Indigenous Peoples of Nepal

to the State Report Submitted by the Government of Nepal to
the Committee on the Elimination of Racial Discrimination

Submitted to

95th Session of the United Nations Committee on the Elimination
of Racial Discrimination

Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais des Nations
CH-1211 Geneva 10,
Switzerland

Submitted by

Lawyers' Association for Human Rights of Nepalese Indigenous
Peoples (LAHURNIP)

Nepal Federation of Indigenous Nationalities (NEFIN)

National Indigenous Women's Federation (NIWF)

Youth Federation of Indigenous Nationalities (YFIN)

Nepal Indigenous Disabled Association (NIDA)

National Coalition Against Racial Discrimination (NCARD)

Indigenous Women's Legal Awareness Group (INWOLAG)

Kathmandu, Nepal

March 2018

PART I

INTRODUCTION, SCOPE AND METHODOLOGY

Introduction

1. Nepal is a “multi-ethnic, multi-lingual, multi-religious, multi-cultural and diverse regional characteristics”⁸ country. The country is the homeland to 125 caste/ethnic groups, 123 languages and 10 religious groups.⁹ The total population of Nepal is 26,494,504.¹⁰ Among them, indigenous peoples (IPs) comprise 35.8 percent of the total population. Nepal has legally recognized 59 indigenous nationalities, referred to as Adivasi Janajati. The country has entered into a new State structure with promulgation of new Constitution in September 2015. IPs of Nepal were forcibly assimilated in third category of Hindu Caste hierarchical system, that was legally institutionalized with the codification of the Civil Code (Muluki Ain) 1854. Further the Act divided IPs into slaveable and enslaveable. The Civil Court is still in practice with some changes. The principles and the notion of the Civil Code reflected in several existing legal provisions.

Scope of the Report

This report has three scopes:

2. First, the State Party Report of the Government of Nepal (GoN) contains information until the date of submission (25 January 2017) and It's been already more than one year period since the date of submission. After submission of the State report numbers of political development has taken place. During this period, *Gaun Palika, Nagarpalika Tatha Bises Samrakchit wa Swayetta Chhetraako Sankya ra Simana Nirdharan Ayog* (The Commission for the determination of the number and boundaries of Village Bodies, Municipalities and Special, Protected or Autonomous Regions (Hereinafter the Local Bodies Restructuring Commission (LBRC) was formed with mandates

⁸ Preamble, the Constitution of Nepal, 2015

⁹ CBS (2012) National Population and Housing Census 2011: National Report, Volume 01, Kathmandu: National Bureau of Statistics, Government of Nepal.

¹⁰ CBS 2011

- stipulated under article 295(3) of the Constitution of Nepal, 2015.
3. Second, there are numbers of new laws promulgated affecting IPs and their rights. Three elections respectively: election of legislative parliament; state legislative and local level were held during this period.
 4. Third, this Alternative Report provides supplementary information to the State report on the basis of the facts and data derives from primary and secondary sources and intended to contribute to the Committee on the Elimination of Racial Discrimination (CERD) for identifying gaps and to provide suggestions for the concluding recommendations in terms of eliminating racial discrimination against IPs in Nepal.

Methodology

5. This Alternative Report has been prepared jointly with the consultation of the IPOs and IPs experts and leaders networks in Nepal (See Annex I for the list of organizations).
6. This report provides status of implementation of selected provisions of the CERD related to IPs and also responses to the report of the GoN. Having objectives of recommending the government for effective implementation of the CERD vis-à-vis elimination of the racial discrimination against IPs, recommendations have been proposed for the consideration of the CERD to be accommodated in the concluding observation of the committee.

PART II

RACIAL, POLITICAL DISCRIMINATION AND EXCLUSION AGAINST INDIGENOUS PEOPLES

Systematic Exclusion of Indigenous Peoples in the Constitution Writing Process

(Violation of Art. 1, 2, 3 and 15.c of the CERD and Non-compliance of Early Warning Recommendations)

Response to Government Report (Section II.A.2.2.b)

7. In 2007, Nepal was declared as a Federal Republic State by the reinstated Legislative Parliament to address the demand of Nepali people, including IPs, Madhesis, Dalits, Muslims who are highly marginalized, excluded and historically discriminated against. Among others, the Interim Constitution, 2007 was promulgated to institutionalize federalism, secularism, inclusion, proportional representation (Art. 4), self-governance, autonomy to IPs (Art. 138.1.A) vis-à-vis human rights and fundamental freedoms. For the first time, the Interim Constitution proclaimed to end all forms of racial discrimination with restructuring of the State and writing a new constitution by the people through the elected Constituent Assembly (CA). Various Agreements were concluded between the GoN and IPs in the course of Constitution writing process. Through these agreements, the GoN has agreed to ensure right to self-determination, autonomy and self-governance,¹¹ recognition rights to lands, territories and natural resources,¹² and meaningful participation of IPs in Constitution writing process.¹³ Importantly, there was a provision to nominate at least 13 IPs representatives in the CA by the Council of Ministers. It was to ensure IPs collective representation, from those who were not represented through First-Past-The-Post

¹¹ Agreement between Federal Limbuwan Party and Government of Nepal (2008) Kathmandu: Ministry of Peace and Reconstruction.

¹² Ibid.

¹³ Ibid.

(FPTP) and Proportional Representation (PR) electoral system (Art.63.3.c).

8. Further, there was no direct and meaningful representation of IPs in the Constitution making process. IPs strongly demanded for meaningful representation through freely chosen in accordance with own procedures as prescribed by the article 18 and 19 of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Article 6 and 7 of the ILO Convention No. 169 and the article 5(C) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Special Rapporteur on the Rights of Indigenous Peoples (SRIP) recommended to the GoN for ensuring direct representation of IPs and to formulate separate mechanism of IPs to hold FPIC within the CA (A/HRC/12/34/Add.3, 20 July 2009, Para 86&87). In response to the Urgent Appeal filed by IPs, the respected CERD issued "Early Warning Letters"¹⁴ and urged the government to ensure IPs direct and free participation. The GoN and CA failed to comply with these recommendations and Early Warnings as well as said provisions of international treaties that Nepal is party to.
9. In 2012, the first CA was dissolved without promulgating Constitution and subsequently, the second CA was formed in 2013. The Supreme Court issued a Directive Order against the GoN in 2012¹⁵ in line with the SRIP and CERD to ensure meaningful participation of IPs. In contrast, there was a strict prohibition to form IPs-Caucus (an informal platform in the CA to discuss IPs agenda) and refrain CA members to bring IPs concerns in their deliberation. In addition, the Supreme Court of Nepal issued a writ of prohibition, Mandamus and Certiorari against the GoN.¹⁶ A 2-day public consultation on the draft of

¹⁴ Early Warning Letter were Issued by the CERD on 28 September 2009 (Ref: TS/JF), 31 August 2012 (Ref: CERD/EWUAP) and 13 March 2009 (Ref: TS/JF)

¹⁵ LAHURNIP et. al vs Prime Minister et.al Certiorari including Mandamus, Decision No 8990, Nepal Kanoon Patrika, 21 April 2013, p. 491. (065-WO-0475).

¹⁶ Not the nominate the party leaders who have participated in the elections and ensure the representati on of those IPs who have not represented under the FPTP and PR electoral system, Dalit janajati Party Vs. Government of Nepal, Writ No. 070-WO-0476, decision date 12 May 2014.

Constitution was held in limited places without prior information to concerned peoples and CA members. Even CA members were not allowed for deliberation in the CA. IPs' amendment proposals were forced to withdraw by the political parties imposing whips against the Constitutional and legal provisions relating to the CA. Finally, the Constitution was adopted by deploying military in various indigenous, Tharu and Madhesi areas to suppress their movements and demands to incorporate their rights, issues and concerns in the constitution. Fifty-five people were killed brutally using excessive force¹⁷, many are still facing false charges of breaching law and order.¹⁸ Twenty-six Tharus indigenous peoples (leader and ordinary people) are in judicial custody (See Annex II for the list of detainees) and 300 peoples are facing criminal charges (homicide and attempt to murder). Without any substantial evidences, these people are languishing in jails for more than three years and the Kailali District Court is denying holding final hearing ignoring the orders of the Supreme Court issued in 2017. Many Tharus men and Barghars (Headmen) have been displaced from their home due to the fear of attacks and arrests.¹⁹ The GoN filed cases of treason against the leaders of Pallo Kirant Limbuwan Rastriya Manch (PKLRM) when they had demanded to respect the treaty of 1774 between the State and Limbuwan. The CERD's urgent action and early warning letters resulted in dismissal of the case against them.

10. The Constitution accepts principle of inclusion and proportional representation in the state structure as a fundamental right of different sections of society including, IPs. In practice, the proportional representation is not a free, meaningful and accountable representation of IPs albeit it is representation of

¹⁷ Country Reports on Human Rights Practices for 2016 United States Department of State • Bureau of Democracy, Human Rights and Labor visit www.state.gov/documents/organization/265756.pdf, visited 18-03-23

¹⁸ Nepal: Torture and Coerced Confessions, Human Rights Violations of Indigenous Tharus, After the August 2015 Police Killings in Kailali Amnesty International, P. 16

¹⁹ Human Rights Watch Report, Printed in United State America, Protest and Police Crack Down Tarai Region in Nepal, 2015, P. 21

respective political parties rather than the group that they belong to. Indigenous Parliamentary works in strictly in their party line.

11. The dominant groups Khas Arya that comprises 28 percent of total population enjoy overwhelming representation in legislative parliament, executive, judiciary as well as state and local governments. IPs that comprises 35.8 percent of total population is low representation in aforementioned structure and no different to other marginalized groups such as Madhesis, Dalits and Muslims.

Problems and Challenges

12. The present constitution, which is regressive and racist in compare to the Interim Constitution, 2007 fails to ensure fundamental rights and freedoms of IPs and retain policy of racial discrimination, exclusion and marginalization. Currently, two political parties *Sanghiya Samajbadi Forum and Rastriya Janata Party Nepal* are forwarding agenda of amendment of the Constitution. IPs, through their organizations, are also demanding for total amendment and/or re-writing of the Constitution. However, there is no free representation of IPs, nor any mechanism (committee) in place for consultation and obtaining consent in the Parliament in relation to any amendment proposal that concerned and affect to them. On the top of it, there is very limited chance that agenda relating to IPs would be introduced.

Suggested Recommendation for concluding recommendations

13. Ensure IPs free representation by amending Constitution and enacting/amending laws in federal, provincial and local levels respecting to Art. 5(c) of the CERD, Art. 18; Art.19 of UNDRIP and Art. 6 and 7 of the ILO Convention No.169, Early Warning letters of CERD; Recommendation of SRIP and the Directive Order of the Supreme Court of Nepal.
14. Establish a specific Mechanism or Committee in the Legislative Parliament (Local, Provincial and Federal) through IPs Representatives freely chosen in accordance with their process to give space for free voice in relation to amend or reform the Constitution.

Constitution Promoting Racism and vice-versa (Violation of Art. 1, 2, 4 et.al of CERD)

Response to the government report (Part II, Section I, Para 76)

15. The existing Constitution States Nepal as “multi-ethnic, multi-lingual, multi-religious, multi-cultural characteristics with common aspirations of people living in diverse geographical regions, and being committed to and united by a bond of allegiance to national independence, territorial integrity, national interest and prosperity of Nepal, all the Nepali people collectively constitute the nation” (Art. 3). In contrast, the Constitution has a provision of interpretation of the Secular State²⁰ that reverses the secularism and establishes nation as a Hindu State in new context. An explanatory provision defines secularism as protection of Sanatan (“Hindu”)²¹ religion and Culture. Indirectly, the constitution institutionalizes the Hindu State vis-à-vis graded hierarchical caste system, which is the root cause of IPs’ problems that includes subjugation, exclusion, marginalization, discrimination and dispossession from lands, territories and natural resources.
16. The existing Constitution has given special undue recognition to Chettri, Bahun, Thakuri, Sanyasi, Dasnami (CBTDS) as Khas Arya (Arya race) for the first time in the constitutional history of Nepal. On the contrary, there is no such definition of IPs, Madhesi, Dalits and Muslims, who together comprise 70 percent of the total population of Nepal. Bahun Chhetris, who are historically dominant and overwhelmingly represented at all level of decision making, including parliament, bureaucracy, constitutional bodies and political appointments but they have allocated reservation quotas along with the marginalised caste, Indigenous and regional groups. The electoral method is designed in such a way that the Bahun Chhetris are

²⁰ Interpretational provision of Article 4 (1) of the Constitution of Nepal defines “Secularism” is protection of “Sanatan religion” and culture inter alia cultural freedom.

