

# Cases of Indigenous Peoples Rights Violation



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

# **Cases of Indigenous Peoples Rights Violation**

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## Abbreviation

ADB	Asian Development Bank
APF	Armed Police Force
CDO	Chief District Officer
CIAA	Commission for the Investigation of Abuse of Authority
DAO	District Administration Office
DDCs	District Development Committees
FIR	First Information Report
FPIC	Free, Prior and Informed Consent
GDP	Gross Domestic Product
ICERD	Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IPHHRD	Indigenous Peoples Human Rights Defender
IPOs	Indigenous Peoples Organisations
IPs	Indigenous Peoples
IWGIA	International Work Group for Indigenous Affairs
KDTL	Khimti-Dhalkebar Transmission Line
KMC	Kathmandu Metropolitan City
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
NEA	Nepal Electricity Authority
NEFIN	Nepal Federation of Indigenous Nationalities
NHRC	National Human Rights Commission
RoW	Right of Way
Rtl	Right to Information
SC	Supreme Court
UNDRIP	United Nations Declaration on the Rights of Indigenous peoples
UNESCO	United Nations Organisation for Education, Science and Culture
VCDP	Vulnerable Community Development Program
VDCs	Village Development Committees
WB	World Bank

## Forewords

Development in Nepal often comes at a cost of affecting the livelihood, culture and identity of Indigenous Peoples. Whether building a transmission line in eastern Nepal or preserving a hunting reserve in western Nepal, local indigenous peoples have always had to pay a price.

This book contains 15 case studies about indigenous peoples being displaced from their ancestral lands, deprived of rights over natural resources or attacked by security forces. But these case studies collected from various parts and socio-political contexts of the country are just representative stories of violation of human rights of Indigenous Peoples.

As elsewhere, mega development projects often take place on or near ancestral villages of Indigenous Peoples in Nepal. Examples of the state showing commitment to preserving and promoting cultures and identities of diverse ethnic communities are very rare. When development projects threaten their livelihood and culture, Indigenous People often show resistance, and are portrayed by the state as anti-development communities. But they are not against development. They are just pushing for sustainable development. They just want the state to secure Free, Prior and Informed Consent (FPIC) of Indigenous Peoples before beginning a mega development project in their ancestral villages, or near areas on which they rely for livelihood.

Nepal has signed and ratified international treaties like the United Nations Declaration on the Rights of Indigenous People (UNDRIP), 2007 and the International Labour Organisation (ILO) Convention No. 169. These international laws not only require the state to seek indigenous people's FPIC but also ensure their participation in development projects. Unfortunately, the state is not bothered about these obligatory international laws.

Experiences from within and outside Nepal show that development activities in which local people have participated are always sustainable, and environment friendly. But the state has not demonstrated far-sightedness, and is allowing private investors to

exploit natural resources to make quick profits. It has added to the woes of indigenous people who have always had to make do at the margins of the society.

This book is an effort to document cases of violations of indigenous peoples' rights. And we hope that this book will create more pressure on the state, policymakers and private investors to think of people-friendly development approaches, and encourage human rights activists, researchers and campaigners to raise voice against the abuses of human rights of indigenous people.

Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) is thankful to International Work Group for Indigenous Affairs (IWGIA) who supported us to shape this book. And we would also like to extend our sincere thanks to everyone who have involved in making this book publishable.

Shanti Kumari Rai  
Chairperson

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## Development and Indigenous Peoples

This book contains 15 cases of human rights violations of indigenous peoples (IPs). These cases concern the displacement of IPs from their ancestral lands, the loss of rights over natural resources due to development projects, marginalisation, and extra-judicial killings.

### Development

Development as a concept is constantly evolving. In early stages of human civilization, knowledge and the possession of it was considered the most important indicator of development. However, this changed when classical economists began to consider structural expansion or growth in Gross Domestic Product (GDP) as indicators of development. Throughout the last couple of decades, sustainability has become a key factor in the project of development; in this vein, the discourse on indigenous people's participation in development projects began in the 1980s, following the Brundtland report in 1987 and the 1992 Earth Summit.

On the issue of indigenous people, the Brudtland Report, Our Common Future, states the following:

*These communities are the repositories of vast accumulations of traditional knowledge and experience that link humanity with its ancient origins ... It is a terrible irony that as formal development reaches more deeply into rain forests, deserts and other isolated environments, it tends to destroy the only cultures that have proved able to thrive in these environments ... Hence the recognition of traditional rights must go hand in hand with measures to protect the local institutions that enforce responsibility in resource use. And this recognition must also give local communities a decisive voice in the decisions about resource use in their area.<sup>1</sup>*

Research and study reports have shown that the participation of indigenous people in development projects is essential to the

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<sup>1</sup> Brundtland Report (4 August 1987) UN doc A/42/427, P. 119.



pursuit of sustainable use and equitable shares of natural resources and inclusive growth.

## **Lands and Natural Resources and Indigenous Rights**

There is an inseparable relationship between indigenous peoples and their lands and natural resources. For indigenous people, their land does not merely represent the means of production but is also an integral part of their culture, identity, and lifestyle. Martinez Cobo writes the following:

*It must be understood that for indigenous populations, land does not represent simply a possession or means of production. It is not a commodity that can be appropriated, but a physical element that must be enjoyed freely. It is also essential to understand the special and profoundly spiritual relationship of indigenous peoples with mother Earth as basic to their existence and to all their beliefs, customs, traditions and culture.<sup>2</sup>*

The ILO convention 169 defines land not only as an area occupied by indigenous peoples but also its ecology.<sup>3</sup> Indigenous peoples do not only make use of this ecology but they also preserve it, and it is the state's responsibility to safeguard their rights to natural resources. Besides the ILO convention No. 169, the United Nations Declaration on the Rights of Indigenous People (UNDRIP)<sup>4</sup> also maintains indigenous peoples' rights to local natural resources.

In Nepal, indigenous peoples' land has often been encroached upon or seized in the name of development. In other words, their right to *Free, Prior and Informed Consent* (FPIC) is rarely secured.

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<sup>2</sup> José R. Martinez Cobo, Study of the Problem of Discrimination Against Indigenous Populations (30 September 1983) UN doc E/CN.4/Sub.2/1983/21/Add.8

<sup>3</sup> ILO C.169 Art. 13.2.

<sup>4</sup> UNDRIP Art. 26 (1).

## **Violation of Indigenous Peoples' right to Free, Prior and Informed Consent (FPIC)**

The development projects operated in the lands and territories of IPs found that they have violated IPs rights to Free, Prior and Informed Consent (FPIC). In Nepal, these rights have not only been protected by international laws but also by the Constitution. The Constitution has also guaranteed local people's rights to information about the development work that could affect their lives, livelihood, culture, and identity. Because the state and private investors ignore these legal instruments, development projects are often marred by their conflicting interest with the local people. The construction of the Khimti-Dhalkebar transmission line is an example of this. When the Nepal Electricity Authority (NEA) began building a transmission line to supply hydroelectricity generated from Khimti to India and eastern Nepal, those living along the Right of Way were manipulated; the NEA neither disseminated accurate nor sufficient information. When the locals learned about it, they hit the streets, delaying the project for years. Riots followed, and many local indigenous people were exposed to police violence, harassment, or were arrested. The Khimti-Dhalkebar project has brought down the market prices of land owned by the local people, which is a violation of the constitutional rights to property. The state has disregarded this, and many other constitutional provisions regarding the rights of indigenous people.

## **Religious and cultural rights**

All communities and individuals have the right to practice their culture, and these rights are enshrined in the constitution. The International Covenant on Economic, Social and Cultural Rights, 1966, has also ensured these rights.

## **Foreign investment and indigenous rights**

Foreign investors need to ensure the rights of indigenous people and their participation in all their development projects in Nepal and elsewhere. They need to study and mitigate the impact that

these development projects have on the lives and livelihood of the local people. In Nepal, international organisations like the World Bank and the Asian Development Bank have shown concerns, but these are perfunctory. Although these organisations have formulated their own policies regarding participatory development projects, these policies have not been strictly adhered to during implementation.

	Cases	Districts	Types of Human Rights violated
1.	The army in Dhorpatan: Deprived indigenous peoples of their rights to natural resources.	Baglung, Rukum, Myagdi, Rolpa, and Pyuthan.	<ul style="list-style-type: none"> <li>• Religious and Cultural Rights</li> <li>• Right over land</li> <li>• Right to identity</li> <li>• Rights to Development and Participation</li> <li>• Rights to Free Prior and Informed Consent (FPIC)</li> </ul>
2.	The Khimti-Dhalkebar Transmission Line: The violation of human rights of indigenous peoples.	Sindhuli	<ul style="list-style-type: none"> <li>• Social, religious, and cultural rights</li> <li>• Right over land</li> <li>• Right to identity</li> <li>• Right to development and participation</li> <li>• Right to Free, Prior, and Informed Consent (FPIC)</li> </ul>
3.	The encroachment of Dhimal's Sacred place	Morang	<ul style="list-style-type: none"> <li>• Religious and cultural rights</li> <li>• Rights over land</li> <li>• Right to identity</li> <li>• Rights to Free Prior and Informed Consent (FPIC)</li> </ul>

4.	The attack on the Santhal's culture and religion.	Morang	<ul style="list-style-type: none"> <li>• Religious rights</li> <li>• Cultural rights</li> </ul>
5.	The encroachment of the historical and sacred Kupa (Well) of Tharus.	Sunsari	<ul style="list-style-type: none"> <li>• Religious and cultural rights</li> <li>• Right to identity</li> </ul>
6.	The extra-judicial killing of an indigenous youth.	Taplejung	<ul style="list-style-type: none"> <li>• Right to life</li> <li>• Religious and Cultural Rights</li> </ul>
7.	The extra Judicial Killing and deprivation of the right to natural resources.	Dolpa	<ul style="list-style-type: none"> <li>• Right to live with dignity</li> <li>• Encroachment over traditional land</li> </ul>
8.	Jabdi Animal skin processing	Bardiya plant	<ul style="list-style-type: none"> <li>• Social, Religious, and Cultural Rights</li> <li>• Right to Development and Participation.</li> <li>• Right over land.</li> <li>• Right to live in a clean environment.</li> </ul>
9.	Unconstitutional appointments at the National Human Rights Council.	Nepal	<ul style="list-style-type: none"> <li>• Right to equality</li> <li>• Right to participation</li> </ul>

10.	The Dharan-Chatara-Gaighat-Katari-Sindhuli-Hetauda Road construction project: A threat of displacement.	Sindhuli	<ul style="list-style-type: none"> <li>• Economic, Social and Civil Rights</li> </ul>
11.	The Dangraha waste management area construction	Morang	<ul style="list-style-type: none"> <li>• Right to Free Prior and Informed Consent (FPIC)</li> <li>• Social and Cultural Rights</li> <li>• Right over lands</li> </ul>
12.	The encroachment of the cultural and archaeological site.	Kathmandu	<ul style="list-style-type: none"> <li>• Religious and Cultural Rights</li> <li>• Right to identity</li> </ul>
13.	The encroachment of the religious and cultural site of Tharu and Musanar.	Sunsari	<ul style="list-style-type: none"> <li>• Religious and Cultural Rights</li> <li>• Right over land</li> <li>• Right to identity</li> </ul>
14.	The misuse of the local development budget.	Tehrathum	<ul style="list-style-type: none"> <li>• Right to participation</li> </ul>
15.	The police's atrocious treatment of indigenous people.	Panchthar	<ul style="list-style-type: none"> <li>• Right to live with dignity</li> <li>• Right to freedoms</li> <li>• Right to development and participation</li> <li>• Right to Free, Prior and Informed Consent (FPIC)</li> <li>• Right to live peacefully</li> </ul>

# The Army in Dhorpatan Depriving Indigenous Peoples of Their Right to Natural Resources

## 1. Case Details

### A. Type of Violation

- Religious and Cultural Rights
- Rights over Land
- Right to Identity
- Rights to Development and Participation
- Rights to Free Prior and Informed Consent (FPIC)

### B. The Date and Time of the Incident:

- 2012 AD

### C. The Location of the Incident:

**District:** the five districts of Baglung, Rukum, Myagdi, Rolpa, and Pyuthan.

**VDCs:** 39 VDCs of aforesaid districts

## 2. A Description of the Affected Community:

### A. The Profile of the Victim/s:

- Ethnic/Indigenous Groups: Magar, Gurung, Chhantyal, Thakali, and other communities
- Organisational Affiliations: Involved with various social organizations/institutions

### B. Details of the Affected Community:

- The Specific Location of the Community: Rukum, Myagdi, Baglung, Rolpa, and Pyuthan.
- The Total Number of Affected People in the Community: Approximately 100,000
- Number of Affected Men: Approximately 50 percent
- Number of Affected Women: Approximately 50 percent
- Number of Affected Children: Approximately 20 percent
- Ethnic/ Indigenous Composition to which the Community Members Belong: Magar, Gurung, Chhantyal, Thakali, and other communities

## C. Name of Community Leaders

**Name:** Collective leadership

**E. The Occupation of the Community Members:** The customary professions, such as hunting, collection of herbs, etc.

### 3. Profile of the Perpetrators:

- The office of the Prime Minister and Council of Ministers, Singhdurbar, Kathmandu.
- The ministry of Defense, Singhdurbar, Kathmandu.
- The Ministry of Home Affairs, Singhdurbar, Kathmandu.
- The Ministry of Forest and Soil Conservation, Singhdurbar, Kathmandu.
- The Department of National Park and Wildlife Conservation, Babar, Kathmandu.
- The Dhorpatan Hunting Reserve, Dhorpatan, Baglung.

