

# **Annual Report, 2015**

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

## **Annual Report, 2015**

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Cover: The picture in the cover is totally demolished village by  
the earthquake in Haku VDC of Rasuwa District

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## Preface

The present annual report highlights the achievements made by Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) during the fiscal year (FY) 2071/2072 BS (2014/2015). Because of overlapping of information of the past and the current FY data may vary between the preface and the main text of this report because of delay in publication of this report due to technical reasons.

In terms of social justice the year has been more difficult and challenging. The Indigenous Peoples (IPs) have expressed their dissatisfaction and concerns inside and outside the Constituent Assembly (CA) constantly, but in vain. Sadly, the CA stood against the rights of IPs and other marginalised communities scrapping their constitutional and fundamental rights. The CA members from IPs community were token representatives and remained in minority position and could not influence the CA. Despite the strong reservation of IPs and other marginalised communities the CA promulgated the Constitution which is against the aspiration of IPs and other marginalised communities.

The constitution of Nepal has been challenged by the national and international actors and section. The neighbouring countries and international actors did not welcome the Constitution openly and expressed their concerns over ensuring the rights of all the sections of the country and bring all the social and political actors in the process. Internally, the Tharu and Madhesi have condemned the Constitution strongly and stage peaceful demonstrations. During the protests in Tarai Madhes more than 54 civilian and police personnel have lost their lives. The historically marginalised communities have been questioning in the legitimacy of the constitution.

In one hand IPs rights were systematically sidelined and paralysed inside the CA. On the other hand they were victimized by the natural calamity, the destructive earthquake of 25 April 2015 and its subsequent aftershocks and had to survive under the open sky without any basic supports by the state. We have witnessed that the IPs of remote areas in Rasuwa, Sindhupalchok, Dolakha, Kavre, Nuwakot and other districts had survived under very critical situation after the earthquake. They did not receive timely relief materials and rescue services. Most of the deceased and affected are IPs and still surviving in miserable conditions.

In light of this fact, we felt that the IPs of Nepal have to go long for

securing their rights constitutionally and enjoy dignified life. For that their continuous collective efforts and struggles are necessary.

As previous years LAHURNIP engaged massively in defending the rights of IPs in this year. We had to act at local, national and international level in lobbying and advocating IPs rights. We have worked closely with the IPs at the local level such as earthquake affected, victims of hydro projects and development activities and other severe forms of human rights violations. At the national level we had worked constantly with the CA members and policy makers to aware them of IPs rights enshrined in ILO Convention no. 169, UNDRIP and influence and encourage them to incorporate in the constitution. Apart from that we also worked with the international organisations and UN agencies for advocating IPs rights violation in Nepal at the international forums.

Most importantly the Chairperson of CERD committee Mr. Francisco Jose Calitzay had visited Nepal for assessing the situation of human rights of the marginalised communities, Dalits, Madhesis, Muslim and IPs, in his unofficial capacity. That has been significant steps to internationalise the issues of indigenous and other marginalised communities.

We would like to thank all the national and international institutions/ organizations which supported LAHURNIP generously in its initiatives of defending human rights of IPs in Nepal.

Last but not least, many thanks go to all the board and secretariat members for making this report published. Without their hard work and contribution this report could not have been published in this form.

Shanti Kumari Rai  
Chairperson  
LAHURNIP

## **Abbreviations**

AFO	Admin and Finance Officer
AGM	Annual General Meeting
AIPP	Asia Indigenous Peoples Pact
CA	Constituent Assembly
CBS	Central Bureau of Statistics
CDO	Chief District Officer
CERD	Committee on the Elimination of Racial Discrimination
CIAA	Investigation of Abused of Authority
DAO	District Administration Office
DCC	District Coordination Council
DDC	District Development Committee
EMRIP	Expert Mechanism on the Rights of Indigenous Peoples
EU	European Union
FAMAS	Financial and Management Accounting System
FFM	Fact Finding Mission
FoNIJ	Federation of Nepalese Indigenous Nationalities Journalists
FPP	Forest People Programme
FSF	Federal Socialist Forum
FSPN	Federal Socialist Party, Nepal
FY	Fiscal Year
GDP	Gross Domestic Production
GoN	Government of Nepal
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and

	Cultural Rights
IFA	Indigenous Film Archive
ILI	Indigenous Learning Institute for Community Empowerment
ILO	International Labour Organisation
IMF	Indigenous Media Foundation
INWOLAG	Indigenous Women's Legal Awareness Group
IPHRDs	Indigenous Peoples Human Rights Defenders
IPs	Indigenous Peoples
IWGIA	International Work Group for Indigenous Affairs
KDTL	Khimti Dhalkebar Transmission Line
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
LHRC	LAHURNIP Humanitarian Relief Committee
MILA	Madhesi and Indigenous Lawyers' Association
MJF	Madhesi Janaadhiakar Forum
NC	Nepali Congress
NEFIN	Nepal Federation of Indigenous Nationalities
NFDIN	National Foundation for Development of Indigenous Nationalities
NGO-FONIN	NGO Federation of Nepalese Indigenous Nationalities
NHRC	National Human Rights Commission
NIDA	Nepal Indigenous Disabled Association
NINSF	Nepal Indigenous Nationalities Students' Federation
NIWF	National Indigenous Women's Federation
NLSS	Nepal Living Standard Survey
OHCHR	Office of the High Commissioner for Human Rights
PC	Programme Coordinator



PIL	Public Interest Litigation
SC	Supreme Court
SPCBN	Support to Participatory Constitution Building in Nepal
SWC	Social Welfare Council
THRD Alliance	Tarai Human Rights Defenders Alliance
UCPN (M)	Unified Communist Party of Nepal (Maoist)
UDHR	Universal Declaration of Human Rights
UML	Unified Marxist Leninist
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UPR	Universal Periodic Review
VDC	Village Development Committee
YFIN, Nepal	Youth Federation of Indigenous Nationalities, Nepal



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## Introduction

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This annual report is intended to highlight the progress made by Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) during the fiscal year 2071/72 BS (2014/15 AD).

Nepal is struggling with fluid political situation. The Constitution Assembly (CA) is in place to write the new constitution. The CA-II<sup>1</sup> took place with the glimmer of hope and giving one more chance to the political leaders to end the political transition after the *Jana aandolan-II* of 2006. The mandate of the *Jana aandolan-II* was inclusive participation of all citizens (including indigenous peoples) in the every structure of government as well in plan, policy, program and law making process. As laid down provision of participation in the Interim Constitution of Nepal, 2007, the first CA saw 218 members from indigenous Communities, out of a total 601 CA seats.

In the CA-II, the number of CA members from Indigenous Peoples (IPs) decreased in compare to the first one. Of the total 575 CA filled seats, there are only 184 members from IPs communities. Out of the total 59 listed indigenous communities, only 23 communities saw their representatives in policy making process. The CA is suppose to address so many contentious issues such as the bases of federalism, state structure, electoral system, right to self-determination, self-government/self-rule which are concern to IPs. This minimal participation of representatives from indigenous nationalities (INs) have raised suspicion in addressing and resolving the issues, concerns and problems of all peoples, including the IPs rights in the new constitution, which likely to cause adverse impacts in the peace and sustainable development of the country.

IPs of Nepal have been fighting for their right to equality for long. To get rid of historical discrimination and mirginalisation

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1 The first CA election was held on 10 April 2008 but dissolve on 28 May 2012 without writing constitution after four years of consecutive extension of its terms.

they have been initiating various steps to break the discriminatory legal and social boundary. But, even after the restoration of the democracy in 1990 and succession of peoples *Janaandolan II* IPs are not getting equal rights based on their cultural, social and economic life and norms and values.

After the failing of the first CA the second CA elections held on 19 November 2013, is in place but the political parties and majority of CA members are reluctant to raise IPs voices in the CA. The small number of CA members from the IPs background are constantly raising their voices regarding the rights of IPs but their voices seems not effective in the CA as they do not have in majority and influential positions inside the CA.

Recently, the CA has issued a “preliminary draft constitution” for the comments and suggestions of the people. The “Preliminary draft constitution” has out sidelining all the major issues of IPs. The IPs have expressed that the draft constitution is to limit the IPs rights and even regressive than the interim constitution of 2007

Nepal is signatory of various international human rights instruments, including ILO Convention no. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the policy makers and implementers constantly reluctant to ensure their rights constitutionally. The CA is in the process of writing new constitution but there is no participation of IPs and even the state mechanism is not holding any consultations with the IPs regarding their grievances and concerns.

## **LAHURNIP**

Lawyers’ Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) is a pioneer organisation of the human rights lawyers working for the rights of indigenous Peoples (IPs) in Nepal since its inception in 1995.

LAHURNIP has primary objectived of promoting, protecting and defending human rights and fundamental freedoms of IPs in

Nepal. It envisions a situation where IPs are equally participating in the decision making level, valued, respected and listened to and where they feel safe and where they can develop their fullest potential, equal rights and dignity simultaneously in democracy. LAHURNIP has been working to create solidarity with the regional and international IPs' rights promotional movement. LAHURNIP, established in 1995, by the professional indigenous lawyers aims at ensuring social justice through legal aid. It has been promoting better implementation of the ILO convention 169, United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) inter alia other international instruments that Nepal is a party to, meanwhile, helping Indigenous communities to manifest their rights, particularly those who are affected by the projects upon their land territories and natural resources.

### **Vision**

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

### **Mission**

LAHURNIP was established to render support and contribution to the rights, human rights and interests of Nepalese indigenous peoples.