²¹ Nepali Brihad Sabdakosh of Nepal Academy, 2016 P.1225

overwhelmingly elected in the FPTP electoral system. Hence, they don't need any reservation seats or quota, but 31 percent of seats in proportional representation is reserved for Khas Arya that not only retains their dominant position, but also further marginalizes other communities including IPs. There is a conditional terms "economically backward"²² for proportional representation to the Khas Arya,²³ however this condition has never been taken into account in the course of due implementation.

17. The constitution declares Hindu cultural symbols as national emblems, such as cow (Hindu sacred animal), flag (Hindu symbol), Crimson (color of victory in Hindu Culture) and Sanskrit language in court of arm. The non-Hindus including IPs are compelled to follow those Hindu symbols that have adverse impacts to them legally.

Problems and Challenges

18. Racial supremacy, forced assimilation and hegemony will perpetuate against IPs. The Hindu caste hierarchical system is institutionalized and protected by State, sabotaging rights and dignified life of IPs.
19. Aggression in indigenous sacred sites, cultural heritages and identity would continue. There are several examples that the sacred sites of IPs are Hinduized.
20. Ignorance of the identity based federalism as demanded by the IPs movement in Nepal from the very beginning.

Suggested Recommendation for the Concluding Recommendations

21. Repeal the entire racist provisions of the Constitution (Explanatory provision of Secularism, Art 4.1, Art.8, Art.7, Term Khas Arya from Art 42.1, 84.1.2 and 176.6)
22. Amend the Constitution to ensure *de-jure* and *de-facto* rights and equality as well as respect identity and dignity of IPs.

²² Article 42 of the Constitution of Nepal 2015

²³ Ibid.

23. Amend the constitution for the full protection indigenous identity, cultural sites, heritages, sacred sites and place related to identity.
24. Ensure secularism and multiculturalism.
25. Restructure the State respecting IPs' ancestral lands and territories.

**Violation of Right to Self-determination, Autonomy and Self-rule
(Violation of Article 1 and 4 of CERD and General
Recommendation XXI of CERD)**

No information contains relating to aforementioned topic in the Government Report

26. The agreement concluded in 2008 between Federal Limbuwan Party and GoN agreed to form Autonomous Limbuwan with right to self-determination vis-à-vis self governance to institutionalize in the constitution²⁴. With the fifth amendment, in Art. 138 (1)(a) of the Interim Constitution, 2007 accepted and incorporated IPs and others' aspirations for autonomy and self-governance and expressed to incorporate in new constitution to institutionalize progressive state restructure.
27. In contrast, there is no provision to guarantee autonomy and self-governance with right to self-determination in the Constitution of Nepal, 2015. Only Special, Protected or Autonomous Region can be set by the Federal law for social, cultural protection or economic development (Art.56 (5) without any political power.
28. In accordance with Art. 295(3) of the Constitution, 2015 a Commission to restructure local bodies (Herein after Local Bodies Commission) was commissioned with clear mandate of determination of numbers and boundaries of Village bodies, Municipalities and Special, Protected or Autonomous Regions determined numbers of local bodies and their names. The commission formed 753 Village Bodies and Municipalities but not the Special, Protected and Autonomous Regions.

²⁴ Agreement between Federal Limbuwan Party and GoN in 19 March 2008
www.peace.gov.np visited 11 March 2018

29. The delineation of borders of seven provinces, Local bodies and Municipalities is a clear gerrymandering to crack IPs clusters, settlements and territories so as to turn them into numerical minority and to pack Khas Arya to make them dominant. Many IPs objected and submitted memorandums.²⁵ However, IPs voice was not taken into account. On 27 December 2016, Tajpuriya IPs challenged by filing a Writ Petition in the Supreme Court against the decision of the Local Bodies Commission. The Supreme Court declared the case inadmissible. Again they filed a Public Interest Litigation (PIL) against the Commission. The Registrar of the Supreme Court declared it inadmissible on 21 June 2017. An appeal (073-AP-0494) was filed against the decision of the Registrar in the Supreme Court. Single Bench of the Chief Justice issued an order that affirmed the decision of the Registrar was not unlawful. It is not unusual as the Supreme Court close its door for IPs.
30. In a country report (A/HRC/12/34/Add.3), the Special Rapporteur on the Rights and fundamental freedoms of Indigenous Peoples highlighted, “the demand of Indigenous Peoples in Nepal for federalism in general represents a clustering of assertions that effectively, if not expressly, are centered on the right to self-determination and include demands for local autonomy and political participation; rights over territories, lands and resources; and cultural integrity”. The Special Rapporteur has further noted, “These are all legitimate demands that should be secured in the country’s new constitutional order, whatever ultimately may be the State’s overall political-administrative configuration” (Para.61). The SRIP recommended to ensure right to exercise autonomy or self-government in relation to formation of federal structure (Para. 88)

Problems and Challenges

31. IPs are continuously marginalized, excluded and discriminated in the Constitution, laws, policies, plans and programs.

²⁵ Tajpuriaya Indigenous Peoples and others submitted memorandums to the Commission to respect the cluster of their population

32. IPs cannot enjoy full-fledged human rights and fundamental freedom due to denial of Right to Self-determination, Autonomy and Self-rule have destroyed collective way of life, customary livelihood, food security etc.
33. Lack of reservation policy to ensure equal representation of IPs at the local level elections.

Suggested Recommendation for Concluding Recommendations

34. Ensure autonomy and self-rule of IPs in laws that respects right to self-determination in their ancestral lands and territories in accordance to agreements between Indigenous Peoples and the State.
35. Make the local level structures inclusive based on the population size of IPs.

Forced Identity Deprivation (Violation of Art 5(d)(iii), (5)(e) And General Recommendation 23rd of CERD Response to the government report (A Normative Framework 2)

36. Indigenous Peoples of Nepal are formally recognized under the Foundation for the Development of Indigenous Nationalities (NFDIN) Act, 2002 and 59 groups are enlisted under the Schedule of the said Act. The Home Ministry issued a notice that enlisted 48 Indigenous Peoples as minority groups in relation to election of local levels. Byasi Sauka (an Indigenous Group) filed a PIL against the decision of Home Ministry and the Case is sub judice in the Supreme Court. In order to legalize the decision, GoN published a list of Minority in the Gazette dated 22 January 2018 in order to deprive them from indigenous identity and collective rights.

Problems and Challenges

37. Indigenous Peoples' right to live with identity, dignity and collective rights has been challenged.
38. Introduction list of minorities to replace and deprive IPs from their identity.

39. Banning of IPs toponyms-typonyms at local level structures' naming process.

Suggested Recommendation for the Concluding Recommendations

40. Respect Indigenous Peoples' right to self-identification and right to live with collective rights and dignity, by rectifying list of Minority and ensure meaningful representation without compromising their identity as indigenous peoples.
41. Re-establish the indigenous names of the local level State structures rather than introducing Hindu and Sanskrit names for those IPs' lands and territories.

Criminalization of Political Faith and Denial of Political Representation (Violation of Art 5 c)

Response to Government Report (Part I Background (I)(4), Section III (41)(9))

42. The Article 17(2)(3) of the Constitution imposes restriction on fundamental freedom to form a political party in the name of preventing acts that undermine sovereignty, territorial integrity, nationality and independence of Nepal or jeopardize social and ethnic harmony or organization or representative in a manner to undermine the security of Nepal. The political rights of IPs are directly curtailed by this provision. For example, leaders and members of Mongol Mulbasi Force have been in judicial custody in the charge of "Organized Crime"²⁶ and "Treason"²⁷ just for advocating political rights without any substantial evidences. The Case is sub judice in the District Court of Bhaktapur and the Special Court in Kathmandu. It has been almost a year that eleven people are under the judicial custody, according to the Order of the District Court (See Annex III for names of detainees).

²⁶ GoN vs. Prithivi Narayan Limbu et. al. Case Organized Crime (Case No. 073-CR-0069) Bhaktapur District Court

²⁷ GoN vs. Prithivi Naryan Limbu et. al. Case Organized Crime Case No. 073-CR-0082) Special Court, Kathmandu

43. With amendment of the Electoral Act, each political party has to garner three per cent of the total valid votes casted under the PR electoral system and at least one seat under the FPTP electoral system to be recognized as a national party. This new provision systematically eliminates identity-based parties advocating for Indigenous Peoples' rights. Many political parties including Rastriya Janamorchha, *Nepal Pariwar Dal*, *Rastriya Janamukti Party* and *Dalit Janajati Party* boycotted the House meeting protesting against the threshold provision.²⁸ As a result, the following identity-based political parties could not secure three percent of votes in recent elections. It should be noted that these parties had their representatives in previous legislative parliament/ CA because of no provision of threshold. Most of these Parties were newly formed and some of them had emerged from Indigenous Peoples' movements. There is almost no chance of raising IPs voice freely in the Legislative Parliament due to abolition of these political parties. And, there is very limited chance of emergence of identity-based political party to advocate the rights and voice of indigenous peoples in the Legislative Parliament.

Table 1: Identity based parties that lost status of national after the federal level election of 2017

SN	Political Parties	Legislative Parliament/ CA (2008)	Legislative Parliament/ CA (2013)	Federal Level Elections (2017)
1.	Dalit Janajati Party	National Party	National Party	Lost status of National Party
2.	Khabuwan Party	National Party	National Party	Lost status of National Party
3.	Nepa: Rastriya Party	National Party	National Party	Lost status of National Party

²⁸ <https://thehimalayantimes.com/nepal/house-likely-pass-threshold-decision-amid-fringe-parties-protests/visited11February2018>

4.	Rastriya Janamukti Party, Nepal	National Party	National Party	Lost status of National Party
5.	Sanghiya Limbuwan Party, Nepal	National Party	National Party	Lost status of National Party
6.	Sanghiya Lokatantrik Rastriya Manch (Tharuhat)	National Party	National Party	Lost status of National Party
7.	Tharuhat Tarai Party	National Party	National Party	Lost status of National Party

Problems and Challenges

44. Innocent political rights cadres and leaders are languishing in the jails under the false charges.
45. Exclusion of Indigenous Peoples in raising voice, agenda setting, law making and decision-making prevented them from exercising their full-fledged political rights and fundamental freedoms.
46. The trends of making racial discriminatory laws will be intensified.
47. There is no possibility of enjoying equal political rights and fundamental freedoms, if the status quo should continue.
48. There are problems of implementation of recommendations made by international human rights bodies to the legislative parliament and existing laws relating to the rights of indigenous peoples would not be implemented. For example, the early warning letters of CERD were never complied.

Suggested Recommendation for Concluding Recommendations

49. Immediately repeal the threshold provision of electoral law.
50. Repeal restrictive clauses of proviso Articles 17 (1), (3) and (4) of the Constitution relating to fundamental political freedom.
51. Withdraw the false charges, without further delay, against IPs

political leaders and cadres of *Mongol Mulbasi* and innocent Tharu leaders and community members, including two children, allegedly involved in the Tikapur incident. (section 29, Government cases Act, 1992)

52. CERD Committee should follow-up implementation of the recommendations of the international human rights bodies, including CERD.
53. Repeal the Constitutional provisions regarding national symbols that highlights and establish Hindu identity only.

Preferential Treatment to Dominant Groups

(Violation of Art. 4 and 5 of CERD)

Response to the government report (Part II, Section I, Para 112)

54. Constitution and laws retains the essence of Hindu Caste system and the dominant position of Khas Arya race that goes against the spirit of inclusive democracy and social justice.
55. The highest positions of three State organs and other major government positions, including President Bidhya Devi Bhandari, Prime Minister Khagda Prasad Sharma Oli, Speaker of the Lower House Krishna Bahadur Mahara, Chair of the Upper House Ganesh Prasad Timilsina, Chief Justice Deepak Raj Joshi, Army Chief Rajendra Chetri, IGP Prakash Aryal, NHRC Chair Anupraj Sharma, Commission on the Investigation of Abuse of Authority (CIAA) Chief Nabin Kumar Ghimire, Attorney General Agni Prasad Kharel, are occupied by the Khas Arya Caste groups only. The European Union commissioned independent mission to observe the elections of house of representation and provinces recommended scrapping the reservation to Khas Arya.²⁹ The State and the major political parties do not accept the recommendation and ask the EU to revise the report. But the

²⁹ European Union Election Observation Mission Final Report Nepal, House of Representatives and Provincial Assemblies Election 26 November to 7 December 2017. Recommendation: "Review the impact of the quota system on the ethnic composition of the House of Representatives and provincial assemblies. Remove the Khas Arya from the groups included. Ensure that measures of affirmative action apply only to groups which are the subject of negative discrimination."

IPs and other marginalized communities welcomed recommendations of the EU and asked the government to respect the norms and values of social justice. Similarly, two political parties advocating for the issues and rights of Madhesis and other marginalized communities Federal Socialist Forum and Rastriya Janata Party also stood in favor the report of the EU.

