

Indigenous Peoples Community-Based Justice System in Nepal (Limbu and Santhal)



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

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Supported by: Strengthening the Rule of Law and Human Rights
Protection System in Nepal/ United Nations Development
Programme (RoLHR/UNDP)

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© LAHURNIP, December 2017

Printed in Nepal

ISBN: 978-9937-9135-5-3

Preface

Present research report presents the situation of customary traditional institutions of Santhal and Limbu indigenous peoples (IPs) of Nepal. Customary traditional institutions of IPs have vital roles in strengthening democracy and rule of law at the community level. Furthermore, those institutions are also playing significant roles in conflict mitigations and resources managements. But, in the name of development and modernisation situation of those institutions are degrading day by day.

Nepal is party United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and International Labour Organisation (ILO) Convention No. 169. Those international instruments related to IPs apparently provisions regarding promotion and protection of IPs traditional institutions. The UNDRIP states that the "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions..."¹ Similarly, the ILO Convention 169 provision indigenous peoples "...shall have the right to retain their own customs and institutions..."² But the provisions of the existing national laws and policies do not comply with those international instruments. This research gives the reality of traditional institutions of the aforementioned IPs and their contribution and importance in peace process and strengthening of rule of law. Still there are several institutions yet to be researched and documented. We hope this research will encourage to research and document other institutions as well which are at the verge of extinction.

¹ United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), Art. 5.

² Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169), Art 8 (2).

We would like to extend gratitude to Dr. Chaitanya, Subba, Dr. Dambar Chemjong, advocate Bhim Rai and advocate Tahal Thami who have engaged intensively to accomplish the research. Without their hard work this research could not have been accomplished on time. Roles of field research assistants Mr. Durga Hansda and Mr. Bada Ram Hemram in Jhapa and Morang and Mr. Bharat Tungong and Mr. Dal Bahadur Limbu in Panchathar and Taplejung been instrumental in the course of research work in the field.

We also would like to thank all the Santhal and Limbu community members who have provided invaluable information and inputs to this research. Similarly, we would like to thank Strengthening the Rule of Law and Human Rights Protection System in Nepal/United Nations Development Programme (RoLHR/UNDP) for its financial and technical support to hold this research.

Last but not least, many thanks to those who have directly or indirectly contributed in making the research complete in stipulated time.

Shanti Kumari Rai
Chairperson

Acknowledgements

Many individuals and organizations have been helpful in undertaking this research entitled *Indigenous Peoples Community-Based Justice System in Nepal*. Most importantly the research team is thankful to LAHURNIP and its executive body, the Chair Ms. Shanti Rai, Vice-Chair Dinesh Ghale, and the Secretary Mr. Shankar Limbu, for entrusting us for such an important research task. Similarly, the research team is also thankful to Mr. Tahal Thami, Director of LAHURNIP for his help and facilitations from beginning to the end of this undertaking.

The research team is grateful to the individuals who were unconditionally willing to participate the focus group discussions and key informant interviews during the field research. This report would not have been completed without the knowledge and information the Santhal (Morang and Jhapa) and the Limbu (Pachthar and Taplejung) informants shared with us. In the field, the local resource persons, Mr. D.B. Angbung (Limbu), Mr. Durga Hasda (Santhal) and Mr. Bharat Subba (Limbu) were tremendously helpful in successfully conducting the field research. Unfortunately, Bharat Subba died in a tragic accident before this report was finalized. Late Bharat Subba's contribution will remain alive in this report as an everlasting memory. The research team would like to thank Mr. D.B. Angbung and Mr. Durga Hasda for their valuable contribution and help too.

This report partly relies on some historic writings as well. Particularly in the Limbu section, historian Iman Singh Chemjong's *History and Culture of the Kirat Peoples*, published in 1966 is cited in detail. Chemjong's contribution to writings of the Kirat's and the Limbuwan's history including the Limbus' customary justice system, have been both authentic and seminal. The research team sincerely acknowledges as well as expresses sincere gratitude to Iman Singh Chemjong for his contribution for the Limbus through his writings. Similarly, *Santhal of Nepal*, authored by Gurung and Tamang (2014), based on the ethnographic profile research undertaken by the

Department of Sociology/Anthropology has been equally helpful in problematizing the research questions on Santhals.

The research team also would like to thank the finance and administration staff at LAHURNIP for arranging all the logistics. Without the staff's prompt help, we would not have been able to undertake this research.

Finally, we are also thankful to those individuals whose names are not mentioned here but their help in this undertaking is equally important and valuable for this report.

Research Team

Acronyms

AD	Anno Dominion
BC	Before Christ
CBD	Convention on Biological Diversity
CBS	Central Bureau of Statistics
CE	Christian Era
FGDs	Focus Group Discussion
FPIC	Free, Prior and Informed Consent
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on Elimination of All forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
IPs	Indigenous Peoples
KIIs	Key Informant Interviews
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
NEFIN	Nepal Federation of Indigenous Nationalities
NHRC	National Human Rights Commission
RoLHR	Strengthening the Rule of Law and Human Rights Protection System in Nepal
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VCD	Village Development Committee

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CHAPTER I

INTRODUCTION

Background

This report showcases the history and contemporary practices of customary justice system amongst the Limbus and Santhals of eastern Nepal. Social scientists argue that the customary laws are the foundations of the state's formal laws.³ Hence, the documentation and recognition of customary laws of indigenous peoples (*adivasi*) peoples of Nepal shall be imperative for the state of Nepal as the positive and affirmative aspects of such customary laws could be recognized as well as incorporated by the formal legal system in Nepal. In this regard, the constitutional provision is that the elected local municipal bodies may form their own municipal judicial council to be chaired by municipality's vice-chair/deputy mayors. Such a constitutional provision provides opportunity even to the indigenous peoples (*adivasi*) peoples as in numerous cases new municipal judicial councils are likely to be associated with the *adivasi* peoples too. Furthermore, the municipal judicial councils can also incorporate the positive features of *adivasi*'s customary justice dispensation practice to fulfill the gaps and limitations, if there are any, in the formal laws. The present study is undertaken to address the aforementioned problems.