### 4. Account of the Incident:

#### A. Background Information:

The Dhorpatan Hunting Reserve is Nepal's only reserve of this kind. It was established in 1987 under the the National Parks and Wildlife Conservation Act-1973, the reserve covers the 11 Village Development Committees (VDCs) in the three districts Baglung (4), Rukum (7), and Myagdi (3) (See Table 1)<sup>5</sup>. These districts are the ancestral land of several indigenous communities, largely Magars.

Prior to the establishment of the reserve, these indigenous communities were the main managers, protectors, and users of the forest and forestry products. Today, however, the administration of the reserve does not allow them to access the natural resources they have already been using for generations.<sup>6</sup> This has affected their livelihood, their religious and cultural activities. Additionally, indigenous peoples say that the reserve has tormented them on several occasions by framing them on false charges.<sup>7</sup>

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<sup>5</sup> Letter of Memorandum submitted to Prime Minister and Council of Ministers on March 16<sup>th</sup>, 2015.

<sup>6</sup> Memorandum submitted to National Human Rights Council on August 23, 2013.

<sup>7</sup> Letter of Memorandum Submitted to the office of the Prime Minister and Council of Ministers by the struggle committee on March 31<sup>st</sup>, 2013



Recently, the government has expanded the reserve area under the buffer zone management guidelines, 1999. The plan is to include more VDCs from Baglung, Rukum, Myagdi, Rolpa, and Pyuthan. If expanded, the reserve will cover as many as 39 VDCs from these districts, affecting even more indigenous communities (See Table 1).<sup>8</sup>

The establishment and expansion of the reserve is a move by the government to displace Magar, Gurung, Chhantyal, Thakali, Newar, Kumal and other indigenous communities from their ancestral lands by deploying the army on the pretext of preserving natural flora and fauna. The displacement of indigenous peoples is a violation of several international treaties and laws, including the International Labour Organisation (ILO) convention No. 169 and the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP). These international laws grant indigenous peoples the preemptive rights to natural resources and require the state to seek Free, Prior and Informed Consent (FPIC) from the local and indigenous communities before beginning development projects that could affect their livelihood and cultural practices.

The UNDRIP article 30 (1) states the following: 'Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned'. Following, article 30 (2) states: 'States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities'. However, Nepal has apparently violated these international laws by misusing the national army in Dhorpatan. The Dhorpatan Hunting Reserve Victims Struggle Committee has been raising its voice since 2013 against the violation of international laws.

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<sup>8</sup> Letter of Memorandum Submitted to the office of the Prime Minister and Council of Ministers by the struggle committee on March 29<sup>th</sup>, 2016.

## **B. Possible Reasons for Depriving Indigenous Peoples Rights:**

- The National Park and Wildlife Conservation Act, 1873 is not IP friendly.
- Improper implementation of ILO Convention No. 169.
- Disregarding the collective indigenous peoples' rights as human rights
- Lack of awareness among indigenous communities about their collective rights
  
- The Dhorpatan Hunting Reserve Victims Struggle Committee and members of indigenous and local communities have registered their complaints at the National Human Rights Commission (NHRC).

## **5. Economic, Social and Cultural Impacts:**

- Denied the rights over customary lands and territories.
- Deprived of cultural and religious rights.
- Deprived of traditional occupation and livelihood.
- Risk of loss of indigenous knowledge and skills due to displacement of the affected communities.
- Identity crisis of indigenous peoples.

## **6. Actions Taken by the Victims:**

- The Project Victims Struggle Committee submitted complaints to the Office of the Prime Minister and Council of Ministers, Ministry of Defense, Ministry of Home Affairs, Ministry of Forest and Soil Conservation, Department of National Parks and Wildlife Conservation Office of Dhorpatan Hunting Reserve in Baglung among others against the decision of the Government of Nepal of establishment of an army camp in the hunting reserve. ,
- The organization of awareness raising and protest programs against the government's actions in the affected VDCs.
- The organization of regular sit-in programs as of March 5<sup>th</sup>, 2016.

**Table no. 1: Districts and VDCs affected by the hunting reserve and buffer zone**

S N	Districts and VDCs affected by the hunting reserve			Districts and VDCs affected by the buffer zone	
	District	Name of VDC	No. of VDCs	Name of VDCs	No. of VDCs
1.	Baglung	Nisi, Bobang, Adhikari Chaur, and Bongha Dovan	4	Nisi, Bobang, Adhikari Chaur, Bonga Dovan, Debisthan, Khunga, Bohora Gaun, Taman and Rajkut	9
2.	Rukum	Ranma Maikot, Taksera, Hukum, Kakri, Jaang, Kol and Rangsi	7	Ranma Maikot, Taksera, Hukum, Kakri, Jang, Kol, Rangsi, Kada, Mahat, Sisne, Pwang, Aathbiskot and Chunbang.	13
3.	Myagdi	Mana, Lula and Gurja	3	Mana, Lula, Gurja, Modi, Morang and Takam.	6
4.	Rolpa			Gam, Seram, Uwa, Thabang, Siuripang and Harjang	6
5	Pyuthan			Aarkha, Khara, Rajbara, Syaulibang and Khabang.	5
Total		5	14		39

### **7. Actions Taken by the Civil Society Organisations:**

- LAHURNIP has provided legal aid for members of the Dhorpatan Hunting Reserve Victims Struggle Committee and local communities.
- The Dhorpatan Hunting Reserve Victims Struggle Committee and members of indigenous and local communities have registered their complaints at the National Human Rights Commission (NHRC).

### **8. The Response of the State:**

So far, the government not reacted to the demands raised by the Dhorpatan Hunting Reserve Struggle Committee.

### **9. Responses to the Issue:**

Local people are now being organised to defend their rights and are participating in consultations with several civil society groups. The Dhorpatan Hunting Reserve Victims Struggle Committee has carried out numerous awareness programs.

### **10. Recommendations:**

- The state must respect the rights stated in the International Labour Organization (ILO) Convention 169 and the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP), 2007.
- The state must withdraw the army from the reserve.
- The Dhorpatan Hunting Reserve must be handed over to local communities for sustainable management and preservation.

### **11. Individuals and Organization Involved in the Documentation:**

**Name:** Durgamani Rai (Yamphu)

**Organization:** Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP)

**Position:** Program Coordinator

**Date:** February 2016

**District:** Kathmandu

# **Khimti-Dhalkebar Transmission Line Project Violation of Human Rights of Indigenous Peoples**

## **1. Case Details:**

### **A. Type of Violation:**

- Social, Religious and Cultural Rights
- Rights over lands
- Right to identity
- Rights to Development and Participation
- Rights to Free Prior and Informed Consent(FPIC)

### **B. Date and Time of violation:**

- 2006 AD

### **C. Location of the Incident:**

**District:** Sindhuli

**VDCs:** Bhimeswor, Ratanchura, Jalakanya, Bhadrakali, Raanichuri VDCs and the Kamalamai Municipality

## **2. Description of the Affected Community:**

### **A. Profile of the Victim/s:**

- Ethnic/Indigenous Groups: Magar, Tamang, Bhujel, Newar, Majhi and other communities.
- Organizational Affiliations: each of them are involved with their respective representative organization
- Population of total victims: 4,415
- Population of male victims: 2,074
- Population of female victims: 2,341
- Population of child victims: 1,589

### **C. Name of the Community Leaders:**

**Name:** Not available

**D. Occupation of the Community Members:** Farming, wage labor, etc.

### **3. Profile of the Perpetrators:**

- The office of the Prime Minister and Council of Ministers, Singhdurbar, Kathmandu
- The ministry of Home Affairs, Singhdurbar, Kathmandu
- The ministry of Science and Environment, Singhdurbar, Kathmandu
- The ministry of Energy, Singhdurbar, Kathmandu
- The ministry of Health and Population, Singhdurbar, Kathmandu
- The ministry of Culture, Tourism and Civil Aviation, Singhdurbar, Kathmandu
- The ministry of Water Resources, Singhdurbar, Kathmandu
- The Civil Aviation Authority of Nepal, the Head Office, Babarmahal, Kathmandu
- The Nepal Electricity Authority, the Head Office, Ratnapark, Kathmandu
- The Khimti-Dhalkebar 220 KV Transmission Line Project the head of the project.
- The Chief District Officer, the Chief District Office, Sindhuli
- The Deputy Director, the Civil Aviation Authority of Nepal, the Head Office, Babarmahal, Kathmandu
- Ananta Raj Devkota, Former Secretary of VDC, Bhimeswor VDC-9, Singhuli
- Narayan Bahadur Thapa, Former Secretary of VDC, Ratanchura VDC-7, Singhuli
- Ram Babu Karki, Former Secretary of VDC, Nanakanya VDC, Singhuli
- Mukunda Dahal, Former Secretary of VDC, Ranichuri VDC, Singhuli
- Damodar Bhandari, Chief Executive Officer, Kamalamai Municipality, Sindhuli
- The Armed Police Force base camp, Sindhuli
- The District Police Office, Sindhuli

### **4. An Account of the Incident:**

#### **A. Background Information:**

The 220KV Khimti-Dhalkebar Transmission Line extends from the Kirnetar in Sahare VDC in the Dolakha district to Dhalkebar in the

Dhanusa district. It runs through six VDCs on the banks of the Tamakoshi River, Khurkot in Sindhuli, the Mahabharat range, the Kamala Mai municipality, and Gauribas in Dhanusa. The project affects 15 VDCs and one municipality in four districts (one VDC in Dolakha, three in Ramechhap, five VDCs and one municipality in Sindhuli and three VDCs in Mahottari).

The 73 KM transmission line has a 15-metre Right of Way (RoW) on either side. The construction of each of the towers of the line requires 12.5X12.5 metre land. 188 towers are needed in order to transmit hydroelectrical power from Khimti to Dhalkebar (one in Dolakha, 52 in Ramechhap, 82 in Sindhuli, 12 in Mahottari and 41 in Dhanusa). The Nepal Electricity Authority is developing this project with the support of the World Bank.

The Khimti-Dhalkebar Transmission Line supplies power from Khimti and Bhote Koshi nationally, to eastern Nepal, and India. The construction of the line began in 2006, and was scheduled to be completed by 2009. However, due to the resistance of the indigenous and local communities left out and affected by the project, the project remains uncompleted.