Problems and Challenges

56. Bahun hegemony deterred social inclusion and social justice. Hence, Indigenous Peoples are not only deprived from representation but also from getting government services and resources. IPs are facing extreme marginalization, exclusion and direct and indirect discrimination in public and private spheres

Suggested Recommendation for the Concluding Recommendations

57. Ensure de facto proportional inclusion of indigenous peoples on the basis of their population size in every structure of the state including public service.
58. Review the impact of the reservation and quotas reserved for the Khas Arya in House of Representatives and provincial assemblies and remove the Khas Arya from the groups included as beneficiary of the reservation. Ensure that measures of affirmative action apply only to those groups which are the subject of negative discrimination for centuries.

Participation on decision-making

(Violation of Art 5.c, 4 of CERD)

Response to the government report (Part II Section I (84) and (93))

59. In relation to the Indigenous Participation in decision-making, article 51(j) 8 of the Constitution of Nepal states that the Indigenous nationalities participate in decisions concerning that community by making special provisions for opportunities and benefits in order to ensure the right of these nationalities to live with dignity, along with their identity. However, this is an inspirational provision and no legal action can be brought in front any court, in case of noncompliance.

60. The Local Self-governance Act, 1998 had specific provisions for representation of indigenous peoples in local bodies,³⁰ that have been substituted by newly introduced the Local Government Governance Act (LGGA), 2018, that has no such provision for the representation for Indigenous Peoples in Local Government. This is crystal clear that the newly adopted LGGA is a regressive in term of ensuring representation of Indigenous Peoples in decision-making bodies. The voice of Indigenous Peoples in decision-making will be seriously undermined by this Act in their very own ancestral domain where all state local bodies have been established and functioned. The state decision making bodies are highly exclusionary and dominated by Khas Arya.

Problems and Challenges

61. The issues, concerns, problems and agendas of Indigenous Peoples shall not be addressed in decision-making, law and policy making; implementing and monitoring process which remain them in status quo of poverty, discrimination, marginalization and subjugation.

Suggested Recommendation for the Concluding Recommendations

62. Amend the Sthaniya Nikaya Sarkar Sanchalan Ain, 2074 (Local Government Governance Act (LGGA), 2018) shall be amended to ensure free and meaningful representation of indigenous peoples having provision for proportional representation on the basis of their population.
63. Establish a procedure in laws, policies and programs of Federal, State and Local government to obtain free prior and informed consent in accordance with article 51(j)(8) of the Constitution, article 6 and 7 of the ILO Convention No. 169, article 18 and 19 of the UNDRIP and GR 23 or the CERD.
64. Reform and adopt the National Action Plan (NAP) for implementation of ILO Convention No. 169 prepared by the then Ministry of Local Development (current ministry of Federal Affair and General Administration) in 2008.

³⁰ Section 8(C);76 (C) and 172 (e) of the Local Self-Governance Act, 1998

Indigenous Commission and Tharu Commission

(Violation of Art 5.c, 4 of CERD)

Response to the government report (Part II Section I (148))

65. Constitution has provision for two commissions for IPs one is Indigenous Commission and the other is Tharu commission. Both commissions have no quasi-judicial jurisdiction to take action against human rights violation. They are not based on the Paris Principles.

Problems and Challenges

66. Difficulty in monitoring and redressing rights violation of Tharus and IPs.

Suggested Recommendation for the Concluding Recommendations

67. Amend Constitution to make Tharu commission with quasi judicial jurisdiction *in par* with the National Human Rights Commission vis-à-vis in line with Paris Principles.

PART III
ECONOMIC, SOCIAL AND CULTURAL RIGHTS
Lands, Territories and Natural Resources
(Violation of Art. 5.d.e and 5.e.iii and General Recommendation 23rd)
Response to Government Report (Section III Para 47)

68. The lands, territories and natural resources of the IPs of Nepal is under threat due to fragmentations by the State restructuring³¹ and aggressive development initiatives. The State restructuring was done without the representation and consent of IPs despite their concerns, reservation and dissatisfactions. The GoN did not even stick to the Constitutional provisions regarding formation of "special, protected and autonomous regions"³² which is basically intended to enhance "socio-cultural protection or economic development"³³ of the IPs. The 7 province and 753 local level demarcations divided IPs' lands and territories which lead them into the status of minority and sideline them from accessing to decision making process and protection and promotion of their lands and territories. This is apparently non-compliance to the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention No.169. Nepal is a signatory of both of the international instruments mentioned above. UNDRIP States that the "Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters..."³⁴ The ILO Convention states that "the rights of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized."³⁵ But the State of Nepal does not recognize the rights to lands, territories and natural resources of IPs.

³¹ Nepal is divided into 7 provinces and 793 local levels (municipalities and rural municipalities)-Metropolitan city-6, Sub-metropolitan city-11, Municipality 276, Rural municipality-460) under the new state structure, federal structure.

³² Constitution of Nepal, 2015 Art. 56(5)

³³ Ibid.

³⁴ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Art. 25

³⁵ Indigenous and Tribal Peoples Convention, 1989 (No.169) Art. 14(1)

69. About 80 percent marginalized hill IPs have lands of average 0.4166 hectares per household registered in their names, but 29.5 percent marginalized hill IPs, 25 percent hill IPs other than Newar and another 25 percent of Tarai IPs other than Tharu possess lands not yet registered in their names (title to the lands not legitimated). Some 38 percent Tharu and 28 percent Tarai IPs other than Tharu cultivate lands of others.³⁶
70. The “development” project, such as hydropower generation projects, parks & protected areas and other infrastructure development projects, i.e. road expansion, business complexes etc., are another threat to the lands and territories of IPs. Most of such project are constructed and planned to construct in the lands and territories of IPs without free, prior and informed consent and their meaningful participation in the decision making process. This is against the principles of the self-determined development of IPs.
71. The 999 km of roads expansion project in Kathmandu heavily displace the indigenous and other local communities without consultation, consent and compensation. The project displace around 150,000 populations from their traditional lands, approx. 90 percent of them are Indigenous Newars³⁷ that project damages the Indigenous sacred places, religious sites and cultural heritages.
72. Hydropower and transmission projects are other “development” initiatives that have severe adverse impacts to the lands and territories of IPs. Most of such projects are operated and planned to operate in the lands and territories of IPs causing adverse impacts to their livelihood, sacred places, and their displacements. Currently, there are a total of 683 proposed hydropower projects (37,000 MW)³⁸ in various stages of planning and execution. The projects plan to use the lands and water currently under the customary rights of indigenous peoples. These hydro-dams will displace disproportionately large percentage of indigenous peoples. Data from one of the State-

³⁶ Nepal Social Inclusion Survey (NSIS), 2012).

³⁷ Household Survey conducted by LAHURNIP in 2017

³⁸ Nepal Electricity Authority, 2017.

financed Budhi Gandaki hydropower project (1200MW) alone shows that 50,000 people will be involuntarily displaced.

73. Twelve national parks, one wild life conservation, one hunting reserve, six protected areas and 13 buffer zones occupy 23.39 percent of the total lands of the country. All these areas are in the ancestral lands of IPs. Many IPs, who have been living in these are from time immemorial, have already been displaced and lost their livelihoods and food security. Recently, despite protests of the IPs, the government has deployed army in the Dhor-Patan Hunting Reserve, in spite of protests by the concerned Magar and other IPs against such move.³⁹ The hunting reserve generates millions of rupees as revenue every year but Indigenous Peoples do not get due share of the amount collected.

Problems and Challenges

74. Forced eviction of the Indigenous Peoples and local communities from their lands and territories.
75. Dispossession of the lands and natural resources by the State and non-state actors (privates sectors) without taking consent, giving compensation and sharing of benefits.
76. Militarization in the lands and territories of IPs in the name of security and development.
77. Destruction of IPs collective way of life.
78. No fair compensation and rehabilitations for the displaced IPs from parks and conservations

Suggested Recommendation for the Concluding Recommendations

79. Recognize IPs rights over lands, territories and natural resources that they have occupied customarily owned and used traditionally.
80. Ensure free, prior and informed consent of indigenous peoples prior to develop, design, plan implementation and evaluation of any development projects in the lands and territories of IPs.

³⁹ Bishnu Prasad Shrestha and Bhoj Raj Pantha (2074 BS) Nepal ka Samrachhit chhetra haru (The Protected Areas of Nepal). Kathmandu: National Conservation and Wild Life Conservation Department.

81. Stop mobilization of security forces in the lands and territories of IPs in the name of development and security.
82. Ensure benefit sharing on the benefit emerge out of the commercial activities that exploits resource available in the lands and territories of IPs.
83. Ensure protection of IPs collective way of life that adversely affects by the business related activities.
84. Ensure representation of IPs in the planning, implementation and monitoring of development projects.
85. Stop development aggression in the lands and territories of IPs.

Budget of Allocation

(Violation of Art 2.2 and General Recommendation 4.c) Response to the government report (Part I, Section III, Para 42)

86. The practice of allocating budget for protection, development, and promotion of indigenous cultures, customs, festivals, languages, literatures, arts, folklores, histories, narratives and heritage of National Foundation for Development of Indigenous Nationalities (NFDIN) has been changed from this Fiscal Year (2017/018) with the argument that these areas fall under the jurisdiction of the governments of provincial and local levels, thus these areas became first victim of fiscal federalism.⁴⁰ Similarly, the allocation of budget to the IPs at the district level also have been stopped after restructuring of the State to the federalism.
87. In previous fiscal year, approximately US\$ 14,00,000.00 (Fourteen Hundred Thousand only) budget is allocated to the NFDIN, which is 0.003 percent of the total budget of the Country. Indigenous Organizations have direct access to the half of this budget and the rest is spent in administration of NFDIN. In this Fiscal Year, the Ministry of Local and Federal Affairs directly send half of the budget to the local bodies without any instruction to ensure access of indigenous peoples. Thus, no indigenous

⁴⁰ LAHURNIP. 2017 Base-Line Factsheets on the Situation of Indigenous Peoples of Nepal

peoples get this budget and there is no any record and document of budget allocation.⁴¹

Challenges

- 88. Difficulties to access to the public budget by the IPs at national and local level due to lack of their access in those institutions.
- 89. The policy makers allocated without considering IPs specifically does not reach to the IPs and that hinder on their socio-economic and cultural upliftments and development. This is evident that even there were separate budgets allocated for the IPs were too misused by the decision makers in the name of development.

Suggested Recommendation for the Concluding Recommendations

- 90. Need to allocate separate budget with plans and policies to the IPs for their socio-economic and cultural developments
- 91. GoN and its agencies including local bodies must prepare disaggregated data about their services and resources that have clear reflection of IPs access to.

Genocide of IPs cultures (Constitution, Muluki Ain, SC verdict) (Violation of Art 6 and General Recommendation 23rd)

- 92. Muluki Ain (Civil Code) has a provision of quadruped that declares cow slaughter is a serious crime with 12 years of imprisonment⁴² (the amended policy have provisioned for 3 years of imprisonment but yet to come in effective). And, another provision awards an exemption from punishment of striking, cutting or killing a person in order to protect a Cow or ox.⁴³

⁴¹ Information provided by NFDIN informant during interview that was held in March 7, 2018

⁴² No. 11 of the Civil Code, 1965

⁴³ Section 4 of the quadruped that says "where a person sees another person being ready, by taking up a weapon or otherwise, to intentionally kill a cow or ox, the person shall prohibit that other person from killing the cow or ox. Where that other person, rejecting such instruction, uses the weapon also against the person who so prohibits, and the person who strikes, cuts and kills that other person shall not be deemed to commit offense and be liable to punishment. In cases other than that mentioned above, any person shall not kill but shall arrest and hand over such other person to the office."

Crime of Cow Slaughter is equivalent to homicide in accordance with the statistic of Nepal Police. In last five years 184 cases of cow slaughter registered in the Police (See Table 1).

Table 2: Cases of cow Slaughtering filed to police against IPs and other

SN	Fiscal Year	No of Cases	Region					
			Eastrn	Mid	Valley	Western	Mid Western	Far Western
1	July 2011-June 2012	38	10	7	1	14	6	0
2	July 2012-June 2013	30	16	2	1	10	1	0
3	July 2013-June 2014	39	13	7	1	15	3	0
4	July 2014-June 2015	38	4	6	1	13	13	1
5	July 2016-June 2017	39	8	13	0	12	3	3
	Total	184	51	35	4	64	26	4

Source: <https://www.nepalpolice.gov.np/images/statistic/webpage/index.html>

93. According to LAHURNIP study, most of accused are from Indigenous Peoples. The data does not disclose number of accused however; number will be significantly high due to the nature of a case. In general the charge sheet of cow slaughter is filed against group of people above four. In April 10, 2018 four Tamangs from Makwanpur District were arrested in the charge of cow slaughter.⁴⁴ Hindu people consider a Cow is a sacred animal however, in indigenous peoples such as Rai, Limbu, Tamang, Thakalis need beef to offer their ancestor during their cultural worship. Thus, the provision criminalizing IPs vis-à-vis their culture.