### **Objectives**

1. To ensure, protect and promote the human rights of Nepalese indigenous peoples
2. To conduct different ethnographic research studies and survey about the human rights issues of Nepalese indigenous peoples
3. To make them more alert and sensitive to their rights, welfare and for their fundamental freedom
4. To establish documentation centre and provide detailed information about the different issues of human rights of Nepalese indigenous peoples

5. To organise different level of workshops, interactions, symposium seminars, meeting in the area of indigenous peoples
6. To work as a national pressure group to defend, ensure and promote basic human rights of Nepalese indigenous peoples
7. To collected, process and disseminate information on indigenous human rights issues
8. To provide free legal assistance, in the violation of legal and human rights issues
9. To conduct different projects concerning to the human rights issues of indigenous peoples of Nepal
10. To organise solidarity campaign and to support national and international efforts in order to accelerate towards the socio-economic upliftment of the indigenous peoples of Nepal
11. To work and contribute in the field of peace and conflict management
12. To advocate against racial discrimination and gender inequalities

## **Values**

LAHURNIP is committed to follow the following values:

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

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

*Honesty:* Committed to work with honesty at all levels for betterment of indigenous peoples

*Solidarity:* Wider solidarity with indigenous peoples is our commitment to fight for human rights

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## Socio-economic and political situation

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The political situation of Nepal during the fiscal year (FY) 2014/15 also remained fluid. The CA failed to write the constitution on self-imposed deadline of 22 January 2015. The rigid policy and strategies of the ruling political parties Nepali Congress and CPM UML on the issues of the marginalised communities has hindered in the making of constitution on time. There has been political ups and downs regarding assurance of the rights of IPs and other marginalised groups. Particularly, the ruling parties (controlled by dominant caste groups that include elites Bahun and Chetris) are against the issues of IPs. But the CA members representing IPs constantly are raising their voices in the CA.

The agreement reached between the major political parties regarding the constitution-making stroke down by the Supreme Court (SC), pronouncing unconstitutional and against the aspiration of Janaandolan II and the movements of IPs, Madhesis, Dalits and others.

There has been established an IPs movement accommodating IPOs and other IPs related organisations as the role of NEFIN has been ineffective and contradictory to the aspiration of IPs' movement. NEFIN was paralysed by the political cooption of the "mainstream" political parties namely; UML and Nepali Congress. According to the IPs experts and analysts the roles of the movement also has not been proactive and effective.

At the end of the year the CA has reveal the "preliminary Draft Constitution of Nepal 2071" with paralysing IPs other marginalised groups massively. The IPs and other marginalised groups burnt the draft disagreeing on limiting their rights. The draft constitution is even regressive of the interim constitution in the point of view of IPs and other marginalised groups.

With the support of LAHURNIP, in analysing and providing comments, IPs has submitted the differed view on the draft from different corners. The CA members, IPs political parties, NEFIN, NIWF, and their DCCs, IPOs and other IPs related

organizations have submitted their differed view in the draft constitution.

The IPs movement and other organisations have been holding meeting and interaction regarding assuring IPs rights in the constitutions.

In this year the political polarisation has escalated to its culmination. The pro-identity and anti-identity parties have seen clearly demarking their positions. At the latter period of the year the Madhesi Janaadhiakar Forum (MJF) and Federal Socialist Party, Nepal (FSPN) have merged and formed a Federal Socialist Forum (FSF). Similarly, FSDF and JMP also merged to a single party. This indicates that the parties holding and advocating the issues of marginalized communities are coming together as the ruling parties constantly opposing to recognise the issues and existence of them.

The economy of the country has also been heading back in this year as the devastating earthquake of May hit the country badly. According to the Economic survey 2014/15 the economic growth of the year is 3.04% which is the in the lowest rung in compare to the past eight years. The quake massively hit the social sector, which is 58%. Similarly, its effect is 25% in productive area, 10% in infrastructure.

On 25 June 2015 Government has hold a donors meeting for reconstruction. In the meeting the countries has show their commitments to support in the post-quake reconstruction initiatives.

Lack of employment, migration of youth labour to abroad for seeking job opportunities, trade deficit, down in the agricultural production has been major economic issues of the country in this fiscal year. From its ever-rising trade deficit and the loss of the quake it is really in need of hefty fund to come to its form.

The government policy of privatisation of the public corporations and companies could not materialise in the practices. The public companies are in deep economic crisis and bearing and surviving



with heavy losses. Out of 37 public corporations 15 are operating under the loss. According to the economic survey the loss of those corporations are of NPR about 2.7 billions as the record of the earlier year was of 2 billion. The survey also projected of increase of 700,000 poor because of the devastating quake.

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## **Natural Calamity**

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In the end of this fiscal year Nepal has encountered with devastating natural calamity such as earthquake, landslide and inundation.

### **Earthquake**

The devastating earthquake of 25 April 2015 and its subsequent aftershocks massively affected the life of Nepali. The earthquake claimed lives of more than 8,790 and 300 are still missing. It also caused destroying billion of property resulted in displacement and hardship in the livelihood of people, mostly IPs.

### **Landslide and inundation**

The earth quake in the eastern part of Nepal claimed the lives of dozens of IPs. After the devastating earthquake of 25 April and its subsequent aftershocks the soil and land of Nepal are in fragile situation. There are high chances of landslides and inundation in the coming raining season. The natural calamity could highly affect the lives of IPs as they are dwelling in the remote and lap of hills.

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## **Major Activities**

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### **Support to the Constitution making process**

LAHURNIP worked intensively to facilitate the constitution making process. For this LAHURNIP has organised series of meeting and interactions with the community members at the local level and with the CA members at the national level. LAHURNIP has provided legal and technical support to the

CA members and empowered the community members in the constitution writing process and their rights. LAHURNIP also formed an expert team to provide the IPs CA members instant advice and support regarding the constitution related issues raised in the CA.

### **Technical support to the CA members**

LAHURNIP has been providing technical support to the IPs CA members regarding the constitution making process and content on the issues of constitution for ensuring rights of the marginalised communities including IPs. For that purpose LAHURNIP has formed a five members' expert committee that provides regular technical support to them.

The expert team comprises following members

- Hon'ble R K Khambu
- Dr. Chaitanya Subba
- Dr. Krishna Bhattachan
- Dr. Bal Bahadur Mukhiya
- Advocate Shankar Limbu

The expert committee is providing technical support to the IPs CA members analysing the existing national and international legal provision pertaining to the rights of IPs and other marginalised communities.

The expert team also had a meeting with the CA chair Subash Chandra Nemwang regarding the rights of IPs which are plausible to address in the new constitution. Apart from that the expert team also prepared a differed view to submit the CA in the preliminary draft constitution 2015 prepared and public by the CA for the comments of the general public.

### **Case documentation and legal support and PIL**

To achieve the targeted objective LAHURNIP have been mobilising Indigenous Peoples Human Rights Defenders (IPHRDs) in the districts. Currently there are 28 IPHRDs, including 7 women, active in the districts. Five Regional IPHRDs

(including a woman) are in five regions to coordinate those IPHRDs and support in documentation case of human rights violation of IPs. LAHURNIP has 10 cases in the Supreme Court (SC) regarding violation of IPs rights. Out of them 4 are related to Khimti-Dhalkebar Transmission Line (KDTL). Of them two are related to land acquisition of IPs and locals for road construction by the project. Those cases are under consideration in SC.

LAHURNIP has submitted two writs petitions to the SC for ensuring inclusive commissioner in the National Human Rights Council (NHRC). The first writ submitted to the SC was related the constitutional council's un-inclusive recommendation of commissioners (four out of five are Bahuns) and second was for ensurance of inclusive commissioners as the government has appointed commissioners recommended by the Constitutional Council. The SC has issued show cause decision for the former writ but there was no response from the side of government but latter one is still in the SC.

Other case filed in the SC deals with the displacement in Barah chhetra of Sunsari district, amendment of CA policy and land acquisition in Thamel and Harisiddhi. LAHURNIP has also lodged complains to National Human Rights Commission (NHRC) and Commission on Investigation of Abuse of Authority (CIAA) to the cases such as, police atrocity to the Dolpo IPs in Dolpa in the name of natural resource management, Gorkha drinking water case in Gorkha, Hanuman Dhoka (heritage), Harisiddhi brick factory, Thamel (Chhaya Devi Complex), Dhor-Patan Hunting reserve, Dailekh Hydro, Barah Kshetra (religious site), Rail way in Mornag, Marsyangdi hydropowe, Cow slaughter and other case that have violated IPs cases seriously.

LAHURNIP has been supporting about 37 cases in the districts. Construction of Khimti-Dhalkebar electricity transmission line is one of the cases that LAHURNIP has been dealing with. Currently, the construction of KDLT has stopped its project activities because of the IPs and locals' obstruction as the project violates the rights of IPs. After complaint lodged to

the World Bank by the affected communities with the support of LAHURNIP the WB has decided to investigate in detail. The inspection panel deployed by the WB has investigated and prepared its report regarding effect of the project to the IPs and local. But yet to be made public. A consultation meeting held on 24 March 2015 by the World Bank with community to share the conclusion of panel's report revealed that there has been 'mistakes' in process, procedure and implementation and the WB is committed to fix those mistakes.

Similarly, The Kabeli 'A' Hydro-power project in Panchthar district has stopped its activities because of the agitation of affected IPs. Same as Sindhuli, the project has not gone through the Free Prior and Informed Consent and has not provided justifiable compensations to the affected and displaced communities.

The plan of Government for deployment of army in the name of security in Dhor-Patan Hunting reserve in Lamjung district has postponed for now as IPs has raised their voices. The IPs in the area has submitted memorandum to Prime minister and other concerned authorities to cancel the plan of deployment of army in the hunting reserve.

LAHURNIP has also published a compilation of cases that LAHURNIP has been dealing with. The compilation comprises 37 cases in English and Khas Nepali language.

### **Consolidation Conference on Indigenous Struggles Across Nepal**

In August a three days national consolidated conferences was conducted of the affected communities and struggle committees. The conference was intended to share the issue that IPs have been advocating for safeguarding and promoting human rights of IPs in the districts in various local issues that affecting and violating IPs rights ensured by ILO C. 169, UNDRIP and other international human rights instruments. Furthermore, the intention of the conference was to build synergy and consolidate IPs rights movements across Nepal. The conference was participated by the representatives of the struggle committee active across the country on the rights of IPs particularly

development aggression and violation of IPs rights enshrined in the international human rights instruments such as ILO C. 169, ESCR, UNDRIP and others.

At the end of the conference an Indigenous Rights Network, Nepal (IRNN) was also formed by the representatives of the struggle committees. Currently the IRNN is working to bring the issues of the IPs affected by the development projects. Mutual support and cooperation among the struggle committees across the country is the motto of the network.