By not seeking Free, Prior and Informed Consent (FPIC) from the indigenous and local communities before beginning the Khimti-Dhalkebar Transmission Line project, the World Bank and the project violated international laws. When the survey of the line was conducted, the indigenous and local communities were misled; they were told that the survey was to build mobile towers and drinking water project, not only affecting individual households but also schools and historic, religious, and cultural sites. The 30M Right of Way could also affect agricultural activities. Locals from the Kamala Mai municipality, Bhadrakali and Ratan Chura VDC, of which 95% were from indigenous communities, have protested the construction of the transmission line.

These projects will lead to the displacement of indigenous peoples from their ancestral lands. It will also cause the market prices for the lands through which the transmission line runs to plummet.

Apart from that the banks refuses to mortgage the land lies under the transmission line. Thus, indigenous and local communities are up in arms against the project. However, 181 towers have already been constructed, with only seven towers remaining to be built. In November, 2012, the government deployed security forces to resume the project activities despite the resistance of the indigenous and local communities. In April 2013, as the affected communities continued to resist, the project staff, backed by the police, manhandled and mishandled the locals in an attempt to resume the construction work, but did not succeed.

On July 10, 2013, the affected indigenous and local communities filed a complaint to the World Bank. After an investigation, the inspection panel of the World Bank admitted that free, prior and informed consent (FPIC) was not secured and that the affected communities had not received any form of compensation. The panel suggested that the project be resumed only after correcting these flaws. Likewise, 103 individuals filed a writ at the Supreme Court for justice.

After the protests by the affected communities, Sindhuli has been declared a load-shedding-free (power-cut free) district and the process to provide compensation for the acquired lands has been expedited. It is important to note that affected indigenous and local communities are not against development. However, they want sustainable development, for which they have given consent and are participating, and aim to resolve any related issues through negotiation. The 3.85 km long section of the line that runs through human settlement is one of the most complicated issues. The locals have demanded this section to be diverted from their village, but the NEA has continued to refuse to address their concerns. The dispute regarding compensation is also yet to be resolved; many have refused to accept compensation, and those who have accepted it claim they were intimidated into accepting compensation.

The provision of the National Energy Crisis Reduction and Electricity Development Decade in 2016 allows the Government for deploying



army in the project site in the name of security of the projects. Which is threat to the Indigenous and local communities in seeking their rights. The Energy Minister has threatened to use of force to complete the project, which has provoked the locals. In April 2016, the locals staged a sit-in to protest the resumption of the construction work. However, the police intervened, arresting six and injuring nine protesters. The arrested protesters were released 30 hours later. Now, an Armed Police Force (APF) camp has been set up to guard the project.

Table 2: Districts affected by the Khimti-Dhalkebar Transmission Line Project, VDCs and Municipalities

SN	District	VDCs/ Municipality	VDCs/ Municipality No.	Remarks
1.	Dolakha	Sahare	1	
2.	Ramechhap	Gelu, Khimti, Tilpung, Kathjor, Manthali and Bhaluwajor	6	
3.	Sindhuli	Bhimeswor, Ratanchura, Jalkanya, Bhadrakali, Ranichuri VDC and Kamalamai Municipality	6	5 VDCs and 1 Municipality
4.	Mahottari	Tulasibahunmara, Begdabar, and Dhalkebar	3	
Total	4		16	

## **B. Possible Reasons:**

- Indigenous peoples' rights are not accepted as Human Rights.
- Improper implementation of ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in practice.
- The project has disregarded the rights of indigenous peoples and local communities.

## **C. Related Policies and Laws Violating Human Rights:**

- The Electricity Act 1992, and the Land Acquisition Act 1997, have failed to incorporate the provisions of the ILO Convention No. 169 and UNDRIP, particularly indigenous peoples' rights over lands.

## **5. Economic, Social and Cultural Impact of the Incident:**

- Affected indigenous and local communities are evicted from their traditional lands and territories.
- Risk of identity crisis of indigenous peoples, due to loss of religion and culture.
- Impact on their livelihood.
- Impact on education and health.
- Deprived of the right to a clean environment.

## **6. Actions Undertaken by Community:**

- The Indigenous and local communities affected by the Khimti-Dhalkebar Transmission Line project have expressed their concerns to the National Human Rights Commission, the World Bank, the District Administration Office, the project authorities and the Prime Minister's Office.
- They filed a complaint to the World Bank on July 10, 2013.
- They have been carrying out protests and awareness campaigns.
- They have filed complaints to the Commission for the Investigation of Abuse of Authority (CIAA) against corruption by the project staff.

## **7. Action Taken by Civil Society:**

- Legal Aid: The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP) and Accountability Counsel have been monitoring the human rights violations. Similarly, LAHURNIP has been providing legal aid to victims and facilitating a dialogue with concerned authorities to find a solution to the problem.
- The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP) has been organizing various awareness raising programs regarding development projects and indigenous peoples' rights.
- Lately, the National Human Rights Commission (NHRC) has been facilitating the dialogue, but they are yet to find a solution.

## **8. Actions Undertaken by the Government:**

- The government has done little to negotiate with the local community to find a solution.
- By floating the concept of the feeder road, the government has caused a split among the affected locals.
- The government has terrorized the local communities by passing an energy emergency policy that will allow the deployment of the security forces to resume the disputed Khimti-Dhalkebar line.

## **9. Response to the Issue:**

- The writ petition filed at the Supreme Court remains sub-judice.

## **10. Recommendations:**

- The disputed 3.85 KM section of the transmission line that runs through Bardeutar, Majhitar and Thulitar in the Kamala Mai municipality must be diverted from human settlement.
- If a diversion is not possible, a feeder road may be built. However, this may only be done after ensuring that the affected area has been acquired by the project and the compensation has been given to the affected locals.

- In Ratanchura VDC (ward No. 1 and 2), Bhadrakali VDC (ward No. 1, 2 and 3), Ranichuri VDC (ward No. 1), Kamala Mai municipality (ward No. 7, 10, 4 and Buka Danda), compensation for the acquired land will be based on the general market prices.
- At least 10% to 15% of the benefits will be given to the most affected communities.
- Health and security will be guaranteed for the affected communities.
- The Swiss Sindhuli School and the Natural Human Development Centre will be well-equipped and well-managed.
- A written commitment is needed for the preservation of historic and religious places.
- The transmission line should not be used to supply electricity to Nepal.
- The Vulnerable community Development Program (VCDP) should be run by the local communities.

## **11. Individuals/Organization Involved in Documentation**

**Organization:** The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP)

**Position:**

**Date:** February 2016

**District:** Kathmandu

## Encroachment of Dhimal's sacred place

### 1. Case Details:

#### A. Type of Violation:

- Religious and Cultural Rights
- Rights over land
- Right to identity
- Rights to Free, Prior and Informed Consent (FPIC)

#### B. Date and Time of the Incident:

- **Date:** December 24, 2015
- **Time:** 12:00 p.m. (afternoon)

#### C. The Location of the Incident:

**District:** Morang

**VDCs:** Kerauna

**Ward no.:** 4

**Tole:** Karikoshi (Kalikoshi)

### 2. Description of the Affected Community:

#### A. Profile of the Victim/s:

- **Ethnic/Indigenous Groups:** Dhimal indigenous community
- **Organisational Affiliations:** Involved with various social organizations/institutions

#### B. Details of Affected Community:

The location of the victimised communities: Keraun VDC, Ward no. 4, Kalikoshi Tole and Bayarwan VDC Ward no. 3, Morang

#### Community: Dhimal

- Total population of victims: approximately 1,000
- Population of male victims: approximately 50 percent
- Population of female victims: approximately 50 percent
- Population of child victims: approximately 20 percent
- Communities/ethnic groups residing in the affected areas: Dhimal, Tharu, Ghale, Santhal, Rai etc.

### **C. Name of Community Leaders:**

**Name:**

**D. The Occupation of the Community Members:** Farming and other traditional occupations, such as hunting, collection of herbs, etc.

### **3. Description of Perpetrators:**

#### **A. Name and position of perpetrators:**

- Name and surname: Kabiraj Gurung and Dhana Bahadur Bista, Board of Trustees, Wetland Conservation Committee
- Address: Bayarwan VDC, Morang

### **4. Description of Issue:**

#### **A. Background Information:**

Around three kilometers south of the East West highway in Kanepokhari in the Morang district, just on the border of Keraun and Bayarban VDCs, there is a water spring, which has been used by the local indigenous Dhimal community to irrigate their lands for generations. The Dhimals used to call it Kadhe Jhora, but as this name got distorted, it is now known as Kare Kasi or Kali Kosi. It is also believed that the name Kali Kosi derives from a leafy vegetable in called Karni and Kusi in the Dhimal language. Thus, the Dhimal settlement is here known as Kali Kosi.

In Kali Kosi, the local Dhimal people have built a holy shrine to worship seven kanyas (pre-puberty girls). Here, these girls perform poojas every year, praying for the God to save them from epidemics, drought and enemies. This shrine is central to the identity and culture of the Dhimal people.

In the early 1970s, when malaria was eradicated from the forests of the Tarai, people from Bhojpur, Dhankuta, Ilam, Panchthar, Taplejung and Khotang began migrating southwards. They felled trees and settled down. As a result, the Dhimals were outnumbered by the hill migrants, and their shrine that has once sprawled on four bigahas of land is now restricted to merely one bigaha.

In 2015, the local Wetland Preservation Committee collected Rs. 501 from each household member of the local community. No one protested it because it was meant for wetland conservation. The indigenous peoples, including Dhimals, carried out a cultural rally to promote the funds raising program, but when the committee later decided to use the money to install idols of the Hindu god Narayan and the goddess Durga at their holy shrine, they felt betrayed. Dhimals were up in arms, claiming it to be an attack on their culture and religion. The committee backed off from its decision, but started alienating Dhimals and other indigenous communities, and stopped inviting them to its programs.

A few months later, the committee invited the Hindu pandit, Dinbandhu Pokharel, and organised a week-long Shreemad Bhagwad Puran to raise funds. The Dhimals and the local representatives of the Nepal Federation of Indigenous Nationalities (NEFIN) were not invited. The collected funds were not accessible to the public; instead, the committee spent the money, given to them by the government, on local tourism promotion. They installed idols of the Hindu goddesses Laxmi, Sarswoti, and Durga, and established a foundation in the name of Pandit Pokharel's father, who was also a Pandit, to promote the Hindu religion.

Later, when the Dhimial people wanted to perform their annual poojas at their shrine, they were not allowed by the committee, which had support from the local administration. The committee members hurled seven clay pots (which symbolized the seven Kanyas) and paper horses. This wetland is an integral part of the local Dhimial community's religion, culture, identity, and existence, and without their consent, consultation and participation, the committee is promoting the Hindu religion in the name of wetland preservation. It is a systematic effort by the committee to annihilate the Dhimial culture and identity.

**B. Possible Reasons behind the Attack:**

- Increasing settlement and population of other communities in the traditional lands of Dhimial.
- Disregard by concerned officials regarding the conservation

of the historical and cultural heritage of the Dhimals.

- The failure of the state to recognize the traditional land of the Dhimals.
- The state's indirect promotion of the Hindu religious policy.
- The denial of the collective rights of indigenous peoples as Human Rights.

### **C. Related Policies and Laws:**

- Nepal's constitution only guarantees the promotion of the Hindu religion.

### **5. Economic, Social and Cultural Impact:**

- The deprivation of rights over customary lands and territories, resulting in loss of religious and cultural practices.
- The Dhimal community's loss of cultural identity.
- Affect to the collective rights of the community.
- The Dhimal community's loss of indigenous knowledge and skills is likely to affect in the social harmony.

### **Direct Effect on the Community:**

- The Dhimal community's religion, culture and traditions are in crisis.
- The identity of the Dhimal community and their cultural and religious rights over land are under threat.