⁴⁴ <http://www.news24nepal.tv/2018/03/10/273691visited12March2018>.

Problems and Challenges

94. Criminalization of Indigenous Peoples and Cultures and many people are serving 12 years of imprisonment as well as prosecution. It is serious threat of cultural assimilation that qualifies cultural genocide against Indigenous Peoples. Indigenous Peoples are facing insecurity and the dignity of life has been under serious threat from this provision. This provision is directly inconsistent to article 4(1) that declares Nepal as a Secular State and article 32 (1) and (3) of the Constitution of Nepal, 2015 guarantees fundamental rights to participate cultural life of community and right to protect culture.

Suggested Recommendation for the Concluding Recommendations

95. Repeal provision relating to Cow Slaughter to respect secularism and eradicate criminalization of indigenous peoples and their culture.
96. Release without further delay of those who are serving imprisonment and drop out prosecution against accused of cow slaughter.

PART IV

INDIGENOUS WOMEN AND PERSONS WITH DISABILITIES Indigenous Women

97. Demographically, women comprise 51.50 percent of the total population of Nepal. Indigenous women comprise 36 percent of the total women's population of Nepal. They have been facing multiple forms of discriminations; as women, as indigenous women and as Indigenous Peoples. Indigenous women have distinct identity, problems and issues in compare to other women and indigenous men. The existing laws and policies relating to women do not recognize distinct identity and status of Indigenous women and their rights ensured by UNDRIP, ILO Convention No.169, CEDAW and CERD general recommendation No. 25.

Problems and Challenges

98. Non-recognition of indigenous women and diversity among women in existing laws, plans and policies of the State, and also by the “mainstream” women’s movement.
99. No separate quotas and special provisions for indigenous women within women.
100. Till now all laws, policies, plans and programs for mainstreaming or empowering of women are monopolized by the Bahun Chhetri women belonging to the dominant caste. IPs women have been deprived, excluded, marginalised, oppressed, suppressed, subjugated and exploited in both public and private spheres.
101. IPs women are losing means of livelihood and food security through their customary occupation and other economic activities and practices based on their traditional knowledge and skills because of lack of access to, control and use of lands, territories and resources.

Suggested Recommendation for the Concluding Recommendations

102. Recognize indigenous women as distinct entity in laws, policies, plans and programs of the government.
103. Formulate targeted policies and programs of economic empowerment of indigenous women based on their customary and traditional knowledge and skills.
104. Ensure Indigenous women’s access to, ownership and control of lands and resources.
105. Ensure *de facto* equality, reservation and quota in every state structure based on the proportionality of population of Indigenous Women.
106. Ensure reservation and quotas focusing IPs women in laws, policies, plans and programs.

Indigenous Persons with Disabilities

107. According to the CBS data, the total population of persons with disabilities is 1.94 percent of the total population of Nepal, but there is no gender, caste ethnicity disaggregated data. The Indigenous Persons with disabilities are the most

vulnerable in public and private spheres. However, there are no specific plans and programs existed to address these problems of the Indigenous Persons with disabilities. Putting all the disables in one basket, does not address the issues and rights of the Indigenous Persons with Disabilities.

Problems and Challenges

108. Non-recognition of indigenous persons with disabilities as distinct entity by the laws and policies.
109. Lack of separate quotas and special provisions for the indigenous disables among the women
110. Indigenous Persons with disabilities will not have equal rights and access to resources provided by government and other organizations (National and International).

Suggested Recommendation for the Concluding Recommendations

111. Recognize indigenous Persons with disabilities in laws, policies, plans and programs.
112. Provide disaggregated data based on caste and ethnicity that gives clear situation of Indigenous Persons with disabilities.
113. Formulate plans and policies for capacity development and inclusion of IPs disables in the decision-making and implementation process.
114. Implement the Concluding Observation of the 19th session of CRPD in relation to the Indigenous Persons with Disabilities.

PART V

ACCESS TO JUSTICE

Violation of Article 6 and General Recommendation 4.a and b Response to Government Report Section III (106)

115. The Constitution and laws relating to justice system do not formally recognize indigenous customary laws and justice system even though they are strongly functioning in many indigenous communities that includes *Barghar/Bhalmansa/Matawa* in Tharu; 13 *Ghampa system* in *Thakali, Majhihadam in Santhal*. All community members actively participate in deliberations, decision making and its implementation. The

increasing presence of and interventions from the State justice system is weakening customary laws and justice system.

Problems and Challenges

116. The official language of justice administration is Nepali (Khas Nepali)⁴⁵. And, 123 languages spoken in Nepal and most of these languages are spoken by Indigenous Peoples (CBS 2011). Language barrier is another factor that hinders IPs to access to justice.
117. Referring to the constitutional provision of secularism, a PIL was filed in the Supreme Court to strike down the No. 11 of the Quadruped Chapter of the civil code (Muluki Ain) that makes cow slaughter crime with 12 years⁴⁶ of imprisonment and most of the IPs and their culture was criminalized by this provision. From the Single Bench of Justice Govinda Prasad Upadhyaya, the Supreme Court not only refused admissibility of the case but also warned a lawyer not to bring such kind of case afterward, if any lawyer brings such kinds of cases he or she can be black listed.⁴⁷ Further the decision says, if an Order is issued in accordance with Writ Petition, that is filed against Hindu Sects shall offend dignity and faith of Hindus ⁴⁸

Suggested Recommendation of the Concluding Recommendations

118. Amend laws relating to justice system, including Mediation Act, 2011, *Sthaniya Nikaya Sanchalan Karyabidhi Ain* (Local Body Procedural Act, 2018), to recognize indigenous customary law and justice system to make it compatible to the ILO Convention No. 169 and the UNDRIP.
119. Ensure proportional inclusion of Indigenous Peoples Judiciary in particular appointment of judges in the Supreme Court, High Courts and District Court in accordance with the article 42 of the Constitution.

⁴⁵ Article 7(1) of the Constitution of Nepal, 2015

⁴⁶ Amended policy has provisioned for 3 year but yet to come into effective.

⁴⁷ Tekamprasad Gharti vs. Law and Justice Ministry et.a. Writ No. 071-WS-0001, the was issued in September 14, 2014

⁴⁸ Ibid.

Annexes

Annex I: Details of the Submitting Organizations

1. Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), Kathmandu Metropolitan City-29, Anamnagar, Kathmandu, PO Box No.: 11179, Email: lahurnip.nepal@gmail.com, Website: www.lahurnip.org, Contact# +977 01 5705510
2. Nepal Federation of Indigenous Nationalities (NEFIN), Kusunti, Lalitpur, Nepal Email: info@nefin.org.np, www.nefin.org.np

Following are Indigenous Peoples Organizations affiliated to NEFIN

SN	IPs	Organization Name	Address
1	Kishan	Kishan Samudaya Club	Mechinagar-4, Magurmadi, Jhapa
2	Kumal	Nepal Kumal Samaj Sudhar Samiti	Anamnagar, Kathmandu
3	Gangai	Nepal Gangai Kalyan Parishad	Madhumara-11, Biratnagar, Morang
4	Gurung	Tamoo Hyul Chhonj Dhi Gurung Rastriya Parisad	Mitranagar, Gongabu, Kathmandu
5	Chepang	Nepal chepang (Prajya) Sangh	Pulchok, Lalitpur
6	Chhantyal	Nepal Chhantyal Sangh	Manamaiju, Kathmandu
7	Jirel	Jirel Samudaya Utthan Sangh Nepal	Jiri, Dolakha, Nepal
8	Jhangad	Nepal Jhagad (Uraun) Kondrom Sudhara	Laukahi-6, Sunsari
9	Tajpuriya	Tajpuriya Samaj Kalyan Parisad	Juropani-5, Gauriganj, Jhapa

10	Tamang	Nepal Tamang Ghedung	Bagbazar, Kathmandu
11	Tangbe	Tangbe Samaj Sewa Sangh	Mahendrapul, Pokhara
12	Topkegola	Tokpegola Welfare Society	Kathmandu, Nepal
13	Thakali	Thakali Sewa Samiti	Binayakbasti, Balaju Kathmandu
14	Tami	Nepal Thami Samaj	Koteshor Kathmandu
15	Tharu	Tharu Kalnyankarini Sabha	Purano Baneshwor, Kathmandu
16	Danuwar	Danuwar Jagaran Samiti	Purano Baneshwor, Kathmandu
17	Darai	Nepal Darai Utthan Samaj	Chitawan
18	Dura	Dura Sewa Samaj	Basundhara, Kathmandu
19	Dhimal	Dhimal Jati Bikas Kendra	Urlabari-6 Morang
20	Newar	Newa Deya Dabu	Tamsipakha, Kathmandu
21	Pahari	Nepal Pahari Bikash Sangh	Kumaripati, Lalitpur
22	Baram	Nepal Baram Sangh	Kaldhara-16, Kathmandu
23	Bote	Nepal Bote Samaj Sewa	Bharatpur-10, Chitwan
24	Bhujel	Bhujel Samaj Sewa Samiti	Dillibazar, New Plaza, Kathmandu
25	Bhote	Nepal Bhote Janajati Sewa Samiti	Martadi, Bajura

26	Magar	Nepal Magar Sangh	Shantinagar, Kathmandu
27	Majhi	Nepal Majhi Utthan Sangh	Madhuwan-7, Sunsari
28	Mugal	Mugal Janajati Samaj Kalyan Kendra	Mugu
29	Meche	Meche Samaj Sibiyari Afat	Jorsimal, Mechinagar Ward No.-12, Jhapa
30	Yakkha	Kirat Yakkha Chhumma	Mahalaxmasthan, Lalitpur
31	Limbu	Kirat Yakthung Chumlung	Mahalaxmasthan, Lalitpur
32	Rai	Kirat Rai Yayokkha	Koteshwor Kathmandu
33	Rajbanshi	Rajbanshi Samaj Bikash Samiti	Biratnagar, Madhumara, Morang
34	Raji	Raji Salma Samaj	Tikapur-9, Kailali
35	Lapcha	Rong Sejum Thi	Fikkal-6, Ilam
36	Larke	Larke Samaj Kalyan Kendra	Kuleshwor, Kathmandu
37	Walung	Walung Sewa Samaj	Ghattekulo, Kathmandu
38	Lhomi	Lhomi (Singsa) Kalyan Kendra	Kathmandu, Nepal
39	Sherpa	Nepal Sherpa Sangh	Kumarigal, Baudha, Kathmandu
40	Byasi	Byasi Sauka Samaj	Khalanga, Darchula
41	Santhal	Nepal Santhal Aadibashi Utthan Sangh	Majhare-8, Morang
42	Siyar	Siyar Samaj Kalyan Kendra	Swoyambhu, Kathmandu

43	Sunuwar	Sunuwar Sewa Samaj	Koteshwor Kathmandu
44	Hayu	Hayu Gukhata Kolu Padakmi (Hayu)	Ramechhap, Nepal
45	H yolmo	Nepal Hyolmo Samaj Sewa Sang	Baudhha, Kathmandu
46	Marfali	Marfa Thakali Samaj Sewa Sadan	Chapapani, Kaski, Pokhara
47	Tingaule Thakali	Tin Gaule Thakali Sewa Samiti	Thakalichok, Pokhara
48	Dolpo	Nepal Dolpo Janajati Bikash Kendra	Baudha, Kathmandu
49	Thudam	Thudam Sewa Samaj	Baudha, Kathmandu
50	Surel	Surel Jati Utthan Samaj	Dolakha
51	Dhanuk	Nepal Dhanuk Samaj	Gwarko Lalitpur
52	Kuchba-dhiya	Kuchbadhiya Utthan sangh	Nepalganj, Banke
53	Bahragaun	Bahragaun samaj Sewa Samiti	Jomsom, Mustang
54	Lhopa	Lochhodun Lhopa Sangh	Lomanthang, Mustang
55	Raute	Nepal Raute Bikash Sangh	Jogbudha-1, Dadeldhura
56	Kusunda	Nepal Kusunda Bikash Samaj	Dang, Nepal

3. National Indigenous Women's Federation, Nepal (NIWF),
Buddhanagar, Kathmandu, Nepal, Email: niwf2057@gmail.com,
www.niwf.org.np