### **Consultation meeting with the CA members**

Consultation meeting with six (Limbu, Magar, Newar, Rai, Tamang and Tharu) IPOs and CA members of the respective communities held in Kathmandu. The CA members of the respective communities have shown their commitments to raise voices of IPs in the CA. Tharu, Rai CA members have formed CA members' caucus and Tamang CA members and leaders have extended Tamang national coalition for collective efforts. Limbu, Magar and Newar CA members have agreed to hold further meeting and discussions for collective effort to ensure IPs rights in the constitution. Furthermore, the meetings also provided platform for discussion among the CA members and IPOs.

### **National Dialogue with the CA members**

Series of National dialogue with the CA members and IPs representatives have carried out to bring CA members and IPs to discuss on electoral system, State restructuring and fundamental Rights.

### **Electoral system**

For the first time in Nepal's history the CA adopted the mixed electoral system. The CA adopted First-Past-the-Post, Proportional Representation and nominations from the cabinet. The CA directive has provisions to elect 240 under FPTP and 335 under PR elect methods and 26 are supposed to nominate by the cabinet. Dr. Krishna Bhattachan has presented paper on the electoral process for ensuring IPs right in the new constitution.

Principally the proportional representation (PR) electoral method was adopted to ensure the rights of IPs and other marginalised communities in the decision/constitution making process.

According to Doglus J. Ami following are the merits of the PR electoral method

- Justifiable representation of the small political parties
- Helpful in peace and stability
- Less waste of the votes cast

### *State Restructuring in Nepal*

State restructuring have been one of the major issues in the course of constitution making process. After the peoples' movement of 2006 the issues have been more vocal. Pro. Dr. Krishna Hachhethu has presented paper on federalism and state restructuring in the national dialogue.

The marginalised communities of Nepal have been raising voices for federalism in the place of unitary state structure as the unitary state have been more centralized and discriminatory to those communities. IPs is one of the largest communities of Nepal fighting for federalism to ensure rights of marginlised communities for more than 250 year under the yoke of unitary state policy that support single caste groups language, religion, culture and tradition. The federalism has been asking by the marginalised communities for equality and justice and access and representation of those communities in the decision making process

The earlier CA has presented three models of federalism. One was by the thematic committee of the CA for state restructuring that has presented 14 federal units to the CA based on ethnic and regional identity. After the conflict between the political parties regarding the numbers and name of the federal units then CA formed a commission to for demarcation of the federal units. The commission has presented the 10 federal units again based on the ethnic and regional identity but that was also denied by the political parties.

## *Fundamental Rights*

Dr. Mukta Singh Lama-Tamang has presented a paper on the fundamental rights of IPs to be assured in the new constitution.

### **IPs major demands**

- Cultural Goal: End of cultural oppression and external influence, Completeness of indigenous culture
- Political Goal: Sovereignty and Right to Self-Determination

Economical Goal: Control over own and internal economic management and equality

Those are Porticularly related to IPs

### **Community seminars**

Six community seminars (Morang, Dailekh, Kailali, Ilam, Taplejung and Panchthar) have been organised during the reporting periods to aware IPs at the community levels. Those seminars with the communities were intended to aware IPs at the local level regarding their right on natural resources and participation in the decision making process in the development projects. The IPs at the local level have been affected by the development aggression. The multi national and national development projects have been severely violating the rights of IPs ensured by the international legal instruments.

### **Training on traditional institution/ELDERS**

Training on traditional institutions with the youth and elders of IPs was conducted to bring the elders and youth for inter-learning and knowledge transformation between the youth and elders. The training was organised with the representation of the leaders of traditional institutions of Thakali, Majhi, Newar, Magar, Dhimal and other communities.

### **Regional Human Rights Training**

A-two day regional training on human rights has been carried out in November with the support of OHCHR, Geneva. The

training was organised to aware the IPs working in region regarding international practices regarding assurance of IPs rights constitutionally.

Main trainer of the training was Ms. Samia Slimane from OHCHR, Geneva. She has trained the participants regarding the international human rights instruments and IPs and rights. Apart from that she has also share the best practices around the globe in practices, which are respected by the governments.

*International Legal and Institutional Framework for the protection of Indigenous Peoples: The United Nations Declaration on the Rights of Indigenous Peoples*

Ms. Samia has trained the participants regarding the international legal framework, particularly UNDRIP and ILO C. 169, to protect the rights of IPs. According to her the provisions enshrined in the UNDRIP are not the new and unique but all the provisions are already accommodate in the other human rights documents such as UNDHR, ICCPR, ESCR and others. But those rights are improvised in the context of IPs rights or collective rights for instance in the Art. 1 of ICCPR and IESCR there is right of self-determination and in Art.3 of UNDRIP there is also right to self determination but the difference is that the formers talk about individual right and the latter deals with the collective rights of IPs. Apart from that ILO 169 is the ‘first international organisation to address indigenous and tribal issues and signal the need for cooperation and international attention. It has been working to protect and promote the rights of indigenous and tribal peoples since the early 1920s.’ It is important to take support and references of other human rights tool to make implement of UNDRIP and ILO C. 169.

*The Recognition of the rights of indigenous peoples: examples of good practices*

She has made clear on the best practices from various countries where the IPs rights have been assured in the policies and practices, pertaining to self-governance, rights over natural resources, recognition of IPs traditional leadership and languages etc.



- Denmark: the Act of the Greenland Self-Government sets out Greenland's constitution position in the Kingdom of Denmark. The Act recognizes that the Inuit people of Greenland are people with the right to self-determination under international law. The Greenland self-government authorities comprise a democratically elected assembly (Greenland Parliament) as well as an administration (Greenland Government). The Act recognizes the Greenland language as the official language in Greenland and that the Danish language may still be used in official matters. On 7 October 2009, Denmark submitted a notification of the Act to the Secretary-General of the United Nations.
- South Africa: Traditional Leadership and Governance Framework Act (2003): Act provides that any parliamentary bill pertaining to customary law or customs of traditional communities must, before it is passed by the House of Parliament, be referred to the National House of Traditional Leaders for comment.
- Alaska's governor signed a bill in October 2014 to officially recognize the state's 20 indigenous languages to save Native American tongues at risk of dying out. The move would make Alaska only the second US state, after Hawaii, to officially recognised indigenous languages, although English would remain the official language and the state would not be required to conduct business in any other tongue.

### **Support to the earthquake affected**

After the devastating earthquake LAHURNIP has initiated for the support to the affected IPs in various districts. LAHURNIP has conducted monitoring activities that includes HR violation, discrimination and associated issues simultaneously with the relief distributing activities. LAHURNIP has distributed tarpaulin and corrugated iron sheets to the affected families as instant relief and temporary settlements. LAHURNIP has reached to Rasuwan, Nuwakot, Dolakha, Kavre and Sindhupalchok for distributing the relief materials.

## **Fact Finding Mission**

A fact finding mission (FFM) was conducted from 26 July to 1 August 2014 to find out the ground reality that locals and indigenous peoples have been struggling with for their rights in the area of Kabeli hydro power project. Furthermore the mission was to aware them of their rights complying with the national and international law that safeguard the rights of local and indigenous peoples that ensure their rights in the course of development and implementation of development projects.

The 37.6 MW Kabel 'A' Hydro power project lies at the border of Panchthar and Taplejung district in the river called Kabeli. That occupy Amarpur and Panchami VDCs of Panchthar and Thechambu and Nangkholyan VDCs of Taplejung. The major structures of the project to construct are Diversion, side intake, settling basin, headrace tunnel, surge shaft, surface penstock and surface power house.

The project is estimated to build a 14.3 meter high diversion barrage 2.5 KM from Kabeli River in Dhuseni village. Hudruke of Thechambu VDC lies to the right to the diversion location. The water flows through 4326.8 meter headrace tunnel and 60.2 subsidiary tunnels to the surface power house near to Piple River. Total estimated cost of the project is 100.86 Million US\$. Out of that World bank group is supposed to invest 80.46 million USD ie. 78%.<sup>2</sup> The FFM was joint initiative of NEFIN, FoNIJ and LAHURNIP. The mission was also accompanied by the media, Sagar Matha TV and Naya Patrika national daily, for the field reporting.

## **Human Rights monitoring**

LAHURNIP has engaged continuously for the human rights violation monitoring activities from national to local levels. The board, Staff and IPHRDs are carrying out HR violation monitoring activities. Different teams of LAHURNIP have carried out field missions in the districts for the purpose of

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2 [www.kel.com.np/sia/report.p.1](http://www.kel.com.np/sia/report.p.1)

monitoring of violations of IPs. The mission reports suggest that there are various kind of human rights violations in the ground. For instance violation of rights to information, rights to participate in the decision making process, right to dignified life, right to language and so on.

### **Training to IPHRDs**

A refreshers training was organised to enhance the capacity of IPHRDs working in various districts. The three days training was held in Dharan, Eastern region of Nepal. The participants of the training were IPHRDs who are engaged in case documentation and human rights violation monitoring in the districts. The training was participated by 30 persons working on the issues of IPs actively in various districts.

The training has enhanced the capacity of IPHRDs in mobilizing community and documentation of cases of human rights violations in the districts in various development projects. After the training the IPHRDs have been documenting the cases in effective way.

### **National Conference of the Earthquake Affected IPs**

The devastated 7.9 Richter scale of earthquake of 25 April 2015 and its continuous aftershocks have gravely affected the IPs in the project area. Most of the affected are from IPs communities as the epicenters of major quake and its major aftershock were in the land and territory of IPs such as Tamang, Ghale, Thami, Baramu and others. There have been engagements of national and international institutions in rescue, relief and rehabilitation of the quake affected. But there have been strong voices of discriminations in the course of rescue, relief and rehabilitations.

Considering the voices of affected LAHURNIP has conducted series of monitoring activities in those affected areas. LAHURNIP has found that there are massive discrimination towards IPs in the process of relief distribution and others. According to the monitoring reports of LAHURNIP there are no state presences in the IPs areas who are affected of earthquake.

Reliefs distributed are also not based on the needs of the peoples in the ground. The IPs in the remote areas such as Haku of Rasuwa are still not getting any relief materials from the donors and state mechanism as those are far from the road access and district headquarters.

Considering the urgent need of the time LAHURNIP has been engaged in the support of earthquake victim at the moment. Apart from that it also has been monitoring the situation of violation of IPs rights in the areas of quake affected.