### **6. Actions taken by Dhimals:**

- Local Dhimals have submitted a memorandum to the Wetland Conservation Committee, asking for an end to the encroachment upon its culture and identity. However, the committee has so far ignored their demand.
- Similarly, they have submitted memo at National Human Rights Commission (NHRC) and at Commission for Investigation of Abuse of Authority (CIAA) requesting for investigation of human rights violation.

### **7. Actions Taken by Civil Society Organizations:**

- Legal Aid: Lawyers' Association for Human Rights of



Nepalese Indigenous peoples (LAHURNIP) has been providing legal aid to victims and members of the struggle committee.

- Advocacy and Campaign: Community leaders have a plan to conduct campaigns and advocacy programs against the encroachment.
- Local Indigenous Human Rights Defenders have been regularly monitored.

#### **8. Action taken by Government:**

- Government authorities have not yet taken any steps for ensuring the rights of victims.
- In the name of the conservation of wetlands and promotion of tourism, the government has allocated a budget to promote and protect the Hindu religion.

#### **9. Responses on the Issue:**

- The authorities have not yet responded to the issues.

#### **10. Recommendations:**

- A free and fair probe needs to be conducted, and actions must be taken against those who have attacked the Dhimal culture and identity.
- Actions must be taken against those who have hurt the Dhimal people's religious and cultural sentiment under the pretext of tourism and conservation.
- The Dhimal's religion and culture must be respected, and their rights to live with dignity must be guaranteed.
- Social harmony must be safeguarded.

#### **11. Individuals/Organization Involved in Documentation:**

**Name:** Devraj Chaudhary

**Organization:** Lawyers' Association for Human Rights of Nepalese Indigenous peoples' (LAHURNIP)

**Position:** Regional Indigenous Human Rights Defender

**Date:**

**District:** Morang

# Attack on Santhal's culture and religion

## 1. Case Details:

### A. Type of Violation:

- Religious Rights
- Cultural Rights

### B. The Date and Time the Incident Happened:

- Date: 16 January 2016
- Time: 2 O'clock in the afternoon

### C. Location of the Incident:

**District:** Morang

**VDCs:** Kerauna

**Ward No.:** 4

**Tole:** Karikoshi (Kalikoshi)

## 2. The Description of the Affected Community:

### A. The Profile of the Victim/s:

- **Ethnic/Community Groups:** A total of 18 members from the Santhal communities, including the children Delke Murmu, Boka Murmu, Kanchha Karmakar, Shishir, Marandi, Bijaya Marandi, and others.
- **Gender:** Male
- **Age:** Aged 12 to 45.
- **Occupation:** Farming and Hunting
- **Ethnic/Indigenous groups:** Santhal
- **Institutional Involvement:** Involved with the Nepal Santhal Adibasi Utthan Sangh

### B. Details of Affected Community:

- **The areas/places of affected communities:** Keraun VDC, Ward no. 4, Morang
- **Population of total victims:** approximately 16,000
- **Population of male victims:** approximately 50 percent
- **Population of female victims:** approximately 50 percent
- **Population of child victims:** approximately 20 percent

- **The communities/ethnic groups living along the affected areas:** Santhal, Dhimal, Majhi, Tharu, Rajbansi and other non-indigenous communities.

**C. Name of Community Leaders:**

**Name:** 1) **Bhojbir Majhi**, Chairperson, Nepal Majhi Utthan Sangh, District Committee, Morang and Chairperson, VDC Coordination Council of Nepal Federation of Indigenous Nationalities (NEFIN), Keraun VDC, Morang

2) Tala Tudu, Chairperson, Nepal Santhal Adibasi Utthan Sangh, Morang

**D. The Occupation of the Community Members:** Farming, daily waged labor, and hunting.

**3. The Profile of the Perpetrators:**

**Name and Position of Perpetrators**

**A. Name:** Ramesh Basnet

**Position:** Inspector.

**Address:** Ward Police Office, Pathari.

**4. Description of the issue:**

**A. Background Information:**

Santhal is one of Nepal's highly marginalised indigenous communities. According to the population census 2011, they have a population of 51,735. They mostly live in the Morang, Sunsari and Jhapa districts. They value, and have so far preserved, their traditions, religion, culture and practices. Sohari is one of the festivals that the Santhals celebrate. This month long festival is celebrated from mid-January to mid-February every year, when they worship their farmland and go on hunting. On January 13, 2016, Santhals from the Hoklabari and Bayarban villages in Morang hunted down six leopard cats as part of the Sohari celebration.

A team of policemen, led by inspector Ramesh Basnet from the Area Police Office of Pathari in Morang, arrested 18 Santhals for killing the leopard cats. Indigenous rights activists Bhojbir Majhi and Devraj Chaudhary made sure that they were released.

The arrest of the 18 Santhals was a violation of their religious and cultural rights. This incident exemplifies how the government criminalises the cultural practices of these indigenous communities. Instead of preserving and promote the identity and culture of indigenous peoples, the state is working to annihilate their cultural practices.

#### **B. Possible Reasons behind the Incidence:**

- The Santhal Indigenous Communities are unaware of their rights.
- The state disrespects the protection and promotion of the rights of indigenous peoples.
- The existence of legal provisions which undermine the livelihood of indigenous peoples.

#### **C. Related Policies and Laws:**

- Nepal's Constitution and laws aim to promote the Hindu religion.

#### **5. Economic, Social and Cultural Impact:**

- Affected Indigenous communities and local communities are evicted from customary lands and territories.
- This leads to the risk of loss of culture and religious beliefs for the Santhal indigenous communities, including their traditional occupation of hunting.
- Risk of losing indigenous knowledge and skills.

#### **6. Actions against the Arrest of Santhals:**

- Indigenous rights activists undertake the efforts to get the 18 Santhals released.

#### **7. Efforts by Civil Society:**

- **Legal Aid:** The Lawyers' Association for the Human Rights of Nepalese Indigenous peoples (LAHURNIP) and the Accountability Counsel have been monitoring these human rights violations, including the legal aid to victims and facilitating dialogue with concerned authorities for solutions to the problem.

- Civil society organizations have drawn the attention of the Chief District Office regarding these Human Rights violations.

**8. Action by State:**

- The National Human Rights Commission and other government bodies have not given their response regarding the memorandum.
- A court decision is not available.
- The police administration and judicial bodies have not given their opinion.
- There has been no parliamentary hearing.

**9. Responses to the Issue:**

- The authorities have not responded.

**10. Recommendations:**

- The government must guarantee the Santhals' rights to practice their religion and culture, and live with dignity.

**11. Individuals/Organization Involved in the Documentation:**

**Name:** Devraj Chaudhary

**Organization:** The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP)

**Position:** The Regional Indigenous Peoples' Human Rights Defenders

**Date:** February 2016

**District:** Morang

# The Encroachment of the Historical and Sacred Kupa (Well) of Tharus

## 1. Case Details:

### A. Type of Violation:

- Religious and Cultural Rights
- Right to identity

### B. The Date and Time of the Incident:

- 2016 AD

### C. The Location of the Incident:

- **District:** Sunsari
- **Municipality/VDCs:** Itahari Sub-Metropolitan City
- **Ward No.:** 5
- **Tole:** Bayarwan

## 2. Description of the Affected Community:

### A. The Profile of the Victim/s:

- **Ethnic/Community Groups:** The Tharu indigenous communities.
- **Institutional Involvement:** Involved with various social organizations.

### B. Details of Affected Communities:

- **The areas/places of the affected communities:** Bayarwan and its adjoining villages in the Itahari ward no. 5
- Total population of victims: approximately 15,000
- Population of male victims: approximately 50 percent
- Population of female victims: approximately 50 percent
- Population of child victims: approximately 15 percent
- Ethnic/indigenous communities residing in the affected areas: Tharu, Rai, Limbu, Gurung, and others.

### C. Name of Community Leaders:

**Name:** Jyotish Kumar Choudhary

**Organization:** Dhakkidevi Gramthan Samitee

**Position:** Chairperson

**Name:** Darshan Lal Choudhary

**Organization:** Dhakkidevi Gramthan Samitee

**Position:** Priest

**D. The Occupation of the Community Members:** Farming and business.

### **3. The Profile of the Perpetrators:**

**Name and Position of the Perpetrator:** Ramesh Kathayat and Karuna Kathayat, Bayarwan, 5, Itahari

**Institutions involved in human Rights violations:** Itahari Sub-Metropolitan Office, Sunsari

### **4. Description of Case:**

#### **A. Background Information:**

Bayarban in the Itahari municipality-5 of Sunsari district is historically predominantly indigenous Tharu people. This area used to be a forest of Bayar (sumac) trees, which is why it is called Bayarban (the jungle of sumac trees). Many years ago, the Tharus dug a community water well, and worshipped it as their deity. Newly-wed Tharu couples encircled the well before beginning their new life together. Thus, today, this well is an intrinsic part of the Tharu culture, identity, and livelihood.

While people migrated from the hills to settle down in the Tarai, Bayarban was also populated by the migrants. The culture and tradition of the indigenous peoples had heavily affected by the culture and tradition of the migrants. Thus, their historic well faced the danger of being encroached upon. In 2015, Ramesh and Karuna Kathayat bought a land near this well, built a house and claimed the well to belong to them. When the Tharus fenced the well, the Kathayat couple filed a complaint at the Itahari municipality. The municipality held the Tharus guilty of encroaching upon the well 'owned by the Kathayat couple'. The municipality ordered Jyotish Kumar Chaudhary, the president of the Well Preservation Committee, to appear in its office. Such kind of activities of the administration caused mental torture to the community.

#### **B. Possible Reasons behind the Attack:**

- The Sub-Metropolitan is not sensitive in protecting historical

and cultural heritage.

- Political protection to Ramesh and Karuna Kathayat.
- Communities are unaware of their rights and thus failed to protest against the encroachment.

### **C. Related Policies and Laws:**

- Discriminatory laws and policies.
- Non-recognition of Indigenous Peoples collective ownership over lands and not availability to legal provision to register such land.

### **5. Economic, Social and Cultural Impacts:**

- The well encroached upon by the Kathayat couple is an important part of the local Tharu community's identity, religion and culture; it was not merely a source of water, but a shrine. If owned by individuals, the local Tharus culture and identity will be at risk, affecting the social harmony between the Tharus and the hill migrants.

### **6. Action taken by Community:**

Attracted the attention of Itahari Sub-Metropolitan Office.

### **7. Action by Civil Society:**

- **Legal Aid:** Not yet received.
- **Campaign and Advocacy:** Not yet conducted.
- **Financial or other forms of Assistance:** Not yet received.

### **8. Action by State:**

- The government authorities, including the National Human Rights Commission (NHRC), has not yet responded to the memorandum.
- No court cases, parliamentary hearings, or responses from any police administration or government authorities regarding the incidence.

### **9. Responses to the Issue:**

- No response from the regional, national and international mechanisms regarding the incidence.

### **10. Recommendations:**



- The well should be preserved as part of the Tharu culture and identity. Actions must be taken against those who have encroached upon it.
- The government must provide support for preservation of this well.
- Dhapkidevi Gramthan Committee that preserved the well in the past must be given a responsibility to preserve this Tharu identity in future.

#### **11. Individuals/Organization Involved in Documentation**

**Name:** Gopal Dewan

**Organization:** The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP)

**Position:** Regional Indigenous Peoples' Human Rights Defender

**District:** Sunsari

# Extra-judicial killing of an indigenous youth

## 1. Case Details:

### A. Type of Violation:

- Right to life
- Religious and Cultural Rights

### B. Date and Time of Killing:

- November 3, 2015
- Time: 3 PM

### C. Place of Killing:

**District:** Taplejung

**VDC:** Santhakra

**Ward No.:** 6, Thebara

## 2. Discription of Affected Community:

### A. Profile of the Victim/s:

- **Name:** Samir Limbu,
- **Permanent Address:** Mamankhe VDC, Khejenem, 3, Taplejung
- **Gender:** Male
- **Marital Status:** Married
- **Nationality:** Nepalese
- **Age:** Approximately 25 years old
- **Occupation:** Farmer
- **Ethnicity/Indigenous community:** Limbu
- **Language Speaker:** Limbu and Nepali
- **Religion:** Kirat
- **Education:** Literate
- **Membership in organization:** General member of Kirat Mulbasi Swatantra Limbuwan
- **Ethnic /Indigenous Groups residing in the affected areas:** Limbu, Rai, Sunuwar, Yakkha, Tamang, Gurung, Sherpa and others.