Limbus and Santhals: Peoples Under Study

The communities under study, namely Limbus and Santhals are the two among many indigenous nationalities (*adivasi*) societies in Nepal and eastern Nepal in particular. Limbus are also known as hill indigenous nationality (*adivasi*), while the Santhals are known as Tarai (lowland/plain) *adivasi* group. Since the remote and the recent past, the Limbus politically enjoyed their own autonomous political system on the basis of chieftainship until the Limbuwan was annexed by the then Hindu Gorkha Kingdom in 1774 CE. That

³. Grossi 2010.

was the political epoch when the Limbus had their own justice system-be it formal or customary-prior to the Limbuwan's annexation to the Gorkha Kingdom. Even after the Limbuwan's annexation to the Gorkha kingdom, Limbus' customary justice system was appropriated by the state to follow suit the state makers' own interests.

Santhals, who inhabit the lands of Jhapa, Morang and Sunsari districts, are said to have entered Nepal at different times and occasions for various reasons, mainly from the Jharkhand and the West Bengal regions of India. Santhals, while they relied on hunting gathering for their livelihood, believe that they entered Nepal side many generations before in search of games and hunting. Another anecdote is that the ruling groups-even the Ranas-brought Santhals to Nepal for clearing the Tarai forests for turning forest land into cultivable land.⁴ However, Santhals remained to be one of the least included groups in terms of the indicators of national social inclusion including per capita land ownership. On the other hand, Santhals are one of the best successful groups in terms of practicing their own customary justice as well as political institution.⁵

Research Objectives

The main objectives of this research are as follows:

- To explore customary justice institutions and mechanisms among the Limbus and the Santhals;
- To explore mediation, mitigation and reconciliation efforts done through customary justice institutions amongst the peoples under study;
- To explore potential of reviving the customary justice practice as instrumental in peace-building and reconciliation efforts in Nepal.

Brief Profile of the Research Undertaking Organization

Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)-established in 1995 by a group of professional

⁴ Siwakoti (Olee) 2013; Rai 2066.

⁵ Gurung 2014.

indigenous lawyers-is a pioneer organization of human-rights lawyers working for the rights of indigenous peoples-IPs-(*adivasis*) in Nepal. LAHURNIP's main objective is to contribute to ensure social justice through legal service including Pro bono service in collective rights cases. It has primary objective of promoting, protecting and defending human rights and fundamental freedoms of IPs (*adivasis*) in Nepal.

LAHURNIP envisions a situation where *adivasis* are equally participating in the decision making process, and are valued, respected and listened to, where they feel safe, secure and they can develop their capacity at the fullest potential, equal rights and dignity simultaneously in inclusive democracy. LAHURNIP has been contributing for better implementation of the ILO convention No. 169, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), *inter alia* other international human rights instruments that Nepal is a party too. It has been working to create solidarity to the regional and international IPs' rights promotional movements. Meanwhile, LAHURNIP is supporting indigenous communities to manifest their rights, particularly those who are affected by the projects in their land, territories and natural resources both in laws and policies.

Customary laws versus Formal Laws in Nepal

Existing Nepalese formal laws were founded on the footings based on the Hindu Shastras and the Hindu castes' customary laws during the 18th century. As far back as in the 14th century the then Nepal also favored the Brahman⁶ caste. Such a legal arrangements favorable to the Brahman caste group continued even in the subsequent ruling dynasties and generations. The 26 Codes

⁶ "Death penalty is executed to all the castes except the Brahman because Brahman is not executed...If a Brahman commits a crime to which death penalty is prescribed he should be banished from the city upon completely shaving his head... If a Sudra has the arrogance to instruct the Brahman on religion, the king should have hot oil poured into his mouth and ears". " (Laws made by King Sthitiraj Malla in Bikram Era 1436 (Nepal Era 500) NYAYAVIKASINI (Manavanayashastrat) (<http://www.lawcommission.gov.np/documents/2015/08/>. Accessed: 2017/11/20)

promulgated by Ram Shaha in the 17th century also favored the Brahman caste while neglecting other "low" castes and the non-caste indigenous peoples. The first Civil Code 1854 was the first formal law that legally favored some groups and discriminated against "the other" groups. These legal arrangements were influential in the Nepalese societies' all spheres of lives, let alone the legal consequences, meaning that the state of Nepal took on the Hindu *shastras*, *puranas*, and the Hindus' own customary laws for initiating the formal law of the state at the cost of customary laws of the *adivasi* peoples. For example, once the Hindu customary law of prohibition of cow slaughter and eating beef was declared as law by incorporating it both into the civil code and the constitution of Nepal. If we look into such practices of cultural and customary practices of prohibition of consuming meat of certain animals, most of the Rai clan groups have a custom of not consuming mutton but the beef. Since the Hindus were the makers of the state of Nepal, it was understandable for themselves to declare their own customary laws as the formal laws.