On 23 June a national conference of earthquake affected IPs has been carried out in Kathmandu with the coordination of LAHURNIP. The conference was participated by the representatives from affected 14 districts. According to the participants there are massive discriminations to the IPs in distribution of relief material and rehabilitation process. IPs dwelling in the remote areas of the affected districts are not receiving proper relief materials still. As the rainy season is about to began the IPs are in worry of flood and landslides. The national conferences also issued a 15 point declaration (*see annex II*).

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## **International Lobby and advocacy**

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### **UPR Report preparation and submission**

With the coordination of LAHURNI 34 IPs related organisations working inside and outside of Nepal have prepared a Universal Periodic Review (UPR) an alternative report from the perspective of IPs and submitted to the committee for the international reassurance to ensure the IPs rights in Nepal as the government has failed to promote and protect their rights as recommended by the earlier review of the UPR.

### **CERD Chair visit**

The visit of Hon'ble United Nations Committee on the Elimination of Racial Discrimination (UNCERD) Chair Mr. Francisco Jose Calitzay in Nepal took place from 22nd February to 3 March 2015. Mr. Chair's unofficial visit was intended to hold

study on the situation of marginalized communities, IPs, Dalits, Madhesis, disabled, in Nepal. Mr. Chair conducted meeting with all the aforementioned marginalised communities in Kathmandu and other parts of the country. Mr. Chair has visited Dhanusha, Mahottari, Sindhuli and Chitawan and had meeting with Madhesi, Dalits, IPs and other marginalised communities regarding issues and concerns. During the field visits Mr. Chair had meeting and interactions with Madhesis, Dalits, IPs and other marginalized communities. Apart from that Mr. Chair also had meeting with the CA members and political leaders at the national level.

## EMRIP

EMRIP's forum has also been used to internationalise the issues of IPs for solidarity and international level advocacy. The eighth session of the EMRIP was participated by the representative of LAHURNIP and delivered statement on cultural heritage and Nepal's IPs issue.

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## Publications

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### *Updates on Constitution writing Process*

During the reporting period LAHURNIP has published three briefings and disseminated the CA members and community to aware of IPs rights. The briefings are pertaining Electoral System in Nepal's context, Fundamental rights and IPs concerns and state restructuring and debate on federal structure which are burning issues in the course of constitution writing process and IPs have deep concerns over those issues to ensure their rights constitutionally.

### *Case studies on IPs rights violations*

As part of lobby and advocacy LAHURNIP has published a compilation of cases on violation of human rights of IPs. The cases includes violations IPs rights by the development projects such as hydro projects, infrastructure developments and other projects run by the corporate sectors. Apart from that it has also accommodated the cases of violations of rights by the state mechanisms and policies such as cow slaughtering etc.

### *Calendar*

A calendar of the year 2071 BS was published as a means for advocacy and awareness. The calendar is regarded as advocacy material because it contains the slogans pertaining to IPs and information on the celebrations of different IPs.

### *Analysis of national census data*

LHURNIP has published a book relating to the socio-economic status of IPs in Nepal. The book is based on the data of National Living Standard Survey (NLSS) and Central Bureau of Statistics (CBS).

There were no aggregated data of IPs. Even the CBS and other government agencies do not have such kind of data so that the actual picture of the situation of IPs could be reflected on the data which could help in lobby and advocacy and planning for the development process. Considering that LAHURNIP has analysed the raw data gathered by CBS and NLSS hiring experts on data and statistics. The book called “A Study on the Socio-Economic Status of Indigenous Peoples in Nepal” has been circulated widely to the policy makers, planners, advocacy workers and donor.

### *Traditional Institutions*

During the reporting period LAHURNIP has published a book on traditional institutions based on the research. The book consists of eight research articles of seven IPs communities, Newar, Thakali, Majhi, Dhimal, Tharu, Hyolmo, Magar.

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## **Coordination and cooperation**

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During the reporting period LAHURNIP has worked closely and collaborated with various national and international organisations and institutions for advocating the rights of IPs.

Following are the organizations LAHURNIP has collaborated in the fiscal year 2014/15:

### *National Institution*

National Human Rights Council (NHRC)

Nepal Federation of Indigenous Nationalities (NEFIN)

National Foundation for Development of Indigenous Nationalities (NFDIN)

National Indigenous Women's Federation (NIWF)

Youth Federation of Indigenous Nationalities, Nepal (YFIN, Nepal)

Nepal Indigenous Nationalities Students' Federation (NINSF)

Terai Human Rights Defenders Alliance (THRD Alliance)

Indigenous Media Foundation (IMF)

Federation of Nepalese Indigenous Journalists (FoNIJ)

Nepal Indigenous Disabled Association (NIDA)

Indigenous Women's Legal Awareness Group (INWLAG)

Various Indigenous Peoples Organisations (IPOs)

Indigenous Film Archive (IFA)

Madhesi and Indigenous Lawyers' Association (MILA)

### *Government line agencies*

Social Welfare Council (SWC)

District Development Committee (DDC)

### *International institutions*

International Work Group for Indigenous Affairs (IWGIA)

International Labour Organisation (ILO)

United Nations Declaration on the Rights of Indigenous Peoples (UNDP)

Asia Indigenous Peoples Pact (AIPP)

Office of the United Nations High Commissioner for Human Rights (OHCHR)

European Union (EU)

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## **Institutional Development**

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To strength institutional capacity and institutional development LAHRUNIP has carried out following activities during the reporting period.

### **Annual General Meeting (AGM)**

LAHURNIP has conducted its 19<sup>th</sup> Annual General meeting (AGM) on 28 Bhadra 2071 in Kathmaud. The AGM endorsed the annual plan and budget for the fiscal year 2072/73 presented by the board. The meeting concluded with the proposal of amendment of the statue and appointment of the auditor for the aforesaid fiscal year.

### **Audit Accomplished**

The annual financial audit for the fiscal year has done with the authorized auditing institution and disseminated and submitted to the concerned institutions and rights holders.

### **Renew of the organisation**

Renewal of the oranisation to the district administration office (DAO) regularly and reports have been submitting to the SWC

### **Installation of FAMAS**

To ease the accounting system LAHURNIP has installed accounting software called Financial and Management Accounting System (FAMAS). The computerised accounting system has been supportive to keeping accounting system update in professional and reliable way.

### **Training to staff**

During the reporting period LAHURNIP has trained its staff on the accounting package, especially the programme coordinator and the Admin. and Finance Officer

### **Mobilisation of intern and volunteers**



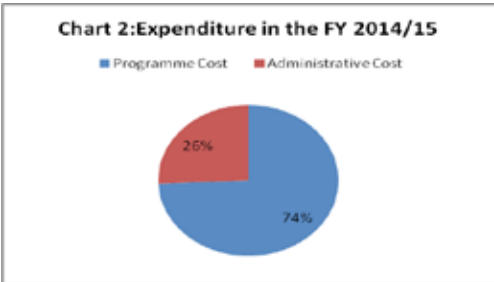
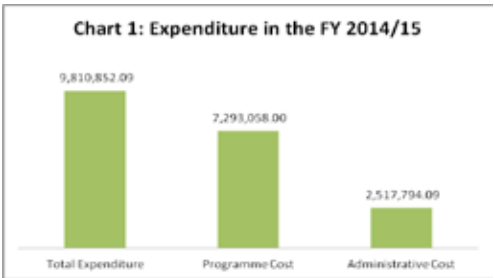
During the fiscal year LAHURNIP has Provided forum to interns and volunteer from different national and international universities and colleges. The students from various universities in Nepal and abroad such as USA, Germany and others have worked as volunteer and interns to LAHURNIP as part of their university course. LAHURNIP has also benefited from their skills and expertise.

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## Financial Reporting

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In the fiscal year 2014/15 LAHURNIP has received support from different organisaitons to work on the aforementioned issues. In total NPR 16,120783.17 has received from the donors and supporters for its lobby advocacy and administrative expenditures. Total expenditure in this FY occurred NPR 9,810,852.09. Out of the total expenditure 26% was on administrative and rest spent on program in that FY(*see Chart 1 and 2 and audit report below*).



**NEPALKA ADIVASHIHARUKO MANAB ADHIKAR SAMBANDHI OKIL SAMUH/**  
**(LAWYERS' ASSOCIATION FOR HUMAN RIGHTS OF NEPALESE INDIGENOUS PEOPLES)**

Kathmandu, Nepal

Balance Sheet as at Ashad End 2072

Particulars	This Year Amount	Last year Amount
<b>Liabilities</b>		
1. Capital fund	975,437.60	710,025.60
2. Payable	406,240.50	-
3. Surplus/Reserve	6,309,931.08	481,494.07
<b>Total NRS</b>	<b>7,691,609.18</b>	<b>1,191,519.67</b>
<b>Assets:</b>		
1. Cash & Bank Balance	6,716,171.58	481,494.07
2. Office Assets	975,437.60	710,025.60
3. Other Advance	-	-
<b>Total NRS</b>	<b>7,691,609.18</b>	<b>1,191,519.67</b>

.....  
 Accountant

.....  
 Treasurer

.....  
 Chairperson



**NEPALKA ADIVASHIHARUKO MANAB ADHIKAR SAMBANDHI OKIL SAMUHA**  
(LAWYERS' ASSOCIATION FOR HUMAN RIGHTS OF NEPALESE INDIGENOUS PEOPLES)  
Kathmandu, Nepal