Following are the Indigenous Women's Organizations affiliated to the NIWF

S.N.	IPs	Name of Organization	Email Address
1.	Newar	Nepal Bhasa Misha Khala, Central Committee, Kathmandu	nananewa@yahoo.com premhiraatuladhar@gmail.com mrs.shreejanapradhan@gmail.com
2.	Magar	Nepal Magar Mahila Sangh, Central Committee- Kathmandu	
3.	Sunuwar	Sunuwar Mahila Samaj, Central Committee- Kathmandu	sunuwarlaxmi32@gmail.com 1583sunuwar@gmail.com
4.	Rai	Nepal Kirat Rai Mahila Sangh, Central Committee- Kathmandu	mrs.somarai@gmail.com gole_sushila@yahoo.com
5.	Tharu	Tharu Mahila Jagaran Kendra, Central Committee- Kathmandu	phulmati45@yahoo.com
6.	Tamang	Nepal Tamang Mahila Ghedung, Central Committee- Kathmandu	sunilama28@gmail.com ntwghedung@gmail.com shramiklama@gmail.com
7.	Thakali	Thakali Mahila Sangh, Central Committee- Kathmandu	kusumbishalnagar@gmail.com
8.	Majhi	Nepal Majhi Mahila Utthan Sangh, Central Committee- Kathmandu	sismajhi@gmail.com majhimahima@gmail.com bndmajhi@hotmail.com
9.	Kumal	Nepal Kumal Mahila Samaj Sudhar Samiti, Central Committee- Kathmandu	kalpanakumal@hotmail.com
10.	Walung	Walung Mahila Sangh, Central Committee- Kathmandu	
11.	Gurung	Nepal Gurung (Tamu) Mahila Sangh, Central Committee- Kathmandu	grgck01@gmail.com

12.	Danuwar	Danuwar Mahila Samaj Sudhar Sangh, Central Committee-Udayapur	sanjadanuwar11@gmail.com
13.	Sherpa	Nepal Sherpa Mahila Sangh, Central Committee- Kathmandu	atesnimi@wlink.com.np
14.	Pahari	Nepal Pahari Mahila Bikash Sangh, Central Committee- Lalitpur	
15.	Meche	Meche Mahila Utthan Sangh, Central Committee- Jhapa	punam.meche@yahoo.com
16.	Rajbanshi	Rajbanshi Mahila Sangh, Central Committee- Jhapa	
17.	Limbu	Kirat Yakthung Mangena Chumlung, Central Committee- Kathmandu	
18.	Lhomi	Lhomi Mahila Kalyan Manch, Central Committee- Lalitpur	chhing9@hotmail.com
19.	Dolpo	Palden Dolpo Mahila Sangh, Central Committee- Kathmandu	
20.	Mugal	Mugal Adivasi Janajati Mahila Utthan Sanstha, Central Committee- Kathmandu	tomalama123@yahoo.com
21.	Byasi Sauka	Byasi Sauka Mahila Sangh, Central Committee- Kathmandu	pushpa_lala@yahoo.com
22.	Chhantyal	Nepal Chhantyal Mahila Sangh, Central Committee- Kathmandu	
23.	Barhagaunle Thakali	Barhagaun Chhimighyarcha Mahila Samaj Sewa, Central Committee- Kathmandu	tashi3248@yahoo.com

24.	Tajpuriya	Tajpuriya Mahila Utthan Sangh, Central Committee- Jhapa	
25.	Bhujel	Bhujel Mahila Samaj, Central Committee Kathmandu	
26.	Jirel	Jirel Mahila Samaj Sewa, Central Committee Dolakha	shantijirel@hotmail.com
27.	Gangai	Nepal Gangaai Mahila Parishad, Central Committee- Jhapa	
28.	Dhanuk	Dhanuk Mahila Samaj, Central Committee Kathmandu	dhanukwomen@gmail.com
29.	Dura	Dura Mahila Samaj, Central Committee Kathmandu	dilu.dura123@gmail.com
30.	Chepang	Nepal Chepang Mahila Sangh, Central Committee Kathmandu	chepangwoman@gmail.com
31.	Dhimai	Dhimai Mahila Sangh, Central Committee Morang	dhimaimanju7@gmail.com
32.	Yakkha	Yakkhama Yapsen, Central Committee Lalitpur	indirajimee@yahoo.com
33.	Baram	Nepal Baram Mahila Sangh, Central Committee Kathmandu	tarabaram@yahoo.com
34.	Thami	Nepal Thami Mahila Samaj, Central Committee Kathmandu	nanu.thami@yahoo.com
35.	Holmo	Nepal Holmo Woman Association, Central Committee-Kathmandu	buddhamaya14@gmail.com
36.	Surel	Surel Jati Mahila Utthan Samaj	
37.	Jhagad	Nepal Jhagad Mahila Sangh	

38	Bhote	Nepal Bhote Janajati Mahila Sangh	
39	Darai	Nepal Darai Mahila Samaj	
40	Kusunda	Kusunda Mahila Bikash Samaj Nepal	
41	Bankariya	Bankariya Mahila Bikash Sangh	
42	Topkegola	Topkegola Mahila Samaj Sewa Samiti	

4. Youth Federation of Indigenous Nationalities, Nepal (YFIN-Nepal), Bagbazar, Kathmandu Nepal, Email:yfin.nepal@gmail.com, www.yfin.org.np

Following are the Indigenous youth organizations affiliated to the YFIN, Nepal

1. Nepal Magar Youth Association, Central Committee
2. Tamu Hyula Youth Chhonj Dhi, Central Committee
3. Newa Iyamha daboo, National Committee
4. Nepal Tamang Youth Ghedung, Central Committee
5. Tharu KalyanKarini Youth Shabha, Central Executive Committee
6. Kirat Yakthum Youth Chumlung
7. Nepal Chhantyal yuwa sangh
8. Kirat Rai Youth Association
9. Nepal Sherpa Youth Association
10. Nepal Kumal Yuwa Samaj
11. Nepal Hyolmo Youth Samaj
12. Danuwar Youth Samiti
13. Kirat Sunuwar Youth Association
14. Kirat Aathpahariya Youth Samaj
15. Nepal Baram Youth Association
16. Nepal Dura Youth Association
17. Nepal Tajpuriya Youth Samaj
18. Uraun Youth Samaj
19. Rajbamshi Youth Committee
20. Bhote Yuwa Samaj
21. Nepal Done Youth Sangh
22. Nepal Khawas Youth Samaj
23. Kirat Kulung Youth Samaj
24. Nepal Bhujel Youth Samaj

25. Kirat Khaling Youth Samaj
 26. Kirat Bahing Youth Association
 27. Nepal Chepang Youth Association
 28. Nepal Jirel Youth Association
 29. Kirat Jero Youth Samaj
 30. Karmarong Youth Samaj
 31. Thakali Yuwa Samaj
 32. Nepal Thami Youth Association
 33. Darai Youth Association
 34. Nepal Lapcha Youth Association
 35. Surel Youth Committee
 36. Topkegola Youth Committee
 37. Kirat Thulung Youth Samaj
 38. Nepal Dhanuk Youth Association
 39. Lapcha Youth Association
 40. Kirat Yakhkha Youth Chhumma
 41. Nepal Walung Youth Sewa Samaj
 42. Majhi Youth Sudhar Samiti
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5. Nepal Indigenous Disabled Association (NIDA), Bhawanimandal, Lalitpur, Email: info@nidanepal.org.np, www.nidanepal.org.np
 6. National Indigenous Disabled Women Association Nepal (NIDWAN), Bhawanimandal, Lalitpur, Email: info@nidwan.org.np, www.nidwan.org.np
 7. Indigenous Women's Legal Awareness Group (INWOLAG), Kumaripati, Lalitpur Email: inwolag@yahoo.com, www.inwolag.org.np
 8. National Coalition Against Racial Discrimination (NCARD), Sahayogi Marg-32, Anamnagar, Kathmandu Metropolitan City, Email: ncardnp@gmail.com/ncard2003@gmail.com, website: www.ncard.np.org, Ph.: +977 01 4102601
 9. Athar Magarat Magar Pratisthan, Kathmandu Metropolitan City-14, Kalanki, Kathmandu, Ph: 01 52181688
 10. Lila Phang (Ghale Samaj), Kathmandu Metropolitan City-29, Samakhushi, Kathmandu, Ph.: +977 01 4352798

Annex II: Judicial detainees: Tharu Leaders, Youth and Children in Kailali District Jail in the Charge of Homicide, attempt to murder and Theft

SN	Name, Age and Address	Court	Time	Arrested from	Remark
1.	Karan Chaudhary Age: 14 Kailali District, Munuwa VDC-4	Kailali District Court	11 Sept. 2015	House	Children Remand Home Kaski
2.	Shrawan Chaudhary Age:15 Kailali District, Munuwa VDC-4	"	11 Sept. 2015	House	Children Remand Home Kaski
3.	Pradip Chaudhary Age: 18 Kailali District Munuwa VDC-4	"	24 Aug. 2015	House while tutoring children from village	Children Remand Home Kaski
4.	Bishram Chaudhary Age: 24 Kailali District, Pathraiya VDC-1	"	10 Sept. 2014	House	Person with disability
5.	Jit Bahadur Dagaura Age: 46 District Kailali, Thapapur VDC-6	"	22 Aug. 2015	House Night	
6.	Santosh Kr. Tharu Age: 31 District Kailali, Tikapur Municipality-5	"	3 Sept. 2015	Near Sukhad Police Check post	
7.	Ram Naresh Chaudhary Age: 31	"		School: while teaching	

8.	Bir Bahadur Chaudhary Age:34 Tikapur Municipality-1	"	29 Aug. 2015	House: Midnight, while sleeping	
9.	Santaram Chaudhary Age: 33 Kailali Thapapur VDC-5	"	12 May 2016	House	
10.	Kisan Lal Chaudhary Age: 36 Kailali District, Thapapur VDC-5 "	"	29 Aug. 2015	House: Night 1'Oclock, while sleeping	
11.	Rajesh Chaudhary Age: 35 Kailali District, Thapapur VDC-7	"	30 Aug. 2015	House: Night 1'Oclock, while sleeping	
12.	Prem Bahadur Chaudhary Age:40 Kailali District, Bhajani Trishakti Municipality 4	"	25 Aug. 2015	Shop	
13.	Brija Mohan Dagoura Age:34 Kailali District, Thapapur VDC-7	"	30 Aug. 2015	House 2'o clock night	
14.	Ram Kumar Kathariya Age:20 District Kailali, Munuwa VDC-1, Kanchanpur	"	25 Aug. 2015	Hospital	
15.	Nurul Ali Jaga Age:33 Kailali District, Thapapur VDC-7, Khaira	"	8 Sept. 2015	House	

16.	Ram Prasad Chaudhary Age:46 Kailali District, Joshiapur VDC-4	"	25 Aug. 2015		
17.	Hari Narayan Chaudhary Age: 22 District Kailali, Munuwa VDC-4, Okharpur	"	25 Aug. 2015	Hospital	
18.	Dil Bahadur Chaudhary Age: 20 District Kailali, Munuwa VDC-1,kanchanpur	"	25 Aug. 2015	Hospital	
19.	Sundar Lal Kathariya Age: 32 District Kailali, Munuwa VDC-1, Kanchanpur	"	25 Aug. 2015	Hospital	
20.	Laxman Tharu Age:40 Kailali Fulbari VDC-1	"	9 Sept. 2015	Bhairahawa	
21.	Lahuram Chaudhary Age:58 Kailali District Dhangari Municipality-3	"	10 Sept. 2015		
22.	Raj Kumar Kathariya Age:25 Kailali District, Munuwa VDC 1 “	"	25 Aug. 2015	Hospital	

23.	Chunniram Chaudhary Age: Kailali District, Joshiapur-7	"	13 Sept. 2015	House	
24.	Bisaram Kusmi (Tharu) Age: District Kailali, Narayanpur VDC-6	"	5 April 2016	House	
25.	Shanta Kumar Chaudhary Age: Kailali District, Thapapur VDC-7, Nawalpur	"	12 May 2016	House	
26.	Resham Lal Chaudhary Age: Kailali District, Durghauli VDC-9 Jagatpur	"	26 Feb. 2018	Kailali District Court	Recently won in Election

These people were accused of Kailali incident were 7 police personnel were died. None of these people claimed that they were there while casualties occurred. Clash between people and police took place when peaceful procession was organized to demand Tharuhat Autonomy (Self-rule for Tharus) in accordance with various sources.