### **3. The Profile of the Perpetrators:**

#### **A. The Name and Position of the Perpetrators:**

**Name and Surname:** Shanti Raj Koirala and police officials deployed as per his command, District Police Office, Phungling, Taplejung.

**Institutions involved in Human Rights Violations:** The District Police Office

**The Name of the Commanding Office:** The Deputy Superintendent of the Police (DSP), Shanti Raj Koirala, District Police Office, Taplejung

### **4. Description of the Extrajudicial Killing:**

#### **A. Background Information:**

The 25-year-old Samir Limbu from the Mamangkhe VDC-3 in the Taplejung district was killed by the police. Samir's relatives say he was just a member of a political group, the Kirat Mulbasi Swatantra Limbuwan. In November 2015, members from the group were in the Santhakra village of Taplejung. Their plan was to interact with the locals and brief them about their political agenda. They were having lunch at Bal Singh Limbu's house when the police appeared and opened fire at the political activists. Samir was shot dead. His family claims that they were not allowed to perform the final rites according to their tradition and culture, and that the police buried his body after postmortem at the district hospital.

Chandra Bahadur Limbu, Kumar Limbu Phombo, Shiva Magar and Durgamaya Limbu and other members were arrested without a warrant. They were tortured in police custody. The police also terrorised the local people in the Santhakra, Yukhabu, Mamamkhe, Sawa and Khokling villages to oppress this budding political outfit. Because of the police actions they had to flee from their home.

### **5. Action by Community:**

- A complaint has been filed at the National Human Rights Commission (NHRC).

## **6. Action by Civil Society:**

- **Legal Aid:** The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP) has provided legal aid to the victims.
- **Advocacy and Campaigns:** Not yet conducted
- **Financial or any other sort of Assistance:** Not yet received.

## **7. Action by State:**

- The National Human Rights Commission and other government authorities have not yet given their response regarding the memorandum concerning the incidence.
- Court Judgements: Not available
- No parliamentary hearing has been arranged, and the police administration or other government authorities have not taken action.

## **9. Response to the Killing:**

–Indigenous rights activists vehemently criticized the extrajudicial killing. Still, government authorities have not taken action.

## **10. Recommendation:**

- To urge the relevant authority to conduct accurate and impartial investigation, punish the perpetrators, and offer compensation to the victims.
- Ensure the citizen's right to live with dignity.
- End police intimidation targeting ethnic groups.

## **Individuals/Organization Involved in the Documentation:**

**Organization:** The Lawyers' Association for the Human Rights of Nepalese Indigenous peoples (LAHURNIP)

**District:** Kathmandu

# The Extrajudicial Killing and Deprivation of Rights over Natural Resources

## 1. Case Details:

### A. Type of Violation:

- Right to live with dignity
- Encroachment over traditional land

### B. Date and Time of Incidence Happened:

- Date: 2 June 2014
- Time: 3 PM

### C. Location of the Incident:

**District:** Dolpa

**VDCs:** Dho

**Ward No:** 4

## 2. Description of Affected Community:

### A. Profile of the Victim/s:

- **Name:** Chhiring Phurba Gurung
- **Permanent Address:** Dho VDC, Ward No. 6, Dolpa
- **Gender:** Male
- **Age:** Approximately 30 years old
- **Occupation:** Farming/husbandry
  
- **Name:** Dhandup Lama
- **Permanent Address:** Dho VDC, Ward No. 4, Dolpa
- **Gender:** Male
- **Age:** Approximately 47 years old
- **Community group:** Dolpo
- **Occupation:** Farming/husbandry

## 2. Description of Affected Community:

### A. Details of Affected Community:

- The areas/places of the victimized communities: Dho VDC
- Total population of victims: 250 households

- Population of male victims: Approximately 50 Percent
- Population of female victims: Approximately 50 Percent
- Population of child victims: Approximately 20 Percent
- Ethnic/indigenous groups residing in the affected areas: Dolpo and others

**B. Occupation of the Community Members:** Farming/ Husbandary

### 3. Profile of Perpetrators:

#### A. Name and Surname of Perpetrators:

- **Name and Surname:** Police Inspector Constable Krishna Prasad Khanal and Assistant Sub Inspector of Police, Jiban Malla
- **Address:** District Administration Office, Dolpa

**B. Institution Involved in Human Rights Violation:** District Police Office and Chief District Office, Dolpa

**C. Commanding Officer:** Chief District Officer

### 4. Description of the case

#### A. Background Information:

Every summer, people from various parts of the country reach the upper Dolpa to collect Yarsagumba, a valuable medicinal herb. They also collect other medicinal herbs from the region. Because of the unregulated and herb collection, the grasslands of the upper Dolpa are depleting. In 2012 and 2013, more than 50 yaks died, largely due to the scarcity of grass fodder. The Yarsagumba collection, with unplanned way, has also affected the local indigenous peoples traditional livelihood and lifestyle. A few years ago, the Dolpo people, an indigenous community in this area, pursued to regulate the Yarsagumba collection. They began collecting taxes from those who would go there to collect the Yarsagumba, and prohibited people from picking Yarsagumba from Lang Patan, the most important grazing land in the area. They aimed to use the money collected from the Yarsagumba pickers to local development work.

But the local administration and the Buffer Zone Management Committee of the Shey Phoksundo National Park did not want the

local indigenous peoples to regulate the Yarsagumba picking. Thus, Manab Hamal, the coordinator of the Buffer Zone Management Committee, filed a complaint against the local Dolpo people at the District Administration Office, which deployed a joint team of the Nepal Police and Armed Police Forces against the local indigenous peoples. A team of 50 policemen, led by inspector Jiban Malla, reached the Dho village of Dolpa, and seized all the money collected by the local indigenous peoples. They also snatched away Rs.800,000, watches, and gold chains from 12 individuals.

On June 3 2014, the locals went to claim the money of which they had been deprived. As a reaction to this, inspector Malla ordered his force to open fire at the locals. 30-year-old Chhiring Phurwa Sherpa, who was injured in the incident, died while undergoing treatment at a local police post. 47-year-old Dhundup Lama was seriously injured. He was brought to Kathmandu for further treatment, and died in Om Hospital, Kathmandu.

### **C. Related Laws and Polices:**

- The National Park and Wildlife Conservation Act, 2019 (1973) failed to reflect the rights of Nepalese Indigenous peoples.

### **6. Actions Taken by the Community:**

- Submitted complaints at the National Human Rights Commission (NHRC).
- Submitted memorandum at the Commission for Investigation of Abuse of Authority (CIAA)
- On July 6, 2014, the FIR (First Information Report) was filed at the District Police Office, Dolpa.

### **7. Action Taken by Civil Society:**

- **Legal Aid:** The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP) has provided legal aid to the victims.
- **Advocacy and Campaign:** Not yet conducted.
- **Financial or other forms of Assistance:** Not yet received.

## **8. Action by the State:**

- Response from the National Human Rights Commission (NHRC) and other government authorities: Not yet received.
- Court judgements: Not available.
- No actions taken by the police or other government bodies and no parliamentary hearing has been arranged.
- The government unilaterally formed an Investigation Committee under the leadership of the Police Inspector of the District Police Office, Dolpa.

## **9. Responses to the Issue:**

- Following the legal proceedings of the incident, the family of one deceased got compensation, while the others have received nothing.

## **10. Recommendations:**

- The United Nations Declaration on the Rights of Indigenous peoples, 2007, and the International Labour Organization (ILO) convention 169, which bestows the preemptive rights of indigenous peoples over natural resources, must be implemented.
- The local administration has used excessive force against indigenous peoples. Their rights to live, rights against torture and rights over land must be respected. A free and fair investigation into the incident is needed.
- The roles played by Chief District Officer Krishna Prasad Khanal, inspector Jiban Malla, Roshan Shah, the Buffer Zone Management Committee's Hemraj Hamal, and Manab Hamal need to be investigated. Actions must be taken against the guilty.
- The goods seized from the locals must be returned to them.
- The state must identify and recognize the legal existence of traditional institutes of indigenous peoples.

## **11. Individuals/Organization Involved in Documentation**

**Organization:** The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP)

**District:** Kathmandu



# The Jabdi Animal Skin Processing Plant Violates Indigenous Peoples Rights

## 1. Case Details:

### A. Type of Violation:

- Social, Religious and Cultural Rights
- Rights to Development and Participation
- Right over land
- Right to live in a clean environment

### B. Date and Time of the Incident:

- 9 January, 2015

### C. The Location of the Incident:

**District:** Bardia

**VDCs:** Dhadhawar

**Ward No.:** 5

## 2. A Description of the Affected Community:

### A. Name and Surnames of the Victim:

- **Ethnic/Community Groups:** Tharu indigenous communities and others
- **Institutional Involvement:** Involved with various representative organizations

### B. Details of Affected Community:

- The areas/places of victimized communities: Gularia Municipality, 9 settlements in 2 VDCs (Dhadhawar and Mohamadpur)
- Communities: Including Tharus, Muslims and Dalit communities
- Total population of victims: 7,000
- Population of male victims: Approximately 50 percent
- Population of female victims: Approximately 50 percent
- Population of child victims: Approximately 28 percent

### C. Name of Community Leaders:

**Name:** Badhghar Ram Bahadur Tharu and Leader Bhaggu Tharu

**D. Occupation of Community Members:** Farming, animal husbandry, fishing, daily waged labour, foreign labor etc.

### **3. Profile of the Perpetrators:**

- Jakir Husain, Founder of Jabdi processing plant
- District Administration Office
- Dhadhawa VDC Office

### **4. Description of the case:**

#### **A. Background Information:**

The Dhadabar VDC in the Bardiya district is historically predominated by indigenous Tharu. Two years ago, the office of Small and Cottage Industry allowed to set-up a plant to process buffalo hides and skins at Jabdi Ghat. However, the local Tharus or their representative institutes were not consulted upon the licensing of the Jabdi plant. Operating an animal hide and skin processing plant on the bank of the Babai River could have affected the livelihood and culture of people not only in Dhadhabar village but also in parts of the Gulariya municipality and in the Mohammadpur village.

When the plant operator began constructing the necessary infrastructure, the local Tharus were alarmed. The plant has adverse impact to the culture and livelihoods of the communities. Badghar Ram Bahadur Tharu, a local community leader, organised a meeting with the affected communities. After that they filed a petition at the Office of Small and Cottage Industry, but nothing happened.

When their pleas fell on deaf ears, the Tharus started staging protests on the streets. The plant operators sought police help to suppress the Tharu protesters. The police intervened in a community meeting of the Tharus. Badghar Ram Bahadur Tharu, Bhaggu Tharu, and Pahari Tharu were taken to the District Administration Office, and pressured into calling off the protests. But the community refused to withdraw the protests. Currently, the construction of the plant is halted.

Nepal has signed the International Labour Organization (ILO) convention 169 and the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP), 2007. These two international laws require the state to ensure that the local indigenous peoples Free, Prior and Informed Consent is sought before initiating any development project that could potentially affect their livelihood and the local environment.

## **B. Possible Reasons:**

- Although Nepal has signed the ILO convention 169 and the UN-DRIP 2007, the state seems unwilling to implement them.
- The Dhdabar VDC office and the District Office of Small and Cottage Industry did not brief the local indigenous community about possible consequences of setting up a plant on the river bank before granting a license to it.
- The local administration supported the plant operator rather than the local community.