**Receipt & Payment (F/Y 2071/2072)**

Particulars	Sch	This Year Amount	Last year Amount
<b>Receipt:</b>			
Opening Balance		481,494.07	80,327.05
Financial Assistance from Donar	1	15,944,599.61	1,615,271.97
Financial Assistance from NFDIN		100,000.00	-
Bank interest		76,183.99	62.67
Financial Assistance from Member		90,158.00	332,536.23
<b>Total Income (A)</b>		<b>16,692,435.67</b>	<b>2,028,200.12</b>
<b>Payment:</b>			
Regional Training on the rights of Indigenous Peoples	2	405,970.00	-
Three oneday national dialogues non-residential between CA members and Indigenous Peoples (Ips) to promote Ips' rights in the new constitution.	3	864,191.00	-
Training on Indigenous Elders & Engagement with government training preparation meeting of stakeholders	4	373,400.00	-
Improving Indigenous Peoples' (Ips) access to justice and development through strategic monitoring (UNDRIP monitoring in Nepal)	5	679,360.00	-
Publish "traditional institutions of Indigenous Peoples in Nepal- a report"	6	98,100.00	-
Strengthening the rights of Indigenous Peoples in Nepal: Bridging Project	7	1,037,409.00	-
Using the Convention on Elimination of All forms of Racial Discrimination to end discrimination of Nepal's marginalized group through a people-centric constitution.	8	586,764.00	-
Racial discrimination in Nepal: Rectifying historical wrongs in the new constitution writing and its publication (A Report Publication)	9	210,000.00	-
Strengthening Indigenous Peoples (Ips') rights in Nepal	10	2,736,251.00	-
Strengthening Ips and advocacy for Ips' Human Rights in Nepal	11	301,613.00	-
Data collection documentation of indigenous		-	264,394.00
Training & Seminar Programme of Human Rights		-	530,413.00
Training Consultancy fee		-	30,000.00
Office Equipments		265,412.00	-
Registration & Renewal expenses		-	5,125.00
Staff Salary	12	1,766,764.00	486,250.00
Transportation		104,110.00	-
Office Rent		202,677.09	36,000.00
Communication		109,119.00	155,509.00
Office Consumables		174,056.00	24,015.05
Electricity and Maintenance		51,068.00	-
Approval from Central and district offices		10,000.00	-
Audit Fee		-	15,000.00
<b>Total Expenditure NRS (B)</b>		<b>9,976,264.09</b>	<b>1,546,706.05</b>
<b>Net Saving(A-B)</b>		<b>6,716,171.58</b>	<b>481,494.07</b>

  
Accountant

  
Treasurer

  
Chairperson

  
Registrar  


**NEPALKA ADIVASHIHARUKO MANAB ADHIKAR SAMBANDHI OKIL SAMUHA**  
(LAWYERS' ASSOCIATION FOR HUMAN RIGHTS OF NEPALESE INDIGENOUS PEOPLES)  
Kathmandu, Nepal

**Income & Expenditure (F/Y 2071/2072)**

Particulars	Sch	This Year Amount	Last year Amount
<b>Income:</b>			
Financial Assistance from Donar	1	15,944,599.81	1,615,271.97
Financial Assistance from NFDIN		100,000.00	-
Membership Fee		-	-
Bank interest		76,183.56	62.87
Financial Assistance from Member		-	332,538.23
<b>Total Income (A)</b>		<b>16,120,783.37</b>	<b>1,947,873.07</b>
<b>Expenditure:</b>			
<b>Program Expenses-</b>			
Regional Training on the rights of Indigenous Peoples	2	405,970.00	-
Three oneday national dialogues for Ips Human rights	3	854,191.00	-
Training on Indigenous Elders & Engagement	4	373,400.00	-
Improving Indigenous Peoples' (Ips) access to justice and development (UNDRIP monitoring in Nepal)	5	679,360.00	-
Publish "traditional institutions of Indigenous Peoples in Nepal a report"	6	98,100.00	-
Strengthening the rights of Indigenous Peoples in Nepal: Bridging Project	7	1,037,409.00	-
Using the Convention on Elimination of All forms of Racial Discrimination; CERD Chair Visit to Nepal	8	588,764.00	-
Racial discrimination in Nepal: A Report Publication	9	210,000.00	-
Strengthening Indigenous Peoples (Ips)' rights in Nepal	10	2,736,251.00	-
Strengthening Ips and advocacy for Ips' Human Rights	11	301,613.00	-
Data collection documentation of indigenous		-	264,394.00
Training & Seminar Programme of Human Rights		-	530,413.00
Training Consultancy fee		-	30,000.00
<b>Total Program Expenses</b>		<b>7,293,058.00</b>	<b>824,807.00</b>
<b>Administrative Expenses-</b>			
Registration & Renewal expenses		-	5,125.00
Staff Salary	12	1,766,764.00	488,250.00
Transportation		104,110.00	-
Office Rent		202,677.09	36,000.00
Communication		109,119.00	155,509.00
Office Consumables		174,056.00	24,015.05
Electricity and Maintenance		51,068.00	-
Approval from Central and district offices		10,000.00	-
Audit Fee		100,000.00	15,000.00
<b>Total Administrative Expenses</b>		<b>2,517,794.09</b>	<b>721,899.05</b>
<b>Total Expenditure (B)</b>		<b>9,810,852.09</b>	<b>1,546,706.05</b>
<b>Net Saving(A-B)</b>		<b>6,309,931.08</b>	<b>401,167.02</b>

  
Accountant

  
Treasurer

  
Chairperson

  
Auditor  
CHANDRA  
Kathmandu

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## Conclusion

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During the fiscal year 2014/15 LAHURNIP has intensively engaged in policy lobby and advocacy. The lobby and advocacy activities, peculiarly, focused on Constitution making process. Apart from that LAHURNIP has also provided legal support to the victims of human rights violations by different development projects such as infrastructure development, hydro projects and so on. LAHURNIP consistently work in community level to capacitate people (IPs and marginalised group) for asserting rights enshrined in international instruments that include ILO C. 169, UNDRIP, CERD, ICCPR etc. that Nepal is a party to.

Community seminar were the significant means to aware the local and IPs in their rights to establish synergy among the community members and social groups in the particular situation and geographical situation.

Furthermore, the engagement of LAHURNIP at the international lobby and advocacy alos has been instrumental to internationlise the IPs isseus at the interntional level broaden the solidarity and cooperation among the likeminded organisations and institutions around the globe.

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## LAHURNIP Team

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### Board

Advocate Shanti Kumari Rai, Chairperson

Advocate Dinesh Kumar Ghale, Vice-chairperson

Advocate Shankar Limbu, Secretary

Advocate Bhim Rai, Treasurer

Advocate Makawan Subba, Member

Advocate Hira Bahadur Ghale, Member

Advocate Kashi Ram Tharu, Member

## **Secretariat**

Mr. Tahal Thami, Director

Mr. Durga Yamphu, Programme Coordinator

Mr. Asim Sunuwar, Admin and Finance Officer

Ms. Amita Rai, Project Assistant

Mr. Nirmal Rai, Program Assistant

Mr. Gokul Bhujel, Regional Field Coordinator

Mr. Bisnu Kumar Rai, Office Assistant

## *Regional Indigenous Peoples Human Rights Defenders*

Mr. Devraj Chaudhari, Morang

Mr. Gopal Dewan, Sunsari

Ms. Juna Kumari Gurung, Kaski

Mr. Makawan Subba, Jhapa

Mr. Santosh Rana Magar, Kathmandu

## *Indigenous Peoples Human Rights Defenders*

Ms. Agni Maya Meche, Jhapa

Ms. Bina Devi Tamang, Sunsari

Ms. Dhan Kumari Sunuwar, Sindhuli

Ms. Laxmi Rai, Kathmandu

Ms. Nina Dangol, Kathmandu

Mr. Birkha Bdr. Waiba Tamang, Panchthar

Mr. Dal Bahadur Gharti, Kailali

Mr. Dil Bahadur Thebe, Morang

Mr. Karsang Temba Tamang, Rasuwa

Mr. Kashi Ram Chaudhari, Bardiya

Mr. Khagendra Pun Magar, Dailekh

Mr. Khem Jung Gurung, Lamjung

Mr. Kiran Mukhiya, Ilam

Mr. Prem Raj Ghising, Jhapa

Mr. Raj Kumar Rajbanshi, Morang

Mr. Ram Hari Shrestha, Kathmandu

Mr. Yam Prasad Limbu, Ilam

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## **Annexes**

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Annex I:

### **INDIGENOUS PEOPLES JOINT SUBMISSION ON NEPAL'S 2<sup>ND</sup> UNIVERSAL PERIODIC REVIEW**

Submitted on 22 March 2015

By

A coalition of indigenous peoples' organisations in Nepal

Secretariat

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

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[www.lahurnip.org](http://www.lahurnip.org)

## A. Introduction

This joint submission by 35 indigenous peoples' organizations (See Name list of the IP Organisations) in Nepal focuses on the collective rights of indigenous peoples, particularly the thematic areas of participation in decision-making, land, territories, and natural resources, development, language and cultural rights, women, disabled peoples and recommendations.

## B. METHODOLOGY

1. This report has been prepared collectively by IPOs. Meetings and consultations were carried out at different levels to identify the thematic priority areas based on the recommendations of the first UPR cycle review of Nepal in 2011. The first hand information is based on the experience of indigenous communities. The secondary data is based on the reports of various governmental agencies, publications (*Kanoon Patrikas*) of the Supreme Court, newspaper reports and case studies.

## C. INDIGENOUS PEOPLES IN NEPAL

2. Indigenous Peoples (*Adivasi Janajati*) constitute 40% of the total population and are recognized in the Constitution, laws and policies. 59 Adivasi Janajati are legally enlisted under the National Foundation for the Development of Indigenous Nationalities Act (NFDIN) 2002. However, there are a number of groups who are yet to be enlisted.
3. Due to the institutionalized Hindu caste hierarchical system, which sustains the concept of pure and impure, indigenous peoples (IPs) have for centuries been subjugated, excluded, marginalized and discriminated against. 14 Adivasi Janajatis are classified as disadvantaged groups; 19 as marginalized; 12 as highly marginalized and 9 as endangered groups.<sup>1</sup>

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1 [https://www.google.com/?gws\\_rd=ssl#q=nefin](https://www.google.com/?gws_rd=ssl#q=nefin)



4. IPs were recognized only after the political change in 1990. In the Comprehensive Peace Agreement of (2006) it was clearly articulated that to end discrimination based on ethnicity, language, religion, cultural and regional the problems of indigenous peoples will be address by undertaking a progressive, democratic and inclusive state restructuring (3.3). This has been institutionalized in the Interim Constitution, 2007.

#### **D. NORMATIC FRAMEWORK OF THE STATE**

5. Nepal is party to various human rights treaties and declarations that includes ICCPR, ICESCR, CRC, CERD, CEDAW, CAT, ILO Convention No.169, UNDRIP etc. Article 33(M) of the Interim Constitution states that state shall implement effectively the international treaties that Nepal is party to. Section 9 of the Nepal Treaty Act, 1991 states that the international law has a higher status than the national law. In case of inconsistency, international law prevails over the national law.
6. At least nine Agreements have been concluded between indigenous peoples' organizations and the Government of Nepal relating to peace building, reconciliation, progressive restructuring of the nation, constitution making and social justice. These Agreements aim at easing up the constitution writing process and resolve the existing problems amicably. They further reflect the will of Indigenous people and provide the basic principle for the new constitution of the Secular, Inclusive Federal Democratic Republic of Nepal.