Annex III: List of Indigenous Leaders and youths judicial detainees in charge of Organized Crime and Treason

SN	Name	Jail	Court of Ordering	Time	Remark
1	Upendra Gharti Magar-Age-30 Rukum District, Jang VDC-2	Dillibazar Kathmandu	Bhaktapur District Court		
2	Suchindra Palungwa Age-33 Bhaktapur District, Madyapur Thimi Municipality-16			19 Oct. 2016	
3	Subash Chandra Rai Age-32 Khotang District Salle VDC-5			20 Oct. 2016	
4	Rabin Shrestha Age-29 Sindhupalchok District Chautara Municipality 5			22 Oct. 2016	
5	Ajay Tamang Age -18 Sindhupalchok District Gumba VDC-5			23 Oct. 2016	Child under CRC
6	Ban Bahadur Tamang Age -21Sindhu palchok District Golche VDC-4			24 Oct. 2016	On Bail
7	Tulke Shrestha Age-39 Sindhupalchok District, Chautara Municipality- 5			26 Oct. 2016	

8	Prithvi Narayan Limbu Age-71 Taplejung District Sikaicha VDC-2		20 Oct. 2016		On bail
9	Temdi Sherpa Age-45 Ramechap District, Gumdel VDC-1				
10	Chandra Bahadur Gharti Age-36 Rolpa District, Siwdi VDC-4				
11	Dujaman Gharti Age-22 Rolpa District, Siwdi VDC-1				
12	Ram Bahadur Buda Age-30 Rolpa District, Siwdi VDC-8				
13	Lok Bahadur Buda Age-32 Rolpa District, Siwdi VDC-8				
14	Jog Bahadur Gharti Age-30 Rolpa District, Siwdi VDC-7				

Source: Charge Sheet of Police submitted to the District Court

(Not: There is high chance of relocate detainees in different jails)

Annex IV: **Caste Ethnic Composition at local, provincial and federal levels**

Federal Member (Proportional Representation) by caste/ethnicity

Caste/Ethnicity	Caste/ethnicity		Total	Percentage
	HBC	(Khas Arya) Hill Bahun Chhetri	33	30.00
	HD	Hill Dalit	14	12.73
	HJ	Hill Janajati	29	26.36
	Madhesi	Madhesi	22	20.00
	Muslim	Muslim	4	3.64
	TD	Tarai Dalit	1	0.91
	TJ	Tarai Janajati	7	6.36
	Total		110	100

Federal Member (FPTP) by caste/ethnicity

Caste/Ethnicity	Caste/ethnicity		Total	Percentage
	HBC	(Khas Arya) Hill Bahun Chhetri	86	52.12
	HD	Hill Dalit	2	1.21
	HJ	Hill Janajati	36	21.82
	Muslim	Muslim	3	1.82
	Madhesi	Madhesi	27	16.36
	TJ	Tarai Janajati	11	6.67
			165	100

Upper House Member	Caste/ethnicity		Total	Percentage
	HBC	(Khas Arya) Hill Bahun Chhetri	34	60.71
	HD	Hill Dalit	6	10.71
	HJ	Hill Janajati	9	16.07
	Madhesi	Madhesi	5	8.93
	Muslim	Muslim	0	0.00
	TD	Tarai Dalit	1	1.79
	TJ	Tarai Janajati	1	1.79
			56	100

SN	Caste/ethnicity		Federal		Total	%	Upper House	%	Total	%
			FPTP	PR						
1	HBC	(Khas Arya) Hill Bahun Chhetri	86	33	119	24.04	34	60.71	153	46.22
2	HD	Hill Dalit	2	14	16	3.23	6	10.71	22	6.65
3	HJ	Hill Janajati	36	29	65	13.13	9	16.07	74	22.36
4	Madhesi	Madhesi	27	22	49	9.90	5	8.93	54	16.31
5	Muslim	Muslim	3	4	7	1.41	0	0.00	7	2.11
6	TD	Tarai Dalit	0	1	1	0.20	1	1.79	2	0.60
7	TJ	Tarai Janajati	11	7	18	3.64	1	1.79	19	5.74
		Total	165	110	275	55.6	56	100	331	100

Provincial FPTP	Caste/ethnicity		Total	%
	HBC	(Khas Arya) Hill Bahun Chhetri	168	50.91
	HD	Hill Dalit	5	1.52
	HJ	Hill Janajati	73	22.12
	Madhesi	Madhesi	58	17.58
	Muslim	Muslim	8	2.42
	TD	Tarai Dalit	1	0.30
	TJ	Tarai Janajati	17	5.15
			330	100

Analysis of Provincial Parliament Member (Proportional Representative) by Caste and Ethnicity

		Province								
Caste/ethnicity		1	2	3	4	5	6	7	Total	%
HBC	(Khas Arya) Hill Bahun	9	1	15	9	16	12	13	75	34.1
HD	Chhetri Hill Dalit	2	0	2	4	6	3	4	21	9.55
HJ	Hill Janajati	19	3	26	11	2	1	0	62	28.2
Muslim	Muslim	1	4	1	0	2	0	0	8	3.64
Madhesi	Madhesi	2	32	0	0	2	0	0	36	16.4
TD	Tarai Dalit	2	2	0	0	2	0	0	6	2.73
TJ	Tarai Janajati	2	1	0	0	5	0	4	12	5.45
	Total	37	43	44	24	35	16	21	220	100

	Caste/ethnicity		Provincial		Total	%
			FPTP	PR		
1	HBC	(Khas Arya) Hill Bahun Chhetri	168	75	243	44.18
2	HD	Hill Dalit	5	21	26	4.73
3	HJ	Hill Janajati	73	62	135	24.55
4	Madhesi	Madhesi	58	8	66	12.00
5	Muslim	Muslim	8	36	44	8.00
6	TD	Tarai Dalit	1	6	7	1.27
7	TJ	Tarai Janajati	17	12	29	5.27
		Total	330	220	550	100

Annex V: Proposal on the prepared by Indigenous Parliamentarian CAUCUS in Consultation with Indigenous Peoples, submitted to the First Constituent Assembly

(None of these rights are incorporated in the New Constitution of Nepal, 2015)

- 1) Right to live with dignity:
Indigenous peoples shall have the right to live with dignity with due respect to their individual and collective identity and rights.
- 2) Right to Freedom:
Every citizen and community will have the freedom to establish organizations or run their cultural and representative organizations.
- 3) Right to Equality:
Every citizen and community will be equal in front of the law. No one shall be denied of equal legal protection and benefit/ services.
- 4) Right to Justice:
Every individual and community's right to justice shall be protected. Indigenous peoples will have the right to practice their judicial/legal organizations/structures and customary law in line with the constitution and international law. Judicial,

quasi-judicial and administrative bodies and its respective jurisdiction will uphold the indigenous peoples' customary law in line with international legal standard.

- 5) Right of the victim and accused:
Any victim or the accused will have the right to represent themselves in their mother tongue during any prosecution, investigation procedures in which they are implicated.
- 6) Right to Religious Freedom:
The State will not conduct any activity that will directly or indirectly discriminate on the basis of religious or reflect such religious discrimination.
- 7) Right to Information:
The speakers of mother tongue will have the right to receive information of public interest and importance in their mother tongue.
- 8) Right to Environment:
Indigenous peoples shall have the right to protect, promote, manage, use and enjoy the environment of their ancestral land and settlement areas.
- 9) Right to Education:
Every community shall have the right to receive education in their mother tongue. The State will introduce/manage the effective structure for the enjoyment of this right.
- 10) Women's Rights:
 - a. Women will have the right of absolute proportional representation in all of the State mechanisms. This will be based on the total women population. The State for the fulfillment of this right will prioritize Indigenous women, Dalit women, Muslim women, women from Terai and Madheshi community, and women from severely marginalized community.
 - b. Indigenous women will have the right to their identity. The State shall adopt special measures to protect the right to identity. Indigenous women will have the special right to receive their ancestral property bestowed on them by their customary law.
- 11) Right to Self-determination:
 - a. Indigenous peoples will have the right to self-determination

on the basis of which they can freely ascertain their political context; foster economic, social and cultural developments; own, control, use, enjoy and manage their ancestral land and natural resources.

- b. Indigenous peoples shall have rights to practice their right to self-determination through autonomy, self-rule and self-governance.
 - c. On the basis of ethnic population, indigenous peoples will have the right to inclusive proportional representation at all decision making regions and levels of the State. The indigenous peoples shall have the right to inclusive proportional representation on election constituency (decided by the State) and decisive State structures. The State, through separate election constituency and electoral system will manage a system that shall enable the indigenous peoples to enjoy their equal right and status.
 - d. Indigenous peoples shall have the right to receive free, prior, informed, consent (FPIC) while the State formulates, reviews, or annuls the legislations related or concerned with the indigenous peoples; while carrying out any works related to the land management, administrative, policy and development. The indigenous peoples shall have the right to receive such information through their customary and representative organizations.
 - e. The State will formulate necessary law, policy and regulations for the implementation of free, prior, informed consultation (FPIC), participation and representation.
- 12) Right to land and natural resources:
Indigenous peoples will have the right to own, use, enjoy, manage, promote and control their ancestral land, geographical region and natural resources.
- 13) Right to indigenous knowledge and heritage:
- a. Indigenous peoples shall have the right to protect, develop, promote and practice distinct traditional indigenous art, knowledge, skills, or expertise as intellectual property and enjoy, protect and promote accordingly. This right shall be inviolable and subject to punishment in the case of violation.

- b. Indigenous peoples will have the right to conserve, promote and develop their cultural, archeological, historical and natural heritage. This right shall be inviolable.
- 14) Indigenous Women's right to Women's rights:
 - a. Indigenous women will have the right to their identity. They shall have the right to effective remedy against any kind of descent and racial (identity) based discrimination and exploitation.
 - b. The State, through law, policy and programmes or special measures shall protect the progress, development and rights of the indigenous women.

Annex VI: Agreement reached between the Government Talks Team comprising seven parties and the Federal Limbuwan State Council on 19 March 2008

The feudalist and centralized state authority and unitary state structure has exploited, oppressed and isolated the people of Limbuwan from mainstream. The Federal Limbuwan State Council has been expressed its dissatisfaction over it. Realizing the said norms and sentiments of historic Jana Andolan 2006 to restructure the state and in the context of the movement being carried with demands for a federal democratic republic with the right to self-determination and autonomy along with ethnic identity, we, the parties mentioned below have reached the following agreement expressing commitment to build a peaceful, prosperous and modern new Nepal by incorporating all Nepali people including Limbuwan in one national mainstream while restructuring the state.

1. The Federal Governance system shall be adopted by making constitutional provision for autonomous states on the basis of historic background of Limbuwan, geographical area etc. while restructuring of current Nepal from the Constituent Assembly thereby addressing the immense desire of the people of Limbuwan and their movement, and maintaining the national unity, integrity and indivisibility.
2. Honouring Late Rajkumar Angdembe (Mangtok) who attained martyrdom during the movement carried out by the people

of Limbuwan as the martyr, his family shall be provided a compensation of one million rupees. The Government shall make arrangements for the treatment of those injured and provide compensation for the losses occurred during the movement. The Government shall withdraw the charges filed against the agitators.

3. The representation of Federal Limbuwan State Council shall be ensured while forming the State Restructuring Commission.
4. The agreements reached in the previously mentioned points shall be ratified by the Council of Ministers and made public.
5. Following today's agreement between the two sides all programmes of agitation announced by the Federal Limbuwan State Council shall be adjourned and support shall be extended to create conducive atmosphere for the Constituent Assembly election.

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined seventeenth to twenty-third periodic reports of Nepal*

1. The Committee considered the combined seventeenth to twenty-third periodic reports of Nepal (CERD/C/NPL/17-23), submitted in one document, at its 2626th and 2627th meetings (CERD/C/SR.2626 and 2627), held on 30 April and 1 May 2018. At its 2639th meeting (CERD/C/SR.2639), held on 9 May 2018, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the seventeenth to twenty-third periodic reports of the State party, while regretting the delay of over eight years in their submission. The Committee expresses its appreciation for the open and constructive dialogue with the State party's delegation. The Committee wishes to thank the delegation for the information provided during the consideration of the report.

B. Positive aspects

3. The Committee welcomes the State party's ratification of or accession to:
 - a. Optional Protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2007, and on the sale of children, child prostitution and child pornography, in 2006;

- b. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2007;
- c. International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169), in 2007;
- d. Convention on the Rights of Persons with Disabilities and its Optional Protocol, in 2010.
- e. The Committee also welcomes the State party's efforts to amend its legislation, policies, programmes and administrative measures to further ensure the protection of human rights and implementation of the Convention, including:

*Adopted by the Committee at its ninety-fifth session (23 April-11 May 2018).

- f. The Constitution of Nepal (2015);
- g. National Human Rights Commission Act (2012);
- h. Caste-Based Discrimination and Untouchability (Offence and Punishment) Act (2011);
- i. Human Rights Action Plan (2014–2019);
- j. National Plan of Action against Human Trafficking (2011).

C. Concerns and recommendations

Domestic application of the Convention

- 4. The Committee is concerned by the absence of information concerning judicial cases in which the Convention has been expressly invoked and applied (arts. 1, 2.)
- 5. The Committee requests that the State party provide information on the number and type of cases in which judges have directly invoked the Convention.