## **C. Related Policies and Laws:**

- Program implementation policies and the directives of the Cottage and Small Industry Office are not indigenous peoples-friendly.
- Improper implementation of existing legal provisions.

## **5. Economic, Social and Cultural Impact:**

- The risk of loss of traditional occupations, such as fishing in the Babai River, animal husbandry, farming, etc.
- Adverse impact to the religion and culture of the indigenous Tharu community.
- The health effects of pollution
- Effects on the livelihood of indigenous peoples

## **6. Actions by the Community:**

- Submitted memo at VDC Office and District Cottage and Small Industry Office, demanding to cancel the registration of the Industry.
- Drew attention to the Chief District Officer concerning the conflict.
- Conducted a series of sit-ins and protest programs against the industry, mainly demanding the closure of the industry.

## **7. Action by Civil Society Organizations:**

- **Legal Aid:** The Lawyers' Association for the Human Rights of Nepalese Indigenous peoples (LAHURNIP) has provided legal aid to the victims.

- Indigenous Peoples' Human Rights Defender affiliated with LAHURNIP has been facilitating amicable solutions to the problem, such as the empowerment of communities.

**8. Action by State:**

- The local government has not paid heed regarding the negative effects that the local communities have to face.

**10 Recommendations:**

- Registration of the Jabdi processing plant must be revoked.
- Human rights of indigenous peoples must be protected.
- Actions must be taken against those who tried to manipulate the local communities to allow a commercial plant that could affect their livelihood and the environment.

**11. Individuals/Organization Involved in the Documentation:**

**Name:** Kashiram Chaudhary

**Organization:** Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP)

**Position:** Indigenous peoples Human Rights Defender

# Unconstitutional Appointments at the National Human Rights Council

## 1. Case Details:

### A. Type of Violations:

- Right to equality
- Right to participation

### B. Date and Time of the Incident:

- October 24, 2014

### C. Place of incident:

**District:** Kathmandu

**VDC/Municipality:** Kathmandu Metropolitan City

## 2. Details of Community Victimized of Incident:

- The areas/places of the victimized communities: Indigenous communities across Nepal
- Communities: All Nepalese Indigenous peoples
- Total Population of victims: All historically and socially excluded communities, namely indigenous nationalities, Madhesi, Dalits, Women, Muslims, etc.

## 3. Profile of the Perpetrators:

- Office of the Prime Minister and Council of Ministers, Singhdurbar, Kathmandu.
- Ministry of Law, Justice and Parliamentary Affairs, Singhdurbar, Kathmandu
- The office of the Constitutional Council, Singhdurbar, Kathmandu
- The office of the Parliamentary Hearing, the Legislature Parliament, Singhdurbar, Kathmandu
- The National Human Rights Commission, the Head Office, Harihar Bhawan, Lalitpur
- The Head Office of the Nepali Congress, Sanepa, Lalitpur
- The Head Office of the CPN-UML, Balkhu, Kathmandu
- The Head Office of the UCPN (Maoist), Parisdanda, Koteswor, Kathmandu
- The Head Office of Madhesi Janadhikar Forum, Sachal Sanepa Lalitpur

- Anup Raj Sharma, newly elected Chairman of the NHRC, the Head Office, Harihar Bhawan, Lalitpur
- Prakash Wasti, newly elected Member of the NHRC, the Head Office, Harihar Bhawan, Lalitpur
- Gobinda Sharma Poudel, newly elected Member of NHRC, the Head Office, Harihar Bhawan, Lalitpur
- Sudeep Pathak, newly elected Member of NHRC, the Head Office, Harihar Bhawan, Lalitpur
- Mona Onsari, newly elected Member of NHRC, the Head Office, Harihar Bhawan, Lalitpur

#### **4. Description of Case:**

##### **A. Background Information:**

On September 18, 2014, the Judicial Council recommended Anup Raj Sharma as the Chair of the National Human Rights Commission (NHRC). Prakash Wasti, Govinda Sharma Poudel, Sudip Pathak and Mohana Ansari were also recommended as members. The following month, a Parliamentary Hearing Committee approved their names, and they were officially appointed as the NHRC Chair and members.

The NHRC is a constitutional body entrusted with the responsibility to safeguard and promote human rights. When appointments are made to lead this body, it is important to honour the spirit of the constitution that has ensured the rights of indigenous peoples, women, Madhesis, and Dalits to be represented in all of the state's organs. However, the appointments of the NHRC Chair and members have violated these constitutional rights.

Article 13 of the constitution stipulates that the state shall not discriminate against anyone on the basis of their religion, ethnicity, gender, language and political ideology. Yet, except for Mohana Ansari, all the NHRC members were from the same caste, community, and religious group.

the preamble of the constitution has mentioned that Nepal is a multi-lingual, multi-racial, multi-religious and multi-cultural country. The constitution has envisaged a society founded on the principles of equality. Still, these principles and the spirit of the constitution

were violated when 80 % of the NHRC members were picked from the same community, thus ignoring Nepal's diversity.

Nepal has ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and International Covenant on Civil and Political Rights, the United Nations Declaration on the Rights of Indigenous peoples (UNDRIP) and the International Labour Organization (ILO) Convention 169. These international laws define the act of giving one caste, community and religious group a privilege as a form of discrimination, and require the state to ensure equality. Thus, the state of Nepal has violated not just its own constitution but also international laws.

#### **B. Actions Taken by the Affected Community:**

- It was an issue of public interest, and several relevant organisations have raised their voices against the manner in which the government appointed its NHRC members.

#### **5. Actions Taken by the Civil Society Groups and Human Rights Activists:**

- A writ petition was filed at the Supreme Court on October 22, 2014, against the way the government appointed its NHRC members.
- On October 16, 2014, a petition was lodged by the Parliamentary Hearing Committee. The petitioners argued that the principles of equality were violated because 80 % of the appointees were from the same community.

#### **6. Actions Taken by the Government:**

- The writ petition filed at the Supreme Court is still pending.
- The Parliamentary Hearing committee did not take into account the arguments presented by the petitioners.

#### **7. Response by the State:**

- The parliamentary committee sought clarification from the Constitutional Council regarding the appointments and conflicts.
- The Constitutional Council responded to the Parliamentary

Committee stating that it will follow the principle of equality in future appointments.

**8. Recommendations:**

- The appointments of the NHRC members must be nullified, and the spirit of the constitution, international laws and internationally accepted principles of inclusion must be honoured when making appointments to a constitutional body, such as the NHRC.

**9. Individuals/Organization Involved in Documentation:**

**Name:**

**Organization:** The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP)

**District:** Kathmandu



# The Dharan-Chatara-Gaighat-Katari-Sindhuli-Hetauda Road Construction Project: A Threat of Displacement

## 1. Case Details:

### A. Type of Violation:

- Economic, Social and Civil Rights

### B. The Date and Time of Incident:

- March 21, 2016

### C. Location of the Incident:

**District:** Sindhuli

**VDC/Municipality:** Kamalamai Municipality

**Ward No.:** 1, 4 and 5

## 2. A Description of the Affected Community:

### A. Name and Surname of the Victims:

**Ethnic/Indigenous groups:** Local communities living in Ward No. 1, 4, and 5 in the Kamalamai Municipality

### B. Details of Affected Community:

- Affected areas: The Kamalamai Municipality, Sindhuli
- Ethnic/indigenous groups residing in the affected area: Newar, Tamang, Sunuwar, Bhujel, Dalit and Chhetri etc.

### C. Name of Community Leaders:

**Name:** Collective leadership

**D. Occupation of the Community Members:** Farming, small business and foreign labor

## 3. Description of Case:

### A. Background Information:

A road construction project connecting Dharan in the eastern part of Nepal to Hetauda in the central part of Nepal – running through Chatara, Gaighat, Katari and Sindhuli – is underway. It is estimated that the construction of this 318 km Dharan-Hetauda will cost around Rs. 11 billion. At least 68 bridges need to be built, including a big one over the Saptakoshi River, to complete this road. This year, at

least three bridges are expected to be built at several parts of the road in the Sindhuli district. However, this development project is happening at a cost, as it threatens to displace indigenous families in Sindhuli district.

The affected indigenous peoples say they are not against development, but they are dissatisfied because it has affected their lives and livelihood. The locals from the ward 1, 4 and 5 of Kamalamai Municipality in Sindhuli have formed a struggle committee to protest the construction and demand adequate compensation. They have drawn the Chief District Officer of Sindhuli to their grievances.

According to Ram Babu Shrestha, coordinator of the struggle committee, as many as 73 families will lose parts of their lands to the project. Still, the government has offered no compensation to them. "We will be displaced from our ancestral villages, if the road built," he says. "And if it is built without compensation, it will be an injustice. It will also deprive us of our social and economic rights."

#### **B. Background of the Project:**

Although the construction of this 318 km road started in the fiscal year of 2007/2008, the part of the road in the Sindhuli district began in the fiscal year 2016/2017. From this road construction, as many as 173 families will be directly affected, losing parts of their lands to the project without compensation.

#### **C. Source of Information:**

- News clippings published by various newspapers and online news media.

#### **D. Possible Reasons for Conflict:**

- The road construction project began without any plans for compensation to the victims. Moreover, the project was carried out without conducting any consultation with the locals.

#### **4. The Socio-Economic and Cultural Impact:**

- The road construction project will displace communities
- The locals are not going to get compensation.
- The project does not have a resettlement plan

#### **5. Actions taken by the Victims and their Families:**

- The affected communities formed a struggle committee.
- They have submitted a memorandum to the Chief District Officer.
- They have attracted the attention of the concerned organisations.

#### **6. Actions taken by Civil Society Organization:**

- The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP) has provided legal aid to the victims. In the meantime, LAHURNIP has facilitated a dialogue to resolve the conflict.

#### **7. Action by State:**

- The government has so far shown no concerns regarding the demands raised by the victims in the Struggle Committee.

#### **8. Response to the Issue:**

- Local people are engaging and consulting various civil society groups regarding their rights. They also have submitted a memorandum to the local administrations.

#### **9. Recommendations:**

- It is important to consult the locals who might be affected by the road project. Without their prior and informed consent, the project should not be carried out.
- It is important to provide compensation to those who might be displaced by the project.

#### **10. Individuals/Organization Involved in the Documentation:**

**Organization:** The Lawyers' Association for Human Rights of Nepalese Indigenous peoples (LAHURNIP)

**Position:** Indigenous Peoples Human Rights Defender

# The Dangraha Waste Management Area Construction

## 1. Case Details:

### A. Type of Violation:

- Right to Free Prior and Informed Consent (FPIC)
- Social and Cultural Rights
- Right over land

### B. Date and Time of the Incident:

- From 2009 to 2012

### C. Location of the Incident:

**District:** Morang

**VDC:** Dangraha

**Ward No:** 5

## 2. Description of Affected Community:

### A. Profile of the Victim/s:

- **Ethnic/Indigenous groups:** Tharu, Uranw, Rajbansi, Magar, Rai, Limbu, Tamang, Bhujel, Bahun, Chhetri, Dalit, and Madhesi
- **Permanent Address:** Shisawani, Badhara, Hathimuda, Dangraha, Tetariya, Tanki Sinawari, Lakhantari VDC and Biratnagar Sub-Metropolitan City Ward no. 1, 2, 4, 10, and 11.

### B. Details of Affected Community:

- **The area of the affected communities:** Shisawani, Badhara, Hathimuda, Dangraha, Tetariya, Tanki Sinawari, Lakhantari VDC and Biratnagar Sub-Metropolitan City Ward no. 1, 2, 4, 10, and 11.
- **Affected Indigenous groups:** Tharu, Uranw, Rajbansi, Magar, Rai, Limbu, Tamang, Bhujel, Bahun, Chhetri, Dalit, and Madhesi.

### C. Name of Indigenous Leader:

- Collective leadership

### D. Main Occupation of Community:

 Farming and traditional living.

## 3. Profile of Perpetrators:

**Name of Perpetrators:** Dangraha Waste Processing Plant Project

#### **4. Description of Case:**

##### **A. Background Information:**

In 2010, a waste processing plant project was about to be launched in ward 5 in the Dangraha village in the Morang district. Under the Strengthening of the Environmental Administration and Management (SEAM-N) project, funded by the governments of Nepal and Finland, 27 bighas of land were purchased in Dangraha. These areas are surrounded by the Tetariya, Siswani, Badahara, Hatthimuda, and the Tanki Sinwari villages.

Tharu, Uraun, Rajbanshi and other indigenous peoples rely on the water streams running through their villages- such as Singiya and Mayata- for their livelihood. They batch, have their cows drink water, and get fish and crab from these rivers. They perform their cultural rituals on the banks, and some of them consider these water streams to be their deities.

Thus, if the waste processing plant had been set up, it would have affected the livelihoods and cultures of the local indigenous peoples. When their lands were acquired for the project, the locals were not involved. Their prior and informed consent was not secured before setting up this plant; only later they learned that a waste processing plant was underway, and that it could affect their life, livelihood, culture, and rituals. Hence, they protested against the project.

##### **B. Information Relating to the Case:**

- The decisions made by the struggle committee in its meetings.
- Memorandums
- News articles published by various newspapers
- Pictures

##### **C. Possible Reasons for Conflict:**

The solid waste processing plant was instituted by giving false information, without conducting a consultation with the local communities. The project had obtained land not for plants but rather for other purposes. Finally, the community came to know that the project was meant for a solid waste processing and protested against it.

#### **D. Related Laws and Policies:**

- The government is unwilling to implement the fundamental rights guaranteed in its Constitution.
- The officials did not follow the proper procedure as provisioned under Land Acquisition Act, 1977.
- The government is unwilling to implement ILO convention no. 169 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

#### **5. Socio-Economic and Cultural Impact:**

- The solid waste processing plant will displace local indigenous communities from their traditional lands.
- The plant will pollute the environment and effect the health and economic activities of the local communities.
- Indigenous communities will lose their traditional land.
- The plant will pollute to the rivers and have an impact on the traditional occupation of indigenous peoples, such as fishing and animal husbandry.

#### **6. Actions by the Victim:**

- The local communities have formed a victim struggle committee and conducted series of protest programs in collaboration with the district chapter of the Nepal Federation of Indigenous Nationalities (NEFIN).
- Conducted press meetings (October 13, 2011), rallies (October 16, 2011), the submitted memorandum at the Chief District Office in Morang (October 17, 2011), the conduction of all party meetings at the CDO office in Morang (November 4, 2011), rallies at land slated for plant (April 14, 2012).
- An interaction was conducted with the District Administration Officer, the District Development Officer, the Chief Executive Officer at the Biratnagar Sub-Metropolitan Office, the Chief of the waste processing plant Project, representatives of political parties and civil society organisations on 26 April 2012.
- Raised the issue of solid waste processing plants in national and international forums.

### **7. Action by Civil Society Organization:**

- Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) facilitated the dialogues between the locals and the relevant officials. LAHURNIP has also provided support to the affected persons.
- The District Chapter of the Nepal Federation of Indigenous Nationalities (NEFIN) supported the victims and local communities at every stage from the beginning until the end.

### **8. Action by State:**

- The officials finally had all party meetings and dialogue between local communities.

### **9. Response to the Protest:**

- The concerns raised by the locals were justified and validated.
- Donors who were funding the project admitted their mistakes, and withdrew the plan to build a plant in Dangraha.

### **10. Recommendations:**

- Securing the local people's consent must be conducted before initiating a project that may have impacts on their life and livelihood. Their participation in the project is also of importance.

### **11. Individuals/Organization Involved in Documentation:**

**Name:** Dev Raj Choudhary

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

**Position:** Regional Indigenous Peoples Human Rights Defender

**District:** Morang

## **Encroachment of the Cultural and Archaeological Site**

### **1. Case Details:**

#### **A. Type of Violation:**

- Religious and Cultural Rights
- Right to identity

#### **B. Date and Time of attack:**

- March 18, 2013

#### **C. The Place of the Attack:**

**District:** Kathmandu

### **2. Description of the Victim:**

#### **A. Profile of the Victim/s:**

- Indigenous groups: Newar

#### **B. Details of Affected Community:**

- The area that victimized communities inhabit: The Newar communities, including others living across Kathmandu valley.
- Total population of victims: Approximately 45,000
- Population of male victims: Approximately 50 percent
- Population of female victims: Approximately 50 percent
- Population of child victims: Approximately 20 percent

**C. The Occupation of the Community Members:** Farming, small businesses, and employment.

### **3. The Profile of the Perpetrators:**

- The Ministry of Culture, Tourism and Civil Aviation
- The Ministry of Federal Affairs and Local Development
- Kedar Bahadur Adhikari, Chief Executive Officer of Kathmandu Metropolitan City Office.
- Suresh Shaha, VDC Secretary of Kathmandu Metropolitan City, Ward no. 23



- Rabindra Man Shrestha, VDC Secretary of Kathmandu Metropolitan City, Ward no. 12
- Sudharshan Bhattarai, VDC Secretary of Kathmandu Metropolitan City, Ward no. 25
- Saraswoti Singh, Director of Hanumandhoka Durbar Museum Development Committee
- Sadhuram Bhattarai, Head of Administration and Organization Development Department Kathmandu Metropolitan City
- Siddha Bahadur Gurung, Chairman, Side Walker Traders Pvt. Ltd.

#### **4. Description of the Case:**

##### **A. Background Information:**

Basantapur Darbar Square is one of the archaeological centres of Kathmandu, on the list of the United Nations Organisation for Education, Science and Culture (UNESCO) world heritage sites. The locals are proud of their cultural heritage, and have always played a crucial role in conservation of the historical place. However, now, in an agreement signed between the Kathmandu Metropolitan City (KMC) office, the Hanumandhoka Darbar Museum Development Committee and Side Walkers Traders Pvt Ltd on March 18<sup>th</sup>, 2013, the role of the locals has not only been undermined, but the agreement also threatens to degrade the already endangered site.

Side Walkers, a profit-oriented private company, made plans to install commercial stalls and building physical structures, such as parking lots, in the Basantapur Darbar Square. The company wanted to have monopoly on this historical site.

The Basantapur Darbar Square is the center of many cultural festivals and events that are celebrated by the local indigenous Newar community. However, the agreement with the Side Walkers may affect or inhibit these cultural events from taking place. By giving a private company the license to exploit the Basantapur Darbar Square without free, prior and informed consent from the native Newars is a violation of the cultural rights of the local indigenous community. Article 23 in Nepal's Interim Constitution,

2007, stipulates that every community has rights to practice, celebrate, and observe their traditional social, religious, and cultural events. Thus, the agreement with the Side Walkers violates the constitutional rights of the local Newar community, as well as the religious and cultural rights ensure by international laws – such as the Committee on the Elimination of Racial Discrimination (CERD), the ILO convention 169, and the United Nations Declaration on the Rights of Indigenous People (UNDRIP).

#### **4. Actions Taken by the Government:**

- A writ was filed in court against the deal with Side Walkers. The court stated that the deal is legally flawed.
- However, government agencies and the police have not acted on the court's verdict.
- There has not been a parliamentary hearing.

#### **5. Response to the Case:**

- The Commission for the Investigation of Abuse of Authority instructed the Kathmandu Metropolitan City not to implement the deal with the Side Walkers.

#### **6. Recommendations:**

- The deal that violates the rights enshrined in the constitution must be revoked.
- The rights of the indigenous peoples has not been respected
- The local indigenous Newar community's rights to live with dignity must be honored.
- The local indigenous community's right to preserve the historic place where they have been living must be protected.
- The deal with the Side Walkers must be investigated, and the locals must be represented in the probe committee.

#### **7. Individuals/Organization Involved in Documentation:**

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

**District:** Kathmandu

# Encroachment of religious and cultural site of Tharu and Musahar

## 1. Case Details:

### A. Type of Violation:

- Religious and Cultural Rights
- Rights over land
- Right to identity

### B. Date and Time of Encroachment:

- Since 2003 AD

### C. Place of Encroachment:

**District:** Sunsari

VDC/Municipality: Itahari Municipality

Ward No: 7

Tole: Tyangra

## 2. Description of Affected Community:

### A. Name and Surnames of Victims:

- **Ethnic/Indigenous Groups:** Tharu, Mushahar and Dalit
- **Institutional Involvement:** Local communities are involved with various organization

### B. Description of Affected Community:

- Community Settlement Areas: Tyangra Toli and various parts of Itahari.
- Affected community groups: Tharu, Mushar, Dalits and others
- Total population of victims: approximately 45,000
- Population of male victims: approximately 50 percent
- Population of female victims: approximately 50 percent
- Population of child victims: approximately 20 percent

### C. Indigenous Leader:

**Name:** Sabitri Chaudhary

**Position:** Advisor

**Organization:** Tharu Kalyankari Sabha, Itahari Nagar Samiti

**Phone no:** 9842221968

**Name:** Nirmala Chaudhary

**Position:** Member

**Organization:** Tharu Kalyankari Sabha, Itahari Nagar Samiti

**D. Occupation of Community Members:** Farming and daily waged labor

### **3. Profile of the Perpetrators:**

**Name:** Hill bahun and Chhetri communities (privileged groups) who are residing by the Janata higher secondary school in Tyangra Tole.

**Institution Involved in Human Rights Violation:** Janata higher secondary school, Itahari, ward no. 7

**Main Violator:** Chairman of School Management Committee.

### **4. Description of the Case:**

#### **A. Background Information:**

In Tyangra, in the Itahari municipality-7 in the Sunsari district, there is an old settlement of indigenous Tharu Community, as well as a downtrodden Dalit community of the Tarai, the Musahar. Animal husbandry is one of the major sources of income. Years ago, they made a pond for their cows, which they have continued to manage and preserve themselves.

Due to the migration of people from the hills to the Tarai, the hill people have encroached upon the lands where the Tharus built their pond. They also encroached upon the land of the Dinabhadri temple, the deity of the local Musahar. The hill migrants have renamed the area Paribartan Tol. That undermines the history and tradition of the areas and discards the beliefs and culture of the Tharu and Musahar community.

The pond is at the centre of a grazing land; it used to extend over 15 bighas of land, but has now been restricted to 10 bigahs. The hill migrants have planted banana trees on the grazing area, and the Janata Higher Secondary school of the Itahara has also claimed the land. The Tharu and Musahar people have knocked on the doors of asked for help from the police, but their pleas have fallen on deaf ears.

## **B. Reasons for Encroachment:**

- The Tharu and Musahar did not have legal ownership over the pond.
- The migration of hill people to the Tarai.
- Janata Higher Secondary School encroached upon the land.
- The relevant authorities were neglected to preserve the cultural places of the indigenous peoples.

## **C. The Laws and Policies Leading to Conflict:**

- Discriminatory policies of the state.
- The state has adopted laws and policies which only favor the Hindu religion.

## **5. Economic, Social and Cultural Impacts:**

- The temple of the local Musahar people is facing threats, and the Musahar people may eventually be displaced.
- The Tharu peoples' main source of income is in danger because of the encroachment upon the grazing land and the pond.
- The indigenous Tharu people may eventually be displaced.

## **6. Impact on Community:**

- The encroachment is going to endanger the religious, cultural, and ritual practices of the community.
- The encroachment is going to have a direct impact on women, children, and farmers.
- This is likely to be an attack on their right to an identity and their ownership over land and territories.
- It is also going to have an effect on the existing kinship of the community.

## **7. Action by Community:**

- The members of victimized families filed a FIR at the Ward Police Office in Itahari.
- A delegation of the community members met the chief district officer and urged them to end the encroachment and preserve the Tharu indigenous peoples' pond and the Musahar community's temple.