## **E. IMPLEMENTATION STATUS OF THE RECOMMENDATIONS FROM THE FIRST REVIEW CYCLE**

- 1. Constitution making process (Recommendation 106.1,106.2 and 107.28)**
  - a. Ensure full participation of indigenous peoples in accordance with international human rights**
7. The Interim Constitution of Nepal, 2007 (hereinafter the Constitution) guarantees the fundamental rights of IPs to participate at the all-state organs, including the Constituent Assembly (CA), on the basis of proportional representation.<sup>2</sup> It also guarantees the basic right of the people of Nepal to write their own Constitution through the CA.<sup>3</sup> In addition to elected members, 26 members to the CA are appointed by the Council of Ministers directly in consensus with indigenous people and civil society.<sup>4</sup> The allocation of the 26 seats is meant to ensure inclusion, direct representation and participation of indigenous peoples in the Constitution writing process. However, the 26 seats were awarded to the cadres of political parties, thereby leaving no room for independent, meaningful and accountable representation of indigenous peoples.
8. In the first CA (2008-2012), 218 (37%) members were from IP communities, which is very close to indigenous peoples' 40% share of the national population. The number of indigenous peoples' representatives in the second CA (2013 to present) has fallen drastically to 183<sup>5</sup> and reportedly, a lot

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2 Article 21 Of the Interim Constitution, 2007

3 Preamble of the Interim Constitution, 2007

4 Article 63(c) of the Interim Constitution, 2007

5 <http://www.ekantipur.com/np/2070/9/25/full-story/382135.htm>

of those who did get elected had been under pressure prior to their nomination as the party candidates to make written commitments to abstain from promoting indigenous peoples' issues in the CA.<sup>6</sup> The indigenous CA members thus represent their respective political parties rather than indigenous peoples. Consequently, there is no space and mechanism in place for Indigenous peoples to participate in the discussion on the agendas that directly affect them in the constitution making process.

9. The issue has been taken up by various national and international human rights mechanisms. In 2009, the UN Special Rapporteur on the Rights of Indigenous Peoples recommended to establish a special mechanism in consultation with Adivasi Janajatis through their own representative institutions in relation to proposals for the provisions of the new constitution that affect to them.<sup>7</sup> Under its mandate of early warning, the CERD in 2009, 2012 and 2013 recommended the Government of Nepal to ensure indigenous peoples' active and meaningful participation in the CA. It further urged to avoid irreparable harm to indigenous peoples due to their inadequate representation in the CA.<sup>8</sup> In the case of LAHURNIP et.al. Vs. Government of Nepal, the Supreme Court issued an order of Mandamus against the government and asked to ensure an effective and meaningful participation in the CA, by reforming existing laws and policies, in accordance with the CERD, ICCPR, ILO Convention No.169 and

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6 Christina Nilsson and Sille Stidsen, Constitutional Politics and Indigenous Peoples in Nepal, [http://www.iwgia.org/iwgia\\_files\\_publications\\_files/0686\\_Constitutional\\_Politics\\_and\\_Indigenous\\_Peoples\\_in\\_Nepal.pdf](http://www.iwgia.org/iwgia_files_publications_files/0686_Constitutional_Politics_and_Indigenous_Peoples_in_Nepal.pdf)

7 A/HRC/12/34/Add.3, 20 July 2009

8 CERD has issued letters from 2009 to 2013.

UNDRIP.<sup>9</sup> There is no representation from 20 indigenous groups in the current CA. And, it was not allowed to form a IPs' CACAUS, like in the first CA for organized effort to ensure IPs rights in the new constitution.<sup>10</sup>

10. Despite several appeals and memorandums submitted by IPs, the government has not complied with and respected the provisions of international human rights instruments and recommendations as well as decisions of the Supreme Court.

**b. Inclusive and progressive restructuring of the Nation**

11. The progressive restructuring of the nation is a constitutional commitment to end existing problems relating to class, ethnicity and gender.<sup>11</sup> Article 4 of the Constitution declares that Nepal will be a secular, inclusive and federal democratic republican state. Article 138(1a) states that autonomous provinces with full authority would be designed in accordance with the desires of Indigenous Peoples. The CA Thematic Committee on the State Restructure came up with the concept of federal states based on identity and viability, which meant to address the issue of power and resource sharing. The State Restructure Commission confirmed the proposal of the CA Thematic Committee on the State Restructure. However, the ruling and Hindu orthodox parties want to denounce the concept of comprehensive state restructuring with their two-third majority in the second CA.

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9 LAHURNIP et.al. Vs. Government of Nepal, Supreme Court 2070, Nepal Kanoon Patrika Additional volume, DN8990 P.491

10 <http://www.indigenousvoice.com/indigenous-peoples-agendas-are-in-shadow-in-constitution-writing-process.html>

11 Preamble of the Interim Constitution, 2007

12. Although the Constitution guarantees the right of IPs and other marginalized groups to participate in the state restructure on the basis of the principle of proportional representation, the recent appointment to the National Human Rights Commission (NHRC) is highly exclusionary. Out of five commissioners one is woman and the rest are Hindu high caste group. There is no representation of IPs. The exclusion is inconsistent with article 131(2) of the Constitution that says to diversify the appointment of the Commission. Prior to the approval of the commissioners' appointment, a complaint to ensure inclusion of IPs was submitted to the Constitutional Council, Parliamentary Hearing Special Committee. However no action was taken to correct the error. A case has been filed in the Supreme Court and it is still pending. The commission doesn't have specific mechanism to deal IPs human rights violation. It does not have specific program on IPs. Similarly, there is no IP representation in the Public Service Commission, Commission (PSC) for the Investigation of Abused of Authority (CIAA) and the National Information Commission.
2. **Review of existing laws (Recommendation 19, 20, 56, 62, 89, 91.92 and 93)**
13. The recommendation made in the first cycle of UPR to review existing laws for effective eradication of racial discrimination prevailing against IPs and other marginalized groups have not been complied with yet. The National Action Plan to Implementation of ILO Convention No. 169 has, for example, been stranded in the Ministry of Council for 7 years. Article 154 of the Interim Constitution talks about the establishment of an Indigenous Peoples Commission. And, the National Foundation for Development of Indigenous Nationalities (NFDIN) does not have the mandate to

monitor the human rights violations committed against indigenous peoples.

### 3. **Peaceful coexistence and freedom of religion (Based on the Recommendation)**

14. Constitutionally, Nepal was declared a secular country in 2007. Prior to that, the country was a Hindu state for 250 years. IPs, who are distinct from Hindus, were forced to adopt the Hindu religion and caste system.
15. The first codified civil code (Muluki Ain) 1854 criminalized cow slaughter with the provision of life imprisonment, replacing the earlier provision of capital punishment. Currently, cow slaughter is a crime punishable with imprisonment of 12 years.<sup>12</sup> Notably, many IPs in Nepal eat beef and use beef in cultural activities and rituals. In 2013 and 2014 alone, at least 38 indigenous persons are either serving imprisonment or facing prosecution charges of cow slaughter.<sup>13</sup>
16. While the quadruped chapter of Muluki Ain contradicts with the constitutional provision of secularism<sup>14</sup> and the fundamental right to practice own religion<sup>15</sup>, the Special Bench of the Supreme Court declared the provision of cow slaughter as constitutional on two grounds: (1) the article 7(2) of the Constitution that considers a cow an national animal; and (2) the cow is a sacred animal of Hindus.<sup>16</sup> In September 2014, the Bench of Justice Govinda kumar

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12 No.11 of the Chapter of Quadruped under the Civil Code (MulukiAin) 1963

13 These cases were reported to LAHURNIP for legal assistance in 2013 and 2014

14 Article 4 of the Interim Constitution, 2007

15 Article 23 of the Interim Constitution, 2007

16 OmprakashAryal Vs. Prime Minister, Nepal KanoonPatrika, 2008 volume 9 decision number 8009 p. 1063

Upadhya<sup>17</sup> in the Supreme Court issued an Order that the Writ against the provision of cow slaughter may damage the dignity of Hindus.<sup>18</sup> The Supreme Court thereby indirectly closed the door of the Supreme Court to bring future cases against the provision of cow slaughter.

17. De-facto discrimination against IPs on the ground of religion still prevails. On 25 May 2013, the police intervened in a rally organized on the occasion of Buddha Jayanti (Buddha's birthday) in Surkhet district. The rally was heading to the Kakre Bihar, which is the shrine and historical pilgrimage site of Buddhists. People wanted to install an idol of Buddha for which they had the permission from relevant government agencies. 52 people, including Monks, were seriously injured due to indiscriminate baton charge of the police to stop them from installing the idol. Currently, the government is constructing a Hindu temple in Kakre Bihar.

#### 4. **Civil, political, economic, educational and cultural rights (Recommendation 40,116)**

18. Because of unequal distribution of resources and access to opportunities IPs continue to face severe problems of poverty. According to the national census and National Living Standard Survey data, among Hill IPs, nearly one-fourth (24.6%) are living under the poverty line.<sup>19</sup> Similarly,

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17 Justice Upadhya belongs to a Hindu high caste group.

18 Tekam Gharti Vs. Minister of Law and Justice, 2014: The petitioner filed the Writ as an indigenous person and as lawyer demanding to strike down the chapter of quadruped in Muluki Ain on the basis of the provision of secularism of the Constitution and the articles 9 and 18 of the UDHR. Further, compensation was requested for those who are serving imprisonment and facing prosecution.

19 Chaitanya Subba, Bishwamber Pyakurel, Tunga Shiromani

about 40% of the Kumal, Sunuwar, Majhi and Chepang cluster are living below the poverty line. In contrast, only 10% of Hill Bahunare living below the poverty line. The state's commitments to ensure the Economic, Social and Cultural Rights (ESCR) thus remain mere commitments as no major steps have been taken to eradicate poverty. One of the major barriers to the advancement of the economic situation of IPs is that they do not have rights over communal lands, forests, pastures lands and other resources. The Kipat system (collective lands and land tenure system), which was recognized by various Treaties<sup>20</sup> and Agreements, have not been respected.