Definition and criminalisation of racial discrimination

- 6. The Committee is concerned that the Caste-Based Discrimination and Untouchability (Offence and Punishment) Act, 2011 does not prohibit discrimination based on colour or national or ethnic origin, and does not expressly prohibit both

indirect and direct forms of discrimination (arts. 1, 2, 5).

7. The Committee urges the State party to ensure that its domestic legislation defines and criminalises all forms of racial discrimination specified in article 1 of the Convention, including on the basis of colour and national or ethnic origin, and prohibits both direct and indirect racial discrimination in all fields of public life.

National human rights institutions

8. The Committee takes note that the National Human Rights Commission has been granted A status by the Global Alliance of National Human Rights Institutions. However, the Committee is concerned that in 2012 and 2013, only five caste-based discrimination complaints were presented to the National Human Rights Commission, and by the lack of clear and comprehensive information on the outcome of the review of these complaints. The Committee is further concerned that the National Inclusion Commission, the Madheshi Commission and the Tharu Commission are not yet operational, and that the National Dalit Commission is only operational in Kathmandu due to insufficient funding (art. 2).
9. The Committee recommends that the State party, in line with the Paris Principles (General Assembly resolution 48/134), provide sufficient resources to ensure the effective functioning of its national human rights institutions, and ensure implementation of their recommendations. It requests that the State party provide in its next periodic report statistics indicating the number, type and outcome of complaints related to racial or caste-based discrimination and submitted to national human rights institutions and other bodies.

Acts of racial discrimination

10. The Committee is concerned that complaints under the Caste-Based Discrimination and Untouchability Act (Offence and Punishment) Act of 2011 can only be filed within a period of three months from the alleged violations. Noting the delegation's

statement that in 2016-2017, 39 convictions resulted from 659 caste-based discrimination complaints before the Supreme Court, the Committee is concerned by the lack of detailed information on such cases, and by reports that the aforementioned Act has not been effectively implemented. The Committee is also concerned by reports that law enforcement officials are reluctant to act *suo motu* upon caste-based discrimination and do not, upon receipt of related allegations, consistently register First Information Reports with the view to initiating criminal investigations (arts. 2, 5, 6).

11. The Committee recommends that the State party:

- (a) Amend the Caste-Based Discrimination and Untouchability Act of 2011 to prolong the statute of limitations for submitting a complaint;**
- (b) Ensure that all criminal complaints of race-based discrimination are formally recorded with law enforcement through First Information Reports and that law enforcement officials who fail to do so are sanctioned;**
- (c) Ensure that acts of racial discrimination are consistently investigated, prosecuted and sanctioned, and that victims are provided with appropriate remedies;**
- (d) Widely disseminate information to the public throughout the country and to law enforcement officials about anti-racial discrimination laws and related complaint mechanisms.**

Segregation

12. While noting that the State party has prohibited several practices of caste-based segregation, the Committee remains deeply concerned by reports that such segregation persists *de facto*, preventing marginalized castes, including Dalits, from safely intermarrying with members of other castes, and from accessing places of religious worship, public spaces, public sources of food and water, educational facilities and housing facilities occupied by members of other castes (arts. 2, 3, 5).

13. The Committee recommends that the State party:

- (a) Monitor, investigate, prosecute and sanction incidents of violence linked to inter-caste marriage and caste-based segregation, and offer protection and remedies to victims;
- (b) Conduct country-wide public awareness and education campaigns designed to eliminate the notion of racial or caste-based hierarchies, end social segregation practices and prevent inter-caste violence;
- (c) Ensure that educational curricula and textbooks condemn caste-based discrimination and untouchability, contain positive representations of the culture and contributions of all castes, and omit derogatory or otherwise discriminatory language against any caste.

Racist hate speech and hate crimes

14. The Committee is concerned by the lack of information on whether racial or caste-based hatred constitutes an aggravated factor in criminal sentencing. The Committee is also concerned by the lack of statistics and information on the incidence of racist or caste-based hate speech, and on measures taken to enforce relevant laws and sanction perpetrators. The Committee is further concerned by reports that the State party does not adequately monitor racist propaganda and organizations, and does not engage in systematic public sensitization efforts to eliminate notions of racial and caste-based hierarchies (arts. 2, 4).

15. Recalling its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination and No. 35 (2013) on combating racist hate speech, the Committee recommends that the State party:

- (a) Ensure that racial and caste-based hatred constitute an aggravating circumstance when they serve as the motivation for an offence, both in law and in practice;
- (b) Ensure that law enforcement officers properly identify, register, investigate, prosecute and sanction racist hate crimes, organisations, and hate speech;

- (c) **Conduct civic sensitization programs and dialogues throughout the country to eliminate caste-based and racial hatred and bias at the community level.**
16. **The Committee requests that the State party collect and provide in its next periodic report statistics, disaggregated by caste or ethnicity of the victim, on investigations, prosecutions, convictions, sanctions and remedies for race or caste-based hate crimes, including acts of hate speech and incitement to hatred.**

Reservation and declaration

17. The Committee remains concerned that the State party's reservation under article 4 and its declaration under article 6 are inconsistent with the obligations of States parties under those articles (arts. 2, 4).
18. The Committee urges the State party to withdraw its reservation to article 4 and its declaration regarding article 6 of the Convention.

Access to earthquake relief

19. The Committee is concerned by reports that marginalised castes were disproportionately affected by the 2015 earthquake and are still less likely to receive related aid.
20. The Committee recommends that the State party urgently take measures to ensure the non-discriminatory provision of disaster recovery assistance to all those in need, including members of marginalised castes in remote areas.

Indigenous peoples

21. The Committee is concerned by reports that indigenous peoples could not adequately and meaningfully participate in the drafting of the 2015 Constitution, because their representatives were not freely chosen but were instead selected via political parties. The Committee is also concerned that domestic legislation only recognises 59 out of the 81 indigenous peoples of Nepal.

The Committee is further concerned by the absence of laws guaranteeing the rights of indigenous peoples to own, use and develop their traditional lands and resources, and by allegations that these rights have been violated in the context of hydropower, road widening and other development activities that are often accompanied by involuntary displacement. The Committee is also seriously concerned by reports of severe harassment of indigenous leaders, including members of the Tharu people, by State agents. The Committee is further concerned by the criminalization of cow slaughter, which compromises the rights of indigenous peoples for whom the eating of beef holds cultural significance (arts. 2, 5, 6).

22. Recalling its general recommendation No. 23 on indigenous peoples (1997), the Committee recommends that the State party:

- (a) Ensure that its domestic legislation formally recognizes all indigenous peoples in Nepal;**
- (b) Ensure that the right of indigenous peoples to participate in government bodies under article 42 of the Constitution is effectively respected and that indigenous peoples freely choose their representatives;**
- (c) Find an adequate negotiated solution to resolve the dispute regarding the rights of indigenous peoples over their traditional lands and natural resources, including by revising its legislation on this issue and taking into account ILO Convention No. 169;**
- (d) 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;**
- (e) Take all necessary measures, including legislative measures, to guarantee that evictions are carried out in accordance with international standards, and provide remedies and adequate alternative housing to those affected by eviction;**
- (f) Ensure the safety of indigenous peoples who have been subjected to threats, harassment, and other arbitrary and**

violent acts by government agents and/or private individuals; and take measures to prevent and investigate such acts and punish the perpetrators.

- 23. The Committee also invites the State party to repeal laws that criminalize aspects of indigenous cultures in order to respect the rights of indigenous peoples (Adivasi / Janajati) to freely exercise their cultural and religious rights.**

Education

24. The Committee is concerned that indigenous peoples and Dalits, especially women, remain underrepresented in higher secondary education and in teaching positions, as revealed by the State party's statistics. It is also concerned by reports that literacy rates among Terai/Madheshi and Hill Dalits are far lower than the national average, and that Dalits are underrepresented in educational curricula and face discrimination in schools (arts. 2, 5).
25. Taking into account its general recommendations No. 32 on the meaning and scope of special measures in the Convention (2009), and No. 25 on gender-related dimensions of racial discrimination (2000), the Committee recommends that in order to ensure equal and inclusive access to education for all children, the State party:
- (a) Strengthen special measures to achieve full inclusion of all children belonging to indigenous peoples, Dalits and underrepresented castes, especially women, at all levels of education and in teaching positions, including by providing necessary human, technical and financial resources;
 - (b) Implement targeted programs in schools, accompanied by increased funding, to improve literacy rates and combat caste-based discrimination by students and teachers, especially in areas inhabited by indigenous peoples, Dalits and other marginalised castes or ethnic groups;
 - (c) Ensure proportional representation of marginalised castes and ethnic groups in all national educational agencies, councils and committees.

Trafficking in persons and slavery

26. While welcoming the State party's efforts to combat trafficking and contemporary forms of slavery, the Committee is extremely concerned by reports that over 200,000 individuals in the State party are enslaved, including for purposes of sexual exploitation, forced labor, bonded labor, domestic servitude and forced marriage. The Committee is concerned that although domestic law prohibits bonded labour practices including Haliya and Kamaiya, which disproportionately affect Dalits and other marginalised castes, reports indicate that these practices persist in reality. The Committee is concerned that although the State party has introduced measures and allocated funds to resettle and rehabilitate former bonded labourers by providing them with land and/or houses and income-generating skills, reports indicate that such efforts are underfunded. The Committee is further concerned by reports that Adivasi / Janajati represent almost half of trafficking victims; that there are no standard operating procedures for identifying victims of trafficking; that prosecutions for human trafficking decreased significantly in 2016; and that many Nepali migrant workers encounter deceptive recruitment practices that could lead to trafficking and slavery (arts. 2, 5, 6).

27. The Committee recommends that the State party:

- (a) Intensify its efforts to prevent trafficking in persons, slavery, sexual exploitation and forced labour;**
- (b) Implement standard operating procedures for proactively identifying and assisting victims of trafficking and slavery;**
- (c) Strengthen its efforts to eliminate exploitative and deceptive recruitment practices towards migrant workers, and bring those responsible for human trafficking and contemporary forms of slavery to justice;**
- (d) Provide information and advice on safe channels of migration in migration-prone communities;**
- (e) Strengthen its efforts to fund voluntary and sustainable resettlement and rehabilitation of former bonded labourers, including through the provision of affordable and adequate housing and alternative livelihoods;**

- (f) Provide in its next periodic report data, disaggregated by ethnicity or caste, on the number of acts of trafficking and enslavement investigated, prosecuted and sanctioned, and on remedies provided to victims.**

Landlessness

28. The Committee is concerned by reports that landlessness is disproportionately prevalent among Dalits and Adivasi Janajatis, rendering them particularly vulnerable to economic exploitation by landowners. While noting the delegation's statements on land ownership, the Committee is concerned by reports that the landholding ceiling and land redistribution provisions contained in domestic laws have not been implemented, and that a small number of large landlords own most agricultural land to the detriment of local landless individuals, including millions of members of disadvantaged castes (arts. 2, 5).

29. The Committee recommends that the State party take all necessary measures, including through the implementation of relevant laws, to eliminate patterns of land distribution that represent *de facto* discrimination against Dalits and other marginalised castes or ethnic groups.

Caste-based occupational specialisation

30. The Committee is deeply concerned by the way in which caste-based occupational specialisation obstructs socioeconomic mobility and assigns members of certain castes to degrading and / or exploitative occupations (arts. 2, 5).

31. The Committee recommends that the State party implement measures to ensure and promote occupational mobility for marginalised castes, including through hiring incentives, vocational training and community-based awareness and empowerment programs.

Citizenship

32. The Committee is concerned by reports that some government officials are seeking to discourage Dalits from applying for citizenship. The Committee is further concerned by reports that many adult Terai Madheshis whose parents received citizenship by birth before the promulgation of the Constitution of 2015 have been denied citizenship by descent, in violation of article 11 (3) of the Constitution (arts. 2, 5).

33. The Committee recommends that the State party ensure that its laws, regulations and practices set clear procedures for issuing citizenship certificates without distinction as to caste; timely register applications for citizenship and provide written, reasoned decisions for denials within a reasonable timeframe; and ensure the availability and accessibility of a complaint mechanism to contest the denial of applications for citizenship.

Dalit women

34. The Committee is seriously concerned by reports that sexual and other forms of violence against Dalit women are common and often unpunished. The Committee is also concerned by reports that because 40% of Dalits live in poverty, the majority of Dalit girls marry before 15 years of age, putting them at heightened risk of being subjected to sexual and domestic violence and impeding their access to education. The Committee is further concerned by reports of caste disparities in reproductive health and maternal mortality, as Dalit women are far less likely to have access to a skilled birth attendant. The Committee is also concerned by the low level of political representation of Dalit women (arts. 2, 5, 6).