- The community members filed complaints to the Itahari Sub-Metropolitan Office, demanding the preservation of the Tharu indigenous and the Musahar communities' symbols of religion, culture, and livelihood.

### **8. Action by Civil Society:**

Civil Society organizations have not yet taken action, or conducted any lobbying and advocacy activities against the encroachments and preservation of the cultural identity of the Tharu indigenous community.

### **9. Action by State:**

The government has yet to respond to the issues regarding the encroachment of the Tharus pond and the Musahar community's temple. There has not been arranged for a parliamentary hearing.

### **10. Recommendations:**

- The indigenous Tharus pond and the Musahar community's temple must be preserved. Those who have encroached upon their symbols of religion, culture, and livelihood must be discouraged.
- The pond must be restored, preserved, and developed as a centre of attraction.
- The affected communities must be given a right to preserve their cultural lands.

### **11. Individuals/Organization Involved in Documentation:**

**Name:** Bina Debi Tamang

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

**Position:** Indigenous Peoples Human Rights Defender

**District:** Sunsari

# Mishandling of the Local Development Budget

## 1. Case Details:

### A. Type of Violation:

- The right to participation

### B. Date of Misuse of Budget:

- Fiscal year 2013/2014

### C. Place of the Misuse of Budget

**District:** Terahthum

**2. Description of the Affected Communities:** Indigenous peoples of the Terahthum district.

**Affected Indigenous Groups:** Limbu, Rai, Tamang, Kulung, Magar, Gurung, etc.

## 3. Profile of the Perpetrators:

- District Development Committee, Terahthum

## 4. Description of the Case:

### A. Background Information:

According to the Local Body Resources Mobilisation and Management Procedure 2012 (2069 BS, at least 15 per cent of the grants allotted to local government bodies must be used for economically and socially excluded communities (elderly people, Dalit, indigenous people, disabled people, Madhesi, Muslim and other backward castes). Their consent and participation is also important when planning how to use the budget. However, in the Tehrathum district in the easternmost hills of Nepal, local government authorities have misused the budget meant for indigenous people by siphoning it off to other programs, thus violating the Interim Constitution 2007 and other laws, bylaws and procedures.

According to the article 33 of the Interim Constitution of Nepal, 2007, and the article 9 of the Nepal Treaty Act, 1990, it is necessary to follow the international laws to which Nepal is party to. According to the articles 6, 7, and 16 of the International Labor Organization (ILO) Convention 169 and the articles 18, 19, 20, and 32 of the

United Nations Declaration on the Rights of Indigenous People (UNDRIP), 2007, it is important to ensure indigenous peoples' participation when spending the budget meant for them.

These international laws have given rights for indigenous people to decide, manage, run, and control development programs and the budget allotted to them (see table 3 below).

#### **B. Information Related to the Misuse of Budget:**

- Local Bodies Resource Mobilization and Management regulation, 2012
- A photocopy of decisions made in the meeting held in 2015.
- A photocopy of Budget allocation details

#### **C. Possible Reasons for Misuse of Budget:**

The District Development Committee of Terhathum did not consult the district chapter of the Nepal Federation of Indigenous Nationalities (NEFIN) or indigenous community before spending their budget on other development programs.

#### **5. Economic, Social and Cultural Impact:**

- The Local Body Resources Mobilisation and Management Procedure, 2012, has allotted at least 15 per cent of the grants for economically and socially backward communities; however, the local government authorities have misused the budget meant for the indigenous peoples.
- It is important to ensure indigenous peoples' participation in the use of budget meant for them.

#### **6. Actions Taken by the Affected Community:**

- Informed the press about the misuse of the budget.
- Submitted a memorandum to several relevant organizations.

#### **7. Action by Civil Society Organization:**

- The Lawyers' Association for the Human Rights of Nepalese Indigenous Peoples (LAHURNIP) has provided the affected communities with legal aid.



Table 3: Provisions for indigenous people (regarding the mobilisation of local resources)

Plan	Strategy	Workplan	Major activities
<p>A three-year plan (from the fiscal year of 2067/68 BS to 2069/70 BS)</p>	<p>4) The empowerment of the Adivasi Janjati - the minority and almost extinct community - through various programs adopting the principles of positive discrimination and inclusion.</p>	<p>3.3) Various programs focusing on the social and economic empowerment and capacity building of the Adivasi Janjatis, minority and other communities, as well as marginalized communities with these target groups.</p>	<p><i>Target programs:</i> Programs related to economic and social improvement, and the reinforcement of cultural, religious, and ethnic identity of indigenous people. <i>The participatory planning system:</i> The participation of indigenous communities or their representative organizations will be ensured in every phase of project. The user groups will be included, and the needs and demands of the community will be identified and addressed through social mobilisation and participatory monitoring systems.</p>

<p>13<sup>th</sup> plan (from the fiscal year of 2070/71 BS to 2072/73 BS).</p>	<p>Various programs will be carried out for the empowerment of women, Dalit, Adivasi Janjati, Madhesi, Muslim, oppressed communities, minority groups, near-extinct community and poor and marginalised people from the Karnali region, remote hills and the mountains.</p>	<p>4) Various programs will be carried out by the government, private and non-governmental organisations, focusing on the social and economic improvement of the target communities. 5) Capacity building, income generation and awareness programs will be carried out as a campaign for capacity building and the social security of target communities. 6) Various programs will be carried out for the preservation, promotion and development of traditional skills, mother tongues and cultures of the target communities.</p>	<p><i>About the state structure and policy</i></p> <p>The state will be restructured in order to ensure the participation of representative organizations of target communities on every stage and level of the state. In order to achieve this, the institutional capacity of these organisations will be increased, and promotional events will be held.</p> <p>Laws, acts and policies that concern indigenous communities will be reviewed and reformed with the participation of the relevant indigenous communities.</p>
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<p><i>About economic development</i></p> <p>Indigenous peoples, Dali, backward communities, Madhesi, Muslims, and Badi will be identified, given identity cards and economic activities will be carried out.</p>		
<p>Their participation will be ensured.</p> <p>Organisations aimed to uplift the socio-economic condition of the targeted communities will be strengthened.</p>		

#### **8. Action by State:**

- The government authorities have not yet given their response regarding the complaints of the misuse of the budget.

#### **9. Response to the Case:**

- Affected communities are assembling and actively participating in programs aimed for awareness raising. They have also submitted a memorandum to various local government agencies.

#### **10. Recommendations:**

- Actions must be taken against those authorities who have abused their power and misused the local development budget meant for the indigenous peoples.
- The budget meant for indigenous peoples should be used only for their benefit.

#### **11. Individuals/Organization Involved in the Documentation:**

**Organization:** The Lawyers' Association for the Human Rights of Nepalese Indigenous Peoples (LAHURNIP)

**District:** Kathmandu

# Police atrocity over indigenous peoples

## 1. Case Details:

### A. Type of Violation:

- Right to live with dignity
- Right to freedom
- Right to development and participation
- Right to Free, Prior and Informed Consent(FPIC)
- Right to live peacefully

### B. Date and Time the Incident Happened:

**Date:** March 15-20<sup>th</sup>, 2015

### C. Location of the Incident:

**District:** Pachthar

VDC: Yangnam

Ward No.: 1 and

District: Pachthar

VDC: Bharapa

Ward no: 4

## 2. Description of the Affected Community:

**A. Ethnic/Indigenous Groups:** Local Indigenous communities

### B. Details of Affected Communities:

- The areas/places of victimized communities: Yangnaam VDC, ward no. 1 and Bharapa VDC, 4, Pachthar District
- Affected communities: Limbu, Tamang, Rai, Magar, Gurung, Chhetri, Bahun
- Total population of the affected communities: approximately 15000
- Population of male victims: Approximately 50 percent
- Population of female victims: Approximately 50 percent
- Population of child victims: Approximately 20 percent
- Main occupation of the affected communities: Farming, Animal husbandry, etc.

## 3. Profile of the Perpetrators:

- Krishnaraj Timilsina, Director, Pachthar Hydropower company

- Chief District Office, Phidim Pachthar
- District Police Office, Phidim Pachthar

#### **4. Description of Case:**

##### **A. Background Information:**

Two decades ago, the local people built a bridge over the Hewa Khola, connecting the Yangnam to the Bharapa village in the Pachthar district. The bridge, built with support from Kaduri Welfare, has become a lifeline for the locals.

When the Pachthar Power Company needed to build a 15MW Hewa 'A' hydropower, this entailed destroying the bridge. The company signed an agreement with the local administration to destroy the bridge and build a new one nearby. However, the agreement was signed without the local's free and informed consent, thus violating their right to participate in the development project in their area.

After removing the original bridge, a new bridge was built 40 meters north of it. However, the locals claim that the new bridge is fragile, and may collapse; thus, they have requested the company to build a stronger, more reliable bridge, but this request has not been granted.

As the company ignored their demands, the locals organised a corner meeting on March 8<sup>th</sup>, 2016, which was followed by a series of protest programs. On March 14<sup>th</sup>, the company held a meeting with the representatives of the locals, in the presence of the local authorities, but the meeting did not end in a solution. The locals claim that the administration sided with the company, and forced them to use the dangerous bridge. A team of policemen knocked on the doors of the locals, threatening to frame them with false charges if they refused to use the new bridge. When the locals refused to comply, the police thrashed some of the locals, and arrested Mahesh Adhikari, Ran Kumar Hangsarumba, Mahendra Kumar Hangsarumba, and Tek Bahadur Hangsarumba.

## **B. Sources of Information on the Police Repression:**

- News published by the newspapers
- Photocopies of meeting minutes held in different time
- Press Releases
- Pictures
- A memorandum and complaint letters submitted to different institution

## **C. Possible Causes of the Conflict:**

The Panchthar Power Company signed an agreement with the local administration to replace the old bridge with a new one, but used low quality materials and built a narrow and dangerous bridge. The cows could easily pass the river using the old bridge, but the new bridge is too narrow, and thus, the cows cannot cross the river.

## **D. Laws and Policies Related to the Police Repression:**

- Existing discriminatory provisions of laws and policies.

## **5. Economic, Social, and Cultural Impacts:**

- The locals and indigenous peoples were not properly and rightly informed before the old bridge was destroyed.
- Now, the locals find it difficult to cross the river and reach other villages.
- During the rainy season, it is almost impossible to use the bridge.
- Even if people can cross the bridge, the cows cannot, which has severely crippled the activities and income of the local people.
- The water source drying up because of the hydropower project.
- The construction of the hydropower project caused landslides in several places.

## **6. Actions Taken by the Affected Community**

- On December 3, 2013, the locals organised a meeting, listed their demands and submitted them to the Panchthar Power Company.
- Their demands were ignored, and they organised a corner meeting on March 8<sup>th</sup>. They carried out a series of protest

programs starting from March 9<sup>th</sup>.

- When the local administration terrorised the locals by deploying police forces, the affected community complained to several human rights organisations.

#### **7. Actions taken by the civil society**

- The Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) helped the affected local community with legal counseling, and supported them to file complaints with human rights organisations.
- Indigenous human rights defenders facilitated dialogues between the administration and the affected community.
- Human rights defenders, the civil society and journalists reached the village after the incident of police oppression.

#### **8. Action by State:**

- The government authorities facilitated a dialogue between the Pachthar Power Company and the affected local communities.

#### **9. Response to the Police Reprisal:**

- The Indigenous Peoples Organizations, including media persons and Human rights activists, have taken this issue seriously. Lately, the Pachthar Hydropower Company and the affected communities have had a dialogue to find an amicable solution to the problem.

#### **10. Recommendations:**

- The rights of the indigenous peoples and locals must be protected.
- A new bridge should be built, based on an agreement with the locals.
- The police brutality must be stopped.

#### **11. Individuals/Organization Involved in Documentation:**

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

**District:** Kathmandu