19. The recommendations of the CERD (2004) and CESCR (E/c.12/NPL/Co/3) to produce disaggregated data based on ethnicity and indigenous identity has yet to be implemented. Due to the lack of disaggregated data, it is challenging to analyze and reform services and facilities provided by the government agencies in a way that ensures that IPs and other excluded groups have adequate access to these services and facilities.
20. The situation of freed Kamaiyas (bonded labour) remains miserable. They are facing lack of housing, livelihood, education, and health care. The freed Kamayas who were not provided shelters are remained complete homeless.<sup>21</sup> In this regard, the government has failed to implement the

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Bastola, Mohan Khajum Subba, Nirmal Kumar Raut and Baburam Karki, (2014) A Study on the Socio-Economic Status of Indigenous Peoples in Nepal, Kathmandu, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples, P.27.

- 20 The 1774 Treaty between Limbus and State recognizes rights over territories, soils and subsoil minerals as well as unconditional right to self-governance.
- 21 <http://idsn.org/key-issues/caste-based-slavery/dalit-women-in-nepal/>



recommendation (E/c.12/NPL/Q/3) of the CESCR. No effort has been made to stop Kamaiyas to return to the same condition of the bonded labour.

**5. Land, territories and natural resources  
(Recommendation 106.49 and 106.43)**

21. IPs have the right to their special cultural and spiritual relationship with their lands, waters, and natural resources, and to pass these rights to future generations. They have the right to own and develop these lands and resources, in accordance with their traditions and customary laws. Indigenous peoples also have the right to be compensated when their lands, territories or natural resources have been confiscated, occupied, or damaged without their free, prior, and informed consent.<sup>22</sup>
22. In Nepal, these collective rights are routinely violated. IPs' land is being confiscated at an alarming rate, particularly in connection with large-scale infrastructure and energy projects. The right to free, prior, and informed consent with regards to such projects is not respected and environmental and social impact assessments are seldom conducted or made public. IPs are rarely compensated for land that is confiscated or damaged, and when compensation is issued, it often falls below market value of the land. IPs are subsequently losing the ability to manage their territories. When IPs peacefully protest against the violations of their rights and demand proper information and consultation processes they are portrayed as being against development and in some cases criminalized.
23. In 2007, the Nepal Electricity Authority began work on the 220 KV Khimti-Dhalkebar Transmission Line funded by the World Bank. The project was designed without any

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22 ILO C. 169 and UNDRIP

consultation with the local people in the Sindhuli area. Most of the families in the area belong to marginalized groups such as Tamang, Magar and Dalit. The project violated not only the local community's right to free, prior and informed consent but also the Bank's safeguard policies. The route chosen for the transmission line would pass through schools, homes, agricultural land and historical sites in the district and would displace already impoverished families. Both in 2012 and 2013, armed police forces were deployed to the project site. In November 2012, for example, 250 armed police officers and 5-6 project officials came to project site and began surveying. Women who tried to enter the project site were violently beaten with sticks, boots and fists. 10 women were severely injured.<sup>23</sup>

24. IPs are also severely affected by protected areas such as national parks and hunting reserves. The establishment of protected areas on indigenous territories without the consent and engagement of the communities whose ancestral lands have been included in the areas has resulted in dispossession, displacement and resettlement, the violation of their rights and the loss of access to natural resources on which the communities depend for their livelihood and spirituality.
25. The Dhorpatan Hunting Reserve covers areas that have been inhabited by the Magar people since before the formation of the Nepali state. The reserve was established in 1987 despite protests from the locals. In an April 2013 memorandum submitted to the government following its decision to mobilize the army, 80 Magar community representatives recounted how the reserve was providing entertainment

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23 LAHURNIP has submitted a complaint to the NHRC against attack on villagers in 2013. NHRC conducted fact finding mission based on the communication. LAHURNIP (2014) *The Glimpses of Indigenous Peoples' Human Rights Violation in Nepal*, Kathmandu: LAHURNIP, P. 99-100.

to the elite at the expense of the local communities. They were—and continue to be—denied access to the natural resources in the reserve, harassed, fined, and imprisoned on various charges and their homes have been demolished.<sup>24</sup>

26. When the Makalu Barun Park was established in 1992 the people, who belong to Rai, Sherpa and Bhotia communities, directly affected by the park were assured by the government that the conservation project would not hamper their livelihoods and culture, that the army would not be mobilized, and that the revenue from the park would be used for community development. In the following years, however, the locals' access to resources was gradually curtailed. Their traditional farming practices such as swidden agriculture was banned. They were told they could not carry out any community development work without the permission of the park authorities. When the locals decided to collect money from each household and start a micro hydropower project to bring electricity to their village, the park did not grant them permission. People started getting arrested, beaten and penalized for using forest resources. Understandably, the locals are worried that deploying the army in the area will further persecute them. They have submitted a memorandum asking the government to retract its unilateral decision, but have received no guarantee that their voices will be heard.<sup>25</sup>

## 6. Education(Recommendation 106.53, 108.34)

Educational disparity is rampant in Nepal and there are no effective and special initiatives to promote equal opportunities

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24 Lawyers' Association of Human Rights of Nepalese Indigenous Peoples (LAHURNIP) (2014): The Glimpses of Indigenous Peoples' Human Rights Violation in Nepal; The Record: Good Intentions Gone Wrong (<http://recordnepal.com/wire/good-intentions-gone-wrong>)

25 Ibid

to education for the marginalized communities, including IPs and Dalits. The gross enrolment rate of Hill Brahmin in higher secondary level is 145.1 whereas it is 69.7 for Hill indigenous peoples.<sup>26</sup> IPs have the highest proportion (27.7%) of dropout due to poor academic progress (failure in exams/tests) compared to all other groups.<sup>27</sup> The main reason is the dominance of Khas-Nepali language in the schools and lack of an inclusive education policy. The Government has, on the other hand, been investing millions of rupees in Sanskrit University to promote and protect the Sanskrit language that only benefits to High caste Bahun and Chetri. The initiation of multi-lingual education (education in mother tongue at primary level) is not effective and there is lack of adequate budget and policies. Even the constitutional provision on basic education in mother tongue is ambiguous as there is no clear division of roles and responsibilities of the state to implement it in practice. Failure to create adequate quotas for teachers and produce skillful teachers is another weakness of the government for the development of mother tongue education in Nepal. It was found that the government does not have proper foundation and budget management for the development of mother tongue education. There is dearth of textbooks in mother tongues. Due to the lack of understanding the medium language of education (Khas Nepali), there is high rate of IPs children drop out from School.<sup>28</sup> The School Sector Reform Plan (2009-2015) aims to transform around 7,500 schools into multilingual schools. The Curriculum Development Centre has so far only developed curricula

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26 Chaitanya Subba, Bishwamber Pyakurel, Tunga Shiromani Bastola, Mohan Khajum Subba, Nirmal Kumar Raut and Baburam Karki, (2014) A Study on the Socio-Economic Status of Indigenous Peoples in Nepal, Kathmandu, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples, P.112

27 Ibid, P.125-26

28 <http://www.nagariknews.com/society/nation/story/35084.html> visited 2015

and textbooks in 19 of the 125 languages listed in Nepal.<sup>29</sup>

**7. Indigenous women (Recommendations 106.2, 106.4, 106.10, 106.28, 106.22, 106.29, 106.46, 106.13, 106.14, 106.21)**

27. Indigenous women form a major section of the society but continue to face multiple forms of discrimination. The state's commitments to the international community to end violence against women are not intended to promote and protect the rights of indigenous women. Indigenous women have been fighting for their distinct identity among the women section in the constitution<sup>30</sup>, so that they could enhance their participation in decision making rather than include them in a basket of women as a whole, which is counterproductive because the women quotas are very often captured by women belonging to Bahun and Chhetri groups.

**8. Persons with disabilities (Recommendation 106.46 and 106.10)**

28. Persons with disabilities from an indigenous background are particularly vulnerable. Prevalence of higher physical disability was found among Tharu (49.6 percent), the Sherpa, Bhujel, Bhote and Thakali cluster (47.7percent).<sup>31</sup> Many of the

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29 <http://www.thehimalayantimes.com/fullTodays.php?headline=Education+in+mother+tongue+still+a+challenge&NewsID=321582>

30 Advocate Indira Shris hMagar and Advocate Sharda Khewa Subba () Rajyako Samabesh Nniti tatha Karykramko Byabastha ra Upalabdhiharu (State's inclusion policy and program precision and achievements), Nepal: Indigenous Women's Legal Awareness Group (INWOLAG).

31 Chaitanya Subba, BishwamberPyakurel, TungaShiromaniBastola, Mohan KhajumSubba, Nirmal Kumar Raut and BaburamKarki, (2014) A Study on the Socio-Economic Status of Indigenous

indigenous persons with disabilities are facing challenges in acquiring identification cards and access to resource. Participation in decision making is also poor. The Federation of disabilities has, for example, ensured participation of 33 percent women in the executive committee but all are from Bahun/Chhetris) of women but is not taking account of inclusion of other marginalized communities. The state's commitment to end discrimination against peoples with disabilities is thus not materialized into practice.

## **F. RECOMMENDATIONS TO THE GOVERNMENT OF NEPAL**

- R.1: Without further delay, implement the recommendation of the UN Special Rapporteur on the Rights of Indigenous Peoples and the CERD to establish a special mechanism in the Constituent Assembly for an effective and meaningful participation of IPs, while taking decisions, in particularly state restructure and other matters that directly affect them.
- R.2: Implement the decision of the Supreme Court of Nepal to have an appropriate provision for effective and meaningful participation in the Constituent Assembly in consultation with indigenous peoples, respecting the International Human Rights Instruments including ILO Convention No 169, CERD, CCPR and UNDRIP.
- R.3: Without further delay, ensure representation of indigenous peoples who are not represented in the current Constituent Assembly as directed by the Supreme Court through its decision (Decision No. 07-WO-0476, Date: 12 May 2014) interpreting article 63(c) of the Interim Constitution, 2007 that allocates 26 seats for unrepresented indigenous peoples and Civil Society.

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Peoples in Nepal, Kathmandu, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples, P.112.

- R.4: Adopt the National Action Plan to implement the ILO Convention No. 169 and reform the existing laws and regulations that are inconsistent with the ILO Convention No. 169, UNDRIP and other international instruments to eliminate discrimination against indigenous peoples and ensure equality. Ensure that the new constitution comprises the provisions and spirit of the ILO Convention, No. 169 and UNDRIP for respect of the rights of indigenous peoples.
- R.5: Ensure de-facto inclusion of indigenous peoples in all state organs including NHRC, Commission for the Investigation of Abused of Authority (CIAA), and Information Commission. Establish the Indigenous Peoples Commission to deal gross human rights violation against IPs.
- R.6: Repeal the provision of the Cow Slaughter in Muluki Ain which is based on the Hindu superiority in accordance with the constitutional provision of secular state and article 1, 2, 5(vii) and 5(e) of the CERD; article 27 of the CCPR, article 3 and 5 of the ILO Convention No. 169 and article 8 and 12 of the UNDRIP.
- R.7: Respect indigenous peoples' right to exercise their religion, beliefs and culture as well as eliminate religious assimilation including obliterating name of indigenous peoples' sacred and religious sites.
- R.8: Recognize indigenous peoples' rights over communal land, forest, pastures lands and other resources in accordance with the ILO Convention. No. 169 and UNDRIP. Ensure indigenous peoples' participation in the land reform process.
- R.9: Respect and protect the right to determine priorities of development and the right to free prior and informed consent in relation to development activities taking place in the indigenous territories.

- R.10: Introduce a national multilingual policy and allocate sufficient budget and teachers for multilingual education in a timely manner.
  - R.11: Institute special measures to address the multiple forms of discrimination against indigenous women and to ensure substantive equality;
  - R.12: Undertake a thorough review of national laws to end discrimination against indigenous women, ensuring their meaningful participation;
  - R.13: Make gender mainstreaming programs and activities compatible with UNDRIP and increase participation of indigenous women at all levels;
  - R.14: Amend the existing laws relating to National Parks/Reserves in line with the ILO Convention No.169 and UNDRIP. And, ensure self-management, if not co-management in the protected areas.
1. Sangh Belayat 296 Frances St. SE 18 SJZ, London.



## **Name list of the IP Organisations**

1. Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), Anamnagar, 32, Kathmandu, Metropolitan city, Nepal, contact: +977-1-4770710, [info@lahurnip.org](mailto:info@lahurnip.org), [shankar193q@gmail.com](mailto:shankar193q@gmail.com), ([www.lahurnip.org](http://www.lahurnip.org))
2. Nepal Federation of Indigenous Nationalities (NEFIN), Lalitpur, Kusunti, Nepal, Contact: +9779851014979
3. National Indigenous Women's Federation (NIWF), Baneshor, WN 34, Nepal
4. Youth Federation of Indigenous Nationalities, Nepal (YFIN, Nepal), Kupandol, Jwagal, Contact: 977984139501
5. NGO Federation of Nepalese Indigenous Nationalities (NGO-FONIN), Maitidevi, KTM, WN 32, contact: 977-1-4417060
6. Nepal Indigenous Disabled Association (NIDA), BhawaniMandal, Lalitpur, Nepal
7. TamuHyulaChhonjaDhi (Grung National Council), MitranagarGangubu, WN 29 KTM, contact: +977-1-4385868, Email: [tamuhyula@gmail.com](mailto:tamuhyula@gmail.com)
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13. TharuKalyankariniSabha, Bhimsengola, Kathmandu, contact: 977-1-4493967, email: [tharusabha@gmail.com](mailto:tharusabha@gmail.com)
14. Nepal KumalSudharSamiti, Anamnagar 32, KTM, contact: +977-1-4262421, email: [kumalsamaj@yahoo.com](mailto:kumalsamaj@yahoo.com)
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28. International Work Group for Indigenous Affairs,  
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29. Federation Indigneous Peoples in America (FIFNA)8212  
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30. Nepali American Solidarity Front for Democracy in  
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31. Nepal Federation of Indigenous Nationalists (NEFIN),  
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32. NEFIN Belgium, contact:0032488830940,
33. NEFIN Israel, Telabib contact :0526658904
34. Nepal AdivasiJanajatiMahilaMaha

## **Annex II: Declaration of the Indigenous Peoples' Conference on the Challenges for Rehabilitation and Reconstruction in the Earthquake-Affected Areas June 2015 Kathmandu**

Expressing our deep sadness over the massive destruction of life and property caused by the 25 April 2015 earthquake and subsequent aftershocks; expressing our heartfelt condolences to the affected families; hoping they are able to achieve recovery in time and worrying to the situation of the displaced peoples,

Considering that the ancestral lands of indigenous peoples, including Tamangsaling/Tamsaling, Wallo Kirat, Kirat, Tamuwan, and Newa Land were hardest hit by the earthquake; that seventy percent of the victims (8,810 dead and 22,310 injured according to government data as of 7 June 2015) belonged to indigenous groups such as Tamang, Gurung, Newar, Ghale, Thami, Sherpa, Hyolmo, Majhi and Sunuwar; that indigenous peoples faced discrimination based on their ethnic identity, language and distinct way of life even at a time when they suffered tremendous economic, cultural, spiritual and psychological damage,

Expressing grave concern over the fact that even days after the earthquake, the government had not begun rescue and relief work in the affected villages with predominantly indigenous population in timely manner; that the government still has not reached some of those areas; that the government's one-door policy hindered rather than aided rescue and relief efforts of individuals and organizations; that the government's response was characterized by confusion, delay, corruption, nepotism, politicization, a failure to coordinate external support, as well as ethnic, gender and other forms of discrimination,

Regretting the fact that the government did not ensure representation and participation of indigenous groups in bodies formed to undertake relief distribution, rehabilitation, and post disaster needs assessment; that it did not consult indigenous groups or seek their prior informed consent, or even mention them in its public statements,

Regretting the blatant violation of rights enshrined in

international instruments to which Nepal is a party, that includes the International Convention on the Elimination of All Forms of Racial Discrimination, ILO Convention No.169, and the UN Declaration on the Rights of Indigenous Peoples,

Drawing the attention of the government, international communities and donor agencies to the fact that the government's uniform policy and program on settlement development threatens the collective identity, culture and ways of life of indigenous peoples,

Drawing attention to the fact that the conference organized by the government to garner donor support on 25 June 2015 is taking place without the participation of indigenous peoples,

The 23 June 2015 conference of the indigenous peoples of the affected areas, indigenous political leaders, representatives of indigenous peoples' organizations, civil society members, and indigenous experts and scholars hereby issues this declaration:

1. This conference honors the courage and the spirit of solidarity demonstrated by the local people in the earthquake-affected areas, who spontaneously came out to lead rescue, relief, rehabilitation and reconstruction work in the immediate aftermath of the disaster. We also express our commitment to becoming actively involved in rescue and relief, rehabilitation and reconstruction work in our respective areas.
2. People who face the threat of floods and landslides as a result of the earthquake and are at risk of losing their lives any moment must be immediately resettled with their prior informed consent; it must also be ensured that the resettlement will not have any adverse impact on them.
3. (a) The Reconstruction Corporation, chaired by the prime minister, as well as other state mechanisms for carrying out relief, rehabilitation and reconstruction work from the central to local level are controlled by one group

(dominant), exclusionary and discriminatory in terms of ethnicity, language, religion, culture, gender and region, and are driven by the vested interests of a few political parties. All such mechanisms should hence be immediately dissolved and new mechanisms should be built at every level ensuring meaningful participation of the earthquake victims representing indigenous peoples' identity, language, religion, culture, gender and region.

3. (b) The chair of the aforementioned Corporation should be an independent citizen, and vice chair should be from indigenous community.
4. Shelters, homes, settlements, tangible and intangible heritage and other infrastructure must be built in a manner that respects, protects the distinct identity, culture and collective rights of indigenous peoples. Development initiatives should be based on recognition of indigenous peoples' right to self-determine development.
5. Those who have lost their homes and have been displaced by the earthquake should be immediately resettled in safe locations, and arrangements should be made to provide them free education and health services, employment, and sources of livelihood in a manner that protects and promotes indigenous ways of life, culture, identity and traditional ties to land. Many indigenous people who still do not own land should be provided low-interest loans through a simple process.
6. All activities related to rehabilitation and reconstruction including needs assessment, evaluation, decision making, implementation and monitoring should guarantee the human rights enshrined in the Interim Constitution of Nepal 2007, ILO Convention No. 169 and UN Declaration on the Rights of Indigenous Peoples to which Nepal is a state party.

7. A mechanism must be in place to obtain the prior informed consent of indigenous peoples for resettlement and reconstruction activities that directly affect them.
8. Information on relief, rehabilitation and reconstruction should be provided to earthquake victims in their respective mother tongues.
9. A mechanism must be established for channelling national and international resources and support to indigenous peoples, Dalits and other disadvantaged groups in a swift and efficient manner.
10. The government's one-door policy has resulted in the centralization of all resources in government mechanisms, which suffer from irregularities and have failed to distribute the resources to affected families, communities and settlements in an equitable and effective manner. Therefore, such a flawed policy should be immediately scrapped and arrangements should be made to ensure quick and effective delivery of aid through different channels.
11. Classification of victims and estimate of damages must be based on factual information; data disaggregated by ethnicity and gender must be made public; false and duplicated data must be corrected; names of those missing from the list must be added; and updated ethnic and gender disaggregated data on those who have received relief and other kinds of support as well as the amount of support provided should be regularly publicized.
12. The family size of earthquake victims should be determined on the basis of their current situation rather than on the basis of their landownership documents.
13. As the need to produce a citizenship certificate, proof of relationship, photo, etc. has resulted in the exclusion of many affected families from relief, rehabilitation and

reconstruction programs, the process of obtaining such services must be made simpler.

14. To ensure transparency, effectiveness and accountability, budget for rehabilitation and reconstruction should be prepared during a mass gathering at the community level, and followed by public hearings and timely auditing.
15. The government must act immediately to ensure the protection of indigenous women, disabled persons, and children who have become victims of or face the risk of human trafficking.

Date: 23 June 2015 Kathmandu

## Annex III: Media Clippings