Briefly though, Brain Hodgson, the British resident representative of Nepal during the first half of the 19th century, discussed and differentiates between law and custom. He enquires how much of the law depends on custom, and how much on the *shastras*? Hodgson writes:

"Many of the decisions of the court are founded on customary laws only; many also on written and sacred canons... There is no code of laws, no written body of public enactments. If a question turn upon a caste of a Brahman or a Rajput, then reference is made to the *guru (raj guru)*, who consults the *shastra*, and enjoins the ceremonies needful for the recovery of the caste or the punishment of him who has lost it... In general, what sort of causes are governed by the *Shastras*, and what by customary laws? Infringements of the law of caste in any and every way fall under the *Shashtra*; other matters are almost entirely governed by customary law (*des-achar*)."⁷

⁷ Hodgson 1880:231–232.

Hodgson also presents the differences between the Brahmans, Khas, Magars, Gurungs, and Kiratas in terms their own customary laws as he writes: "Magars and Gurungs, and other Parbabattias differ from the Khas in respect to inheritance, adoption, and wills...In regard to inheritance, all tribes agree that their customary laws are different from those of the Brahmans and Khasas."⁸ In relation to the Adivasi's court cases, Hodgson writes: "When cases of dispute on [certain] topics are brought into the court, the judge calls for the sentiments [opinions] of a few of the most respectable elders of the tribe to which the litigants belong and follows their statement of the custom of the tribe."⁹ Hodgson clearly expresses that neither the customary laws of the *adivasi* were "reduced to writing, nor did the *dithas* or *bicharis* were regularly educated to the *adivasi* customary laws."¹⁰

This is how Hodgson has distinguished between the Brahmanic laws which were adopted by the state of Nepal, and the customary laws of the *adivasis* differently operated from that of the state laws.¹¹ Furthermore, the state not only adopted the Brahmani laws as the law of the land but also favored the Brahmans: "Brahmans are never done to death, but degraded in every possible way... against treason and petty treason".¹²

Leonhard Adam, in his article entitled *The Social Organization and Customary Law of the Nepalese Tribe*, published in 1936 writes:

The law of Nepal, i.e. the official law, is to be distinguished from the tribal law of the various tribes. If we remember the two principal elements composing Nepalese culture, that is to say the Tibetan element and on the other side, the Hindu element, we should expect Nepalese law to show the characteristic feature of both. The trouble

⁸ Hodgson 1880:233.

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ *ibid.*, 234.

¹² *ibid.*

is that, while we are rather well informed on Brahmanic law, this is not the case with the tribal law as it was before the Hindu influence overshadowed the original customary law of those tribes, which emigrated from Tibet. So we must study the various legal institutions and then deduce what is undoubtedly of Indian origin.¹³

With regards to how the Nepalese state promulgated formal laws based on the Hindu *shastras* thereby leaving aside the IPs' customary laws, Leonhard Adam writes: The first code of Nepal was promulgated by King Ram Shah (1606-1633 A.D.). During the period of Maharajah Jung Bahadur (1846-1877 A.D.) another code, known as the Nepalese Ain, came into force, and is not in use as the standard code of the country. This code is based mainly on the *Shastras*. The Codification has abolished some characteristic legal institutions of the tribes..."¹⁴

Leonhard Adam described even the commensal norms and practices which were different across different the Hindus and non-Hindu indigenous groups. Different commensal norms amongst different peoples were known as different customary laws. Furthermore, customary laws in relation to marriage, family organization, kinship organization, property inheritance, land ownership, religious rituals and rite of passages were differed from people to people. Different customary laws governed the justice dispensation system differently across different communities.

The above studies suggest that the Hindu peoples' customary laws, Hindu *shastras* including the *manusmriti* and other puranas have been the sources of Nepal's formal laws. Indigenous peoples' customary laws in this regard have been left out from the making of the formal laws. However, it is also true that the *adivasis'* customary laws and justice systems still prevail as functionally sui generic institution among many indigenous peoples in Nepal. It does not mean that all indigenous peoples have similar customary laws. Even the indigenous peoples uniquely differ from each other in classification of justice and its dispensation.

¹³. Adam 1936:534.

¹⁴. *ibid*:535

CHAPTER II

RESEARCH METHODOLOGY

Field-sites and Data Collection Methods

Total of four field research locations in four districts of eastern Nepal were purposively selected keeping the population of aforementioned communities in the mind. For this, Majhare village area of Jahada Rural Municipality in the district of Morang and Haldibari Municipality of Jhapa were selected for conducting field research among the Santhals. Similarly, Tharpu village of Yangrok Rural Municipality, Panchthar, and Fungling Municipality of Taplejung district were purposively selected to conduct field research among Limbus. The first two field sites, namely Majhare and Haldibari are predominantly inhabited by the Santhals. Similarly, Yangrok Rural Municipality and Fungling Municipality of Panchthar and Taplejung districts respectively are key settlements of the Limbus.

Field research was conducted from the last week of August 2017 and it continued till the third week of September 2017. Over the field research period of three weeks, 9 FGDs (Focus Group Discussions), and 18 KIIs (Key Informant Interviews) were conducted among the Santhals in Majhals in Majhare and Haldibari villages. The FGDs among the Santhals included male only, female only, and mixed groups. Similarly, the Key Informant Interviews were conducted among the Santhal's key persons in terms of carrying out their customary justice dispensation. The Key Informant Interviews were conducted among local schoolteachers, newly elected municipality representatives including the chief and deputy-chief of municipality. As part of KII one local police post's in-charge was also interviewed.

Similarly, altogether 6 FGDs and 9 KIIs were conducted among the Limbus in Pachthar and Taplejung districts. FGDs included local political leaders, knowledgeable persons and the *fedangmas* (Limbu healer and ritual performer). The KIIs included mainly *fedangma*,

former Subba, and those who had knowledge about Limbus' customary justice system.

The FGDs and KIIs were conducted with the help of checklist. For better implementation of above-mentioned data collection techniques, local research associates were employed for efficiency of the discussion/interview and accuracy of the information.

Since the research has been completed within less than four months period, this study was completed amidst different but unavoidable limitations. This is a research completed within a short span of time for some logistical as well as unavoidable reasons. The monsoon flood in August caused heavy destructions in Morang district including in Majhare area. In such a dire situation amidst the natural disaster, the research team found themselves in an awkward situation in Majhare, while the local Santhals were expecting to get something as relief material or help. Locals were busy in harvesting cardamom in Pachthar and Taplejung districts when the research team reached there. These were the two main reasons that the local informants could not spare their time as much as they would have liked. For this, the research team could not postpone the field research schedule because of the tight deadline fixed for completion of research project.

The research covers only two *adivasi* groups in Nepal; the research teams claim that the facts from the field may be true to the groups and the field sites under study. However, the generalized statements could be applicable to similar circumstances.

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CHAPTER III

LIMBU CUSTOMARY LAWS AND JUDICIAL INSTITUTION

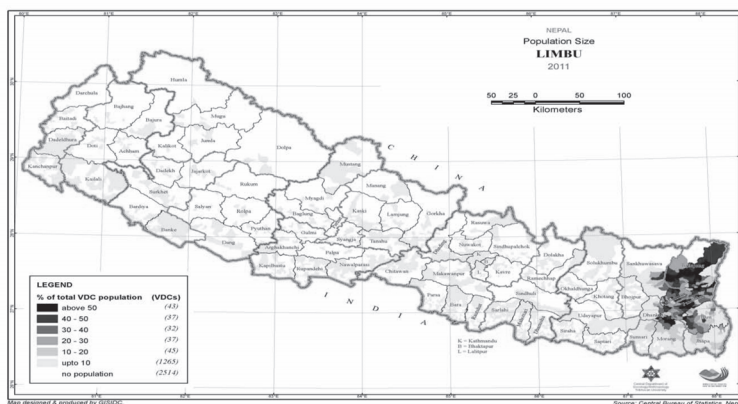
A Brief Note on Limbu

Limbu is one of the indigenous peoples, also officially known as nationality (nation without sovereign state of its own), are primarily living in their historic 'homeland' known as Limbuwan in the far eastern part of Nepal. According to Census 2011, they have a population of 387,300 and 88.7% of them speak their own mother language- Yakthung Pa:n (Limbu language). They are mostly limited in the eight districts of east Nepal and are sparsely found in Kathmandu Valley also. They are basically one nation (*yakpang*/*yaklum*) divided into 10 major groups (*suwang*) and later they were divided into more than three hundred clan (*sang*) and sub-clan (*suma*). Yakthung is their self-defined, primordial identity. Limbus have their own shared customs, traditions, myths, religion, culture, language, symbols and collective memories. Their norms, values, visions and customary laws are guided by Mundhum, which they have been retaining through ages. Mundhum is a word which conveys a range of connotations including scriptures, ancient narratives, mythology/mythomoters, legends, proto- and pre-historic accounts, oral literature, sacred instructions and a repository of distinct knowledge replete with various forms of cosmological, genealogical, cultural, spiritual/ religious, ideological, legal, sociological and philosophical deliberations, speculations and reflections. It is a foundation of indigenous jurisprudence. It is also a philosophy of life that gives meaning to existence of life.

Limbus have one of the longest history of sovereign status and unspoiled cultural heritage in Himalayan region. They were enjoying autonomy even after the annexation of Limbuwan into Nepal in 1774 till 1968. Limbus' relation with state is marked by compromises and confrontations, concessions and oppressions and their culture, land and such type of relation adversely affected customary laws and institutions. They still aspire, though politically divided, revival

of customary institutions and laws, enjoyment of autonomy and self-government in their homeland. It is the sovereign nation with lost sovereignty partially in 1774 and fully only in 1964.

Map Showing the Density and Distribution of Limbu Population in Nepal



(Map adopted from SIA-EP Research, Tribhuvan University, 2014)

Introduction of Limbu Judicial Institution

Customary laws and judicial (including governance institutions) institutions of Limbus (Yakthung word is used in Mundhum and Limbus call themselves as Yakthung instead of Limbus in their language) are as old as Limbus themselves. There are enough indications in Mundhum that Yakthung customary laws and judicial institutions were gradually emerged with the evolution of their culture and political system. Mundhum lead us to think that human laws were developed observing the rules/laws of nature or natural phenomena. For the convenience of our discussion, they can be divided into three phases: (i) ancient customary laws and institutions as reflected in Mundhum, (ii) medieval customary laws and institutions (till the annexation of Limbuwan in Gorkha kingdom), and (iii) customary laws and institutions after the annexation of Limbuwan in Gorkha kingdom. Customary laws and judicial institutions delineated in the subsequent sections are based primarily on published literature and key informant interviews and focus group discussions in the fieldwork.

Ancient customary laws and judicial institutions (Mundhum-based laws)

The language of the Mundhum is archaic one and its exegesis is not devoid of controversy. However, some frequently used words or word combinations; use of metaphors, allusions and symbols; and ritual enactments provide some clues for interpretations and analysis. Both structural analysis (analysis of structure of compatibilities and oppositions) and iedochronic analysis (analysis of idea of form) of Mundhum are the best published works so far. They are discussed under this study. In brief, Mundhum-based laws are codified as Sawara Yetchham Thim and Pegela Phangsam Thim and their codifiers are described as Sawa Yethang (eight great leaders) and Pegi Phangsam (nine most erudite persons). They are ancient laws evolved through ages and are practiced customarily by Yakthung (Limbu) for thousands of years. It can be assumed that these Mundhum-based laws were very forceful till the turn of the first millennium. The presentation of code (law) of Mundhum age and discussion here is based on conclusions/results of analysis of Mundhum and published literature on the discussion of subject matters of Mundhum and substantiation by the key informants (available Mundhum experts) from the study sites.

Code for Preservation of Core Values

- (i) Love for ancestral homeland- Yakthung Ladze and deep attachment to natural objects (mountains, hills, plains, rivers, ravines, forests, bushes, grasses, herbs, birds, animals, aquatic organisms, minerals, etc.) of the homeland and sacred/spiritual relationship with them should be preserved and nurtured to retain the indigenous Yakthung identity and heritage¹⁵. Chumlung (council/meeting) of the Yethangsingsa (self-legislating, self-governing, self-judging society of descendants of Yethang, primordial eight leaders) have every right to penalize those, as appropriate, who go against this valued convention.

¹⁵. Tongsing Takma Mundhum presents fascinating description of profound spiritual relationship of Yakthung people with their ancestral homeland and natural resources and ecology of their territory, one of the characteristic marker of their distinct indigenous identity. See Shreng-Limbu 1992, Kainla 1994, Subba-Pondhak 2001.

- (ii) *Mundhum*, sacred rituals (*khajok*), and oral tradition (*thungsap*) contain themes, meanings, contents and substances of core values of Yakthung (Limbu) society, culture, customs, religion, economic relations and political structure and they should be preserved, practiced and transmitted to new generations for the perpetuity of Yakthung identity.
- (iii) Collectivism (*parup-itthili*), communitarianism (*sanglup-itthili*), cultural integrity (*sakthim thodim*), social/communal intimacy (*sangdzumgen/ suwangmi tungdzum*), egalitarian ideals (*pemben sangram*), environmentalism (*cha:it-itthili*), fair convergent procedure for decision making (*suna-ingdang waya-ningdang*), virtuous politics (*seseba hang-cho:kthim*), autonomy (*i:tyang/ khamyukse:p*), self-rule (*yungsaba suhangem*) and self-determination (*yamkhasek*) are core values of Yakthung society to be safeguarded at any cost and if someone goes against these values should be expelled from society or even eliminated depending upon nature and consequences of his/her transgression.
- (iv) Justice, equality, dignity, autonomy, spirituality, morality, reciprocity (*abhanglum*), cooperation (*lakkappa*), solidarity (*thikhum thikthak*), strong commitment (*sanga-ingdzak*) to common good (*kaktoba nowa*) and collective well-being (*lupwaba aplung*) should be the core concerns of the state and Yethangsingsa (self-legislating, self-governing, self-judging society of Yethang' descendants) have every right to revolt against and replace the state authority whose actions do not comply with these norms¹⁶.
- (v) Various traditional methods, processes or ways of knowing and institutions of knowledge, knowers, meaning making, and knowledge diffusion like *Thung-sap* (oral tradition), *Tagera Ningwaphu Inghang* (instructions/messages of *Tagera Ningwaphu*, supreme goddess), *Sakwa-muing* (sacred

¹⁶ There are several indications in *Mundhum* about this issue. Some clear examples of medieval ages and recent centuries are found in Iman Singh Chemjong who has presented several incidences of such actions including those of the tem Limbus' revolt against eight leaders/kings of their time. See Chemjong 2003/1966, 1948, Hodgson Papers (Khambu-Limbu War against Gorkha).

messages), *Kheba:n* (narratives), *Siwa-khahun* (great teachings/ precepts), *Tum-pa:n* (wise saying/elder's adage or precepts), *Akkhe tajieng* (long-held conclusions/opinions), *Muring sumbhy*(devotional remembrance), *Pandhang* (debate), *Yokkhim tathakma* (collective strategic thinking), *Peli-pa:nchan saga-injan* (analects) related to epistemic principles activating both *Ni:sam* (perception/observation) and *I:tsam* (intuition/ rationalization) should be preserved and practiced regularly.

- (vi) Chotlung is a symbolic representation of magnificent land of ancestors, glorious history, human dignity, fulfillment, unity and harmony, security, prosperity and happiness and valued concept embedded in *Mundhum* should be reminded to existing generation as well as future generation (children and young people) through various rituals like Mangenna (in every six months and occasionally as needed), Nahangma (occasionally or at least in a year) and Tongsing (occasionally or every year or at least once in a three year).
- (vii) Faith on and reverence for Tagera Ningwaphuma, the omnipresent, omniscient and omnipotent goddess, should be kept unsullied¹⁷.
- (viii) Members of every generation should memorize Tagera Ningwaphu Inghang (precept of Tagera Ningwaphuma) that human actions should be consistent with knowledge which leads to power- Mukchili Mukkumsam (knowledge-power)¹⁸.

Code in Relation to Religious Observations and Spirituality

- (i) Household head should perform sacrificial rite twice a year (at the beginning of high season and low season) to propitiate Nahangma (goddess of dignity and valour/ war) to gain/retain power (*mukkumsam*), prestige (*mingso*), and prosperity (*yangsa-kundhe*); gain capability (*hangsam*) to overcome obstacles and calamities; rejuvenate courage to fight back

¹⁷. For explanatory notes, see Chemjong 1961, 2003/1966, Subba 1995/1998, Subba-Pondhak 2006.

¹⁸ Literal meaning of Tagera Ningwaphu is omnipresent repository of knowledge depicted in female form (adding suffix 'ma") and her roles reveal that she is omnipotent at the same time indicating knowledge is power.

against humiliation and disgrace and gain insight and acumen for the success of attempted works¹⁹.

- (ii) Every household should conduct Mangenna (making 'head high' that is, elevating dignity and reviving glory) ritual for family/clan members twice a year to remind clan members, particularly belonging to new generation, of their ethno-history, early struggle of biological and cultural survival, pay homage to ancestors who occupy the land/territory for the first time (*mangenna lungdhung*) and build strong fort (*mangenna yak*) to defend the ancestral land and ensure health, happiness and prosperity of the family/clan.
- (iii) Tongsing Takma ritual should be performed annually (of one night, three days) or at least once in three year (of three nights, five days) for the welfare and prosperity of the families and clan members and also for maintaining linkage with ancestors (source of powers and well-being) and remind the importance of Chotlung (a glorious land of ancestors, a beautiful land of accomplishment, fulfillment and perfection)²⁰.

¹⁹. Sagant 1996:12-18. Tongsing Takma Mundhum and Nahangma Mundhum expatiate in detail on this subject. Limbus almost regularly perform the Tongsing Takma ritual and Nahangma ritual. For details, see Kainla 1994, Shreng-Limbu 1992; Subba 1998/1995: 147-55; Mudzoklung Khadzoklung Mundhum: Audio-cassettes.

²⁰. In Mundhum, Chotlung is described in this way:
Lasebhaden lo Chillekpaden lo (This is the glittering land by the light of moon),
Namsebhaden lo chillekpaden lo (This is the effulgent land by the rays of sun),
Lingpitmaden lo podemaden lo (the land of peace and tranquility),
Niyara numa sesemaden lo (the sacred land with beautiful scenery),
Aplungma den lo tangsepma den lo (the land of safety/security and welfare)
Changhipo den lo lingdhoma den lo (the land of full progress and peak prosperity)
Tuttu yukna ro tumyang yukna ro (This is the seat of gentlemen),
Yakla yukna ro suhangma yukna ro (This is the seat of ladies),
Tuutu chotlung ro tumyang chotlung ro (This represents dignity/ full accomplishment of gentlemen),
Yakla chotlung ro suhangma chotlung ro (This represents dignity/ full accomplishment of ladies).
(Source: Kainla 1994 and others)

- (iv) Chasok Tangnam (harvest festival) should be observed after the harvesting of the crops produced for the first time in a year in the beginning of a 'low season' (usually September-October), marked by the blooming of Phunchhing (Nepal cherry tree- *Prunus ceraides*). Family and community members should celebrate this festival by worshipping Yuma (household goddess) and Tambhungna (female forest deity), Sigera Yabhungekma (female deity who imparted the skills of farming for the first time) and other natural divinities praying for their blessings for good harvest and health.
- (v) Every year at the beginning of 'high season', noticeable by the blooming of Phangrek (peach- *Prunus persica*), usually in March-April before starting agricultural activities, all members of the community/village should gather at the top of the hill and perform worship of Yobadangma (female divinity/controller of the earth), Khamjiri Khambongba (first people of the earth), Yabhungen Yabhungekma (female divinity of seeds), and other nature divinities including primeval ancestors who initiated agriculture and pray for favorable monsoon, fertility of soil, plentiful crops and avoidance of natural calamities, pests and diseases and celebrate this Yokwa or Yumangkhome festival (festival of worshipping mother earth/ mother goddess, nature, the cosmos and celestial bodies) for the blooming of life on earth. Community should penalize as appropriate to those who do not attend the ceremony.
- (vi) Tapheng/Taptheng, also known as 'Kui Kudap', the ritual of propitiating of nature divinities (Tambhungna, female forest divinity; Misekpa, divinity of rain and thunder; Khanjama, divinity of lowland; Warakma, female divinity of; Taksangba, divinity of highland, also a hunter divinity; Makchiso Maklanggha, hunter divinity of low land/ plain; and others) should be performed in every six months or as needed by families and clan members for the prevention of epidemics, disasters, diseases and conflicts and bestowal of health, happiness and progress. One should not avoid this ritual as it reminds the importance of leading life in conformity with the law of nature and dictates of environment.

- (vii) Themang Dema, ancestor worship by all clan segments together, should be conducted in every twelve years or at least eight times (*yetchhing dema*) in the life of a generation to win blessings of ancestors (*thesam*) including celebrated ancestor (*hangsam*) and to gain long life, vitality, wealth, clan solidarity and power²¹.
- (viii) Division of functions should be strictly followed by Phedangma, Samba and Yeba/Yema (religious practitioners, spiritual leaders, healers, repository of pristine knowledge and advisors of *tumyahang*- political leaders), the descendants of Pegi Phanghang (primeval eight erudite persons) and medium of conveying primordial commands, directives and instructions. Phedangma should conduct rituals of life cycle (including Mangenna and Nahangma rituals) and propitiation of Yuma Sammang (female divinity of the house and supreme goddess of Limbu), Theba Sammang (male household/ clan divinity), others clan divinities and of nature divinities. Samba should perform Tongsing Takma ritual and other complex rituals and should involve in *Mundhum* recitation, interpretation, deliberation and knowledge transmission and preparation/ development of medicine. Yeba (M) and Yema (F) should perform rituals of unnatural death and get involve in the complex rituals (*samsogha napma*/driving away the evil spirit of unnatural death, *nahenlangma*/trampling down the evil spirit of envy and jealousy, *misam sepma* /killing the evil spirit of catastrophic fire, *phungwa changma* /letting the flower of life grow and bloom, etc.) and processes of appeasing divinities that cause epidemics, disasters, accidents, misfortunes, diseases, physical deformities and mental illnesses. Tumyahang should stop encroachment in such vocations as vocational transgressions may yield unintended results.
- (ix) Every member of Yakthung society should defy the replacement or alternative of Phedangma, Samba and Yeba/Yema initiated or enforced by dominant religions and cultures.

²¹. Key informants inform that this ritual is rarely observed these days, some exceptions can be observed in remote areas.

- (x) Phedangma, Samba and Yema/Yeba should perform Phungsok (graduation) ceremony after completing courses of their learning and practicing and learners should pay tribute to their teachers (*sikwa*) on this occasion to make tradition of knowledge production, sharing, and transmission lively and perpetual.
- (xi) Every member of Yakthung society should conduct worship ceremonies of Yuma, Theba (*kemba*), Kappoba, Dungdunge (*sapetta pettahang*), Akwanama, Thundangba, Mudemba, Lummayeppa, Pichchamma, Chokhoba, Phakmurama and other divinities most frequently and master spirits (source of knowledge and power) like Mangmangwa (tutelary spirit of Phedangma, Samba and Yeba/Yema), Muiyan (eagle/hawk), Saba (monkey), Miyang (cat), Sakwa (bee), Mangjum-Mangwa (wild bee), Yurum Yuwa (poisonous wasp), Kocho (dog), Makyu (bear), Ketti/Takmi (elephant), etc. should also be propitiated as per the need of the time. Tummyahang should monitor these activities.
- (xii) Hunters should ritually propitiate hunting divinity and offer prayers asking for replenishment of hunted fowls and animals and abundance of wild life before pursuing hunting activities and after hunting accomplished, they should offer blood and roasted piece of meat of hunted fowl or animal to the hunting divinity soliciting for absolution for taking life of others.
- (xiii) Hunters should never kill pregnant animal and pair of birds (male and female) living together violating the law of nature²².

Cultural Code

- (i) As envy and jealousy (*tingding nahen*), sexual anarchism (*sogen soma*), deceit and mislead (*labhak eplek*), intolerance (*naso thappan*), slander/ defamation (*cheya*), evil actions (*labhak eplek*), disinformation/ misinformation (*pa:nbhot* -

²². A verse of Mundhum in the case of pair of birds: Igechum semma, yemeling semma; layo ni ponglo lasot ni ponglo (to separate couple or separate wife from husband or husband from wife is an evil act, a great sin). There are several similar verses in Mundhum regarding the killing of pregnant animal.

ingbhot), sinful acts/ deeds (*layo-laso*), offending treatment (*sangdo-eplek*), greed (*khimbrak*), theft/ plundering (*khuchchiba*), bribery/corruption (*nali cheyang*), domination/ oppression (*ningghum*), and self-centeredness (*khakkhawa/wengdzang*) breed and nurture systems and institutions of deprivation (*chahap/ keklekwa*), discrimination (*senchhing-khesing*), oppression, exploitation, inequality, and other myriads of social evils leading to injustices that corrupt societies, disrupt order (*tangdzem*) and harmony (*nadang*), weaken system (*cho:kthim*) and structure (*kudzo:kcho*) and ultimately, cause biological degeneration and pollute the nature or universe; realization of justice requires a range of actions starting from psychological/ emotional, spiritual and cultural remediation, elimination of vices, to institutional interventions to healing of afflictions of injustices²³.

- (ii) Yakthung society should perform life cycle rituals to distinguish themselves from other societies or cultural groups. (a) Sappok Chomen (womb worship) ritual should be performed before the birth of a child for the safe delivery, and safety of the baby in womb and after delivery and purification of woman giving birth to a child and family members. Only the Phedangma can perform such ritual, as he is the authority of life cycle rituals. (b) Yangdang phongma (hanging the cradle, i.e., naming the child) ritual should be performed within three to four days after the birth of a baby to give name to the baby at the presence of family and clan members and community leaders and Phedangma is the authority to perform this ritual. (c) Changwa lekma, the ritual of changing clothes, should be performed after the children become adolescent and this ceremony should be observed at the presence of clan members and maternal uncles and community leaders. (d) Mekkhim Lakma, marriage ceremony, should be performed when the bride is brought to

²³. These evils and their consequences are described in details in various Mundhum. Nahen Mundhum specifically deals about it and indicates range of actions needed for realization of justice. See Kainla 1993.

groom's home. It should be officiated by Phedangma (clan priest, who is well-versed in clan's history) at the presence of groom's parents, relatives, neighbors and community leaders. Due processes such as pre-nuptial negotiation with parents or Pekosama (compensation to parents for human-power loss in the family); consent seeking from prospective bride or Yupparung/ Yuppallung (maintaining physical and psychological equilibrium between prospective bride and groom through sincere consent and presentation of ornaments and dresses); Inglatapma (making promise), performing Mekkam Thim (rites of marriage) which includes Mekamma Mangenna (ritual of glorifying conjugal union) at the presence of parents, relatives, ladies (*mekesama/menchhyaburukma*) accompanying bride, neighbors, community members and leaders and exchange of gifts, and finally Nuse Phuma (ritual of separation of married daughter from her parent should be followed. (e) After the death of person a death ritual (*Yagu-changsiren khajok*) should be conducted following the due processes such as Sam Lammepma (bade farewell to dead person/ask soul of the dead person to leave house), funeral procession (*chesama*), burial rituals (*ipungden thim*), Netyungma (observing mourning), Samsama (ritual of handover of the soul of dead person to chief ancestor (*hangsam*) and finally Khau:ma (purification ritual/ complete separation with dead soul). Presence of village/ community leaders/elders, gentlemen and ladies, young men and women and relatives from mother side is a must. Only the affinal relatives (cognates) can legitimate the purification ritual. Relatives and villagers can offer Chamyang (money offered as support) to support the cost of feast organized at the time of Khau:ma. Nephamma (postponement of Khau:ma ritual) is permitted if the sons and daughters of the deceased is absent or staying in distant away at the time of death or they are seriously ill or the situation at that time is adverse to conduct Khau:ma ritual.

- (iii) Festivals of seasonal cycle such as Kakphekwa Teyan Tangnam, Sisekpa Teyan Tangnam, should be observed to remind people the importance of living with nature.
- (iv) After the construction of house and before entering there to live in, a ritual of Himlili (ceremonial entry into a new house) should be accomplished by performing a special drum dance- Himgé to save the house from termite and other insects (*mudhak thaknam*) and ward off evil spirits and ghosts (*muyek yetnam*). Clan members and neighbors should be invited on the occasion and a feast should be organized.
- (v) Institutions of knowledge transmission, diffusion, and construction/production and sharing like Phedangma, Samba, Yeba/Yema, Samkelo Kewaphung (music and songs/ lyrics), Lodenhang-Phungdenhang (dance, musical instruments), Palam (lyrical discourse), Tummyang (wise persons) should be safeguarded, preserved and promoted for cultural survival, heritage retention, intellectual growth, and spiritual enlightenment.
- (vi) Every effort should be made to protect Yaks (forts for defending ancestral territories like Kuseyak Kummayak, several Mangenna yaks), stone pillars/standing stones and platforms (*indolung*, *hangsemlung*, *kesaplung-namsaplung*, and many others of various purposes), sacred places like Sangbhe such as Khamboling Nahangma Sangbhe, Samsire Shangbhe, and places like Seremphupma (congregating place of divinities), Menchhyayem, Miyanglung, Pitkhurima, Segek Surungma, Ambepojoma-Sumhatlungma, Sahonamlangma, Kapporung Kapmurung Yukna Den (Chhiruwa), etc.; ponds like Sodho Warak, Saya Warak, Yumikma, etc., mountains like Phaktanglungma, Phiyamlungma, Mukkulungma, Sewalungma, Chanjanlungma, Wasanglungma; caves like Khajiri Khawaphukma (Yuma divinity related), Thiliphukma-Karangphukma (Kappoba divinity related), etc. and other sacred sites.

- (vii) Members of Yakthung society should not abandon the way of life they have traditionally adopted since time immemorial and the path chosen by their ancestors for survival, solidarity, progress, prosperity and dignified life and community and feel proud about it²⁴.

Socio-Economic/Civil Code

- (i) Human dignity (*nahangma*) should be safeguarded at all cost. Perpetration of indignity (*nadhama samdhama*) is a crime at par with homicide as indignity leads to illnesses, anxieties and eventual death.
- (ii) Justice should be universally accessible to make a country where justice is really realizable (*mudhang khara den*) and those responsible for non-realization of justice universally should be made liable to compensation of the consequences of injustices inflicted on people.
- (iii) Every effort should be made to prevent Manghup Mangde (cursing) as it results from unaddressed injustices and invokes divine punishment having intergenerational repercussions, not limited to wrongdoer/ criminal.
- (iv) The earth or lands, water, air, sun, fire, sky or space can never be the personal property and they are common property of the whole community, which should be respected by the state for the creation of just and harmonious society. However, certain

²⁴. The message relating to traditional way of life in Mundhum is communicated in this way: *Unchhon* (In the olden days) *Paresenduba semmena lammo* (the path that our fathers/fore-fathers had chosen/ tested through generations) *Mare senduba semmena lammo* (the path that our mothers/ fore-mothers had chosen/ tested through generations) *Tangso chimmega pekmena lammo* (the path safe to walk in full swing of legs) *Hukso chimmega pekmena lammo* (the path safe to walk in full swing of hands) *Sapphak mellaye chirep millaye* (without bowing head just like a bamboo) *Phungphak mellaye yongap mellaye* (without being scattered like the withering petals of flower) *Lajum pogia:ng lanak pogia:ng* (let us stand up in row now) *Thang thang pogia:ng yetpit pogia:ng* (let us move up and up together unitedly) *Wasa pegiro tholam pegiro* (let us make a move towards the path of progress resolutely) *Sanglang pegiro timphak pegiro* (let us make orchestrated upward movement happily).² (Source: Kainla 1994 and some other Mundhum compilations)

collectivities (clan groups/ tribes, who have occupied certain territories or areas of land since time immemorial can have collective right of ownership, custody, and use of those occupied or settled lands and natural resources therein. Concerned collectivities can collectively manage the utilization and production of the allocated lands.

- (v) Khambongsa