35. The Committee recommends that the State party:

(a) Intensify its efforts to eradicate violence against women, including by conducting awareness campaigns, encouraging reporting, investigating all reported cases,

- prosecuting and sanctioning the perpetrators, and providing protection and remedies to victims;
- (b) Effectively operationalize its strategy to end child marriage by 2030, including by establishing related activities, targets, timelines, budgets and data collection methods;
 - (c) Enforce compulsory, free and quality primary education throughout the country;
 - (d) Raise awareness in affected communities about the legal prohibition on child marriage, and about the value of girls, their education, and their ability to pursue economic independence;
 - (e) Reduce poverty among Dalits, including by providing income-generating skills and training to Dalit youths;
 - (f) Increase access of Dalit women to skilled birth attendants and proper ante-natal care and nutrition; and
 - (g) Increase the level of political participation of Dalit women.

Migrants, refugees and asylum seekers

36. The Committee remains concerned that the State party does not have a formal asylum recognition system to ensure the respect of the principle of non-refoulement, and that while it has provided temporary shelter on humanitarian grounds to thousands of refugees from Tibet and Bhutan, it states that it is not in a position to accept any other refugees due to practical considerations. The Committee is further concerned by reports of large numbers of stateless persons in Nepal, and by reports that because identity documents are not provided to Tibetan refugees and their children, including those born in Nepal and who have been living in Nepal for decades, they are exposed to fines, detention and deportation for irregular stay, and are unable to obtain an education, open bank accounts, obtain driver's licenses, and travel (arts. 2, 5, 6).

37. The Committee again urges the State party (CERD/C/64/CO/5, para. 19) to ratify international instruments relating to the protection of refugees and adopt national legislation

conforming to the standards in those instruments. The Committee further recommends that the State party provide identity documents to refugees in its territory. The State party is also encouraged to accede to the 1954 Convention relating to the Status of Stateless persons and the 1961 Convention on the Reduction of Statelessness.

D. Other recommendations

Ratification of other instruments

38. Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights instruments that it has not yet ratified, in particular treaties with provisions that have direct relevance to communities that may be subjected to racial discrimination, including the International Convention on the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Follow-up to the Durban Declaration and Programme of Action

39. The Committee takes note of the information the State party provided concerning the measures it has taken to give effect to the Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), and encourages it to continue these efforts and report accordingly.

International Decade for People of African Descent

40. In the light of General Assembly resolution 68/237, the Committee requests that the State party include in its next periodic report precise information on the concrete measures adopted in the framework of the International

Decade for People of African Descent, taking into account the Committee's general recommendation No. 34 (2011) on racial discrimination against people of African descent.

Consultations with civil society

41. The Committee recommends that the State party continue consulting and increasing its dialogue with civil society organizations concerned with human rights protection, in particular those working to combat racial discrimination, in the preparation of the next periodic report and in follow-up to the present concluding observations.

Declaration under article 14 of the Convention

42. The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention recognizing the Committee's competence to receive and consider individual communications.

Amendment to article 8 of the Convention

43. The Committee recommends that the State party ratify the amendment to article 8 (6) of the Convention adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

Common core document

44. Noting that the State party submitted its core document in 1994 (HRI/CORE/1/Add.120), the Committee encourages the State party to revise and resubmit its core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human

rights treaty bodies held in June, 2006 (HRI/GEN.2/Rev.6, chap. I). The Committee urges the State party to observe the limit of 42,400 words for such documents (General Assembly resolution 68/268.)

Follow-up to the present concluding observations

45. In accordance with article 9 (1) of the Convention and rule 65 of its rules of procedure, the Committee requests the State party to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations contained in paragraphs 10 and 21 above.

Paragraphs of particular importance

46. The Committee wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 23, 28 and 36 above and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement these.

Dissemination of information

47. The Committee recommends that the State party's reports be made readily available to and accessible by the public at the time of their submission and that the concluding observations of the Committee with respect to those reports be similarly publicized in the official and other commonly used languages, as appropriate.

Preparation of the next periodic report

48. The Committee recommends that the State party submit its combined twenty- fourth to twenty-fifth periodic reports, as a single document, by 1 March, 2022, taking into account the reporting guidelines adopted by the Committee during

its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. In the light of General Assembly resolution 68/268, the Committee urges the State party to observe the limit of 21,200 words for periodic reports.

Annex III: **Publications**

Annex... Summary of the Supreme Court decision of road expansion case

Supreme Court, Full Bench

Honorable Judge Kedar prasad Chalise

Honorable Judge Harikrishna Karki

Honorable Judge Purushottam Bhandari

Order

073-WF-0003

Subject: Certioraris, with writ

Petitioner:

1. Sanu Shrestha of Kathmandu District, Mahadevsthan VDC, Ward no. 1 (Currently Chandragiri Municipality, Ward no. 8)

Against:

Nepal Government, Office of the Prime Minister and Council of Ministers, Singhadurbar, Kathmandu-1

Nepal Government, Ministry of Physical Infrastructure, Singhadurbar, Kathmandu-1

Defendant in Opposition

31. The Supreme Court has pointed out the need to balance between the government's responsibility of infrastructure development and civil rights. Similarly, the Supreme Court has also strongly brought to attention the fact that infrastructure development works should be done without bringing/creating adverse impacts on the environment, in accordance to international commitments on (environment) conservation. Section 36 of the Constitution points toward the need to respect the right to housing. In its principles, the Supreme Court has reflected the fact that it is unexpected of the government, various bodies and officers, who are bound to the legal proceedings that is based on democratic values and principles, use their power to forcefully intervene on private property.

32. It has been observed that although the principles have been

developed and established by the Supreme Court, work that defy these principles, as established by the Supreme Court, continue to abduct the civil rights, adversely affect the environment and adversely affect the objects and sites of archeological importance. These issues have been raised and relevant cases have reached and are under consideration at the Supreme Court and High Court, while such cases continue being filed. To acknowledge and stress on the importance of it, this court has sent this case from the joint bench to full bench. Along with these issues, when deprived of the right to property, other rights guaranteed by the constitution are also directly affected. These rights include the rights to mobility and settlement through Nepal or migrate to other parts of the country, right to work, seek employment, run and own businesses with freedom, as dictated in section 17(e) and (f), right to clean environment as dictated in section 30, right to housing in section 37. On a broader spectrum, the right to education section 31, right to religious freedom section 26, right to language and culture section 32 are also affected. It is observed that ordinarily this serves injustice to the citizens belonging to communities that are economically deprived.

Full compliance to the constitution and the laws are under it and emulation of the principles established by the Supreme Court in infrastructure development would protect the rights of economically deprived communities as dictated in section 42(2) and (would increase civil participation and ownership of the citizens as stakeholders to result in timely completion of development projects. Observing with clarity that all citizens would reap the benefits of the infrastructures and the expenses caused due to delay in the development projects would decrease; the following directive orders are issues to for all acquisition of land from this point forth:

- a. Acquire land lawfully before marking the road boundaries since Section 4 of Public Road Act, 2031 requires land acquisition to be done for road boundaries.
- b. Treat the act of depriving the right to housing as an extremely sensitive manner and do not proceed with any work that adversely affects the security of a house, unless there are no alternative solutions.

- c. In the event of road having to run through residential areas, consider the children's right to education and provide ample time to find alternative solutions to avoid adversely affecting them.
- d. Since talks are an easy, simple, effective and indisputable means of acquiring land, highly prioritize talks between expert groups and stakeholders to acquire land.
- e. The rights to relocation and rehousing of the displaced should be addressed equitably and benefits and compensation provided as per sections 13, 16 of Land Acquisition Act 2034 and Land Acquisition Regulations 2026
- f. Keep environment conservation and conservation of sites of archeological significance at the center of developing and executing a development project

About Lahurnip

Background

Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) is a pioneer organisation of human rights lawyers working for the rights of Indigenous Peoples (IPs) in Nepal.

LAHURNIP was established in 1995 by the professional Indigenous lawyers with objectives of ensuring social justice through legal service including Pro bono service in collective rights cases. It has primary objectives of promoting, protecting and defending human rights and fundamental freedoms of IPs in Nepal.

It envisions a situation where IPs are equally participating in the decision making process, and are valued, respected and listened to, where they feel safe, secure and they can develop their the fullest potential, equal rights and dignity simultaneously in democracy.

LAHURNIP is promoting for better implementation of ILO convention No. 169, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP 2007) *inter alia* other international human rights instruments that Nepal is a party to. It has been working to create solidarity to the regional and international IPs' rights promotional movements.

Meanwhile, LAHURNIP is supporting Indigenous communities to manifest their rights, particularly those who are affected by the projects in their land, territories and natural resources, in laws and policies.

Vision

LAHURNIP envisions full-fledged human dignity, sustainable development and peace which cannot be achieved unless the human rights and fundamental freedoms including collective rights of IPs are ensured and respected.

Mission

LAHURNIP was established to render support and contribute to the rights, human rights and interests of Nepalese IPs.

Objectives

1. To ensure, protect and promote the human rights of Nepalese IPs.

2. To conduct different ethnographic research studies and survey about the human rights issues of Nepalese IPs.
3. To make them more alert and sensitive to their rights, welfare and for their fundamental freedoms.
4. To establish resource centre and provide detailed information on human rights of Nepalese IPs.
5. To organise different level of workshops, interactions, symposium seminars, meeting in the area of IPs,
6. To work as a national pressure group to defend, ensure and promote basic human rights of Nepalese IPs.
7. To collect, process, analyse and disseminate information on indigenous human rights issues.
8. To provide free legal aid, in the violation of legal and human rights issues.
9. To conduct different projects concerning to the human rights issues of IPs in Nepal.
10. To organise solidarity campaign and support national and international efforts in order to accelerate the socio-economic upliftments of the IPs in Nepal.
11. To work and contribute in the field of peace and conflict managements.
12. To advocate against racial discrimination and gender inequalities.
13. To work, collaborate and cooperate with International Human Rights Organisations in order to promote the human rights and fundamental freedoms of IPs in different level.

Values

LAHURNIP is committed to follow the following values:

Transparency and accountability: Committed to work to ensure transparency at all levels and accountability to the people to which our work is directly concerned.

Equality, Equity and Justice: committed to work to ensure equal opportunity to everyone based on non-discrimination principle.

Honesty: Committed to work with honesty at all levels for betterment of IPs.

Solidarity: Wider solidarity to IPs organisations and movements to fight for establishment of human rights.

LAHURNIP Team

Board

Advocate Shanti Kumari Rai, Chairperson
Advocate Dinesh Kumar Ghale, Vice-chairperson
Advocate Shankar Limbu, Secretary
Advocate Bhim Rai, Treasurer
Advocate Makawan Subba, Member
Advocate Hira Bahadur Ghale, Member
Advocate Kashi Ram Chaudhari, Member

Thematic Committees

Indigenous Women Affairs Committee

Advocate Laxmi Rai, Coordinator

Legal Counseling and Aid Committee

Advocate Chet Bahadur Ale Magar, Coordinator

Human Rights Committee

Advocate Santosh Rana Magar, Coordinator

Public Relation Committee

Advocate Buddha Kumari Lama, Coordinator

Information Dissemination Committee

Advocate Ram Hari Shrestha, Coordinator

Secretariat

Mr. Tahal B. Thami, Director
Mr. Durga Mani Rai (Yamphu), Programme Coordinator
Mr. Asim Sunuwar, Admin and Finance Officer
Mr. Manoj Rai, Project Assistant
Ms. Anjana Shrestha, Admin and Finance Assistant
Mr. Bisnu Kumar Rai, Office Assistant
Ms Sunita Chaudhari, Office Helper

Regional Indigenous Peoples Human Rights Defenders

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Advocate Ram Hari Shrestha, Kathmandu
Advocate Santosh Rana Magar, Kathmandu

Mr. Devraj Chaudhari, Morang
Mr. Gopal Dewan, Sunsari

Indigenous Peoples Human Rights Defenders

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Advocate Nina Dangol, Kathmandu
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Ms. Bina Devi Tamang, Sunsari
Ms. Dhan Kumari Sunuwar, Sindhuli
Advocate Kashi Ram Chaudhari, Bardiya
Advocate Yam Prasad Limbu, Ilam
Mr. Birkha Bahadur Waiba Tamang, Panchthar
Mr. Dal Bahadur Gharti, Kailali
Mr. Dil Bahadur Thebe, Morang
Mr. Karsang Temba Tamang, Rasuwa
Mr. Khagendra Pun Magar, Dailekh
Mr. Khem Jung Gurung, Lamjung
Mr. Kiran Mukhiya, Ilam
Mr. Prem Raj Ghising, Jhapa
Mr. Raj Kumar Rajbanshi, Morang
Mr. Gam Bahadur Thapa Magar, Palpa
Mr. Nar Bahadur Gurung, Gorkha
Ms. Niranti Tumbapo, Panchthar
Ms. Sangita Thami, Ilam
Ms. Meera Amatya, Kathmandu
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Ms. Sumi Darlami, Ramechhap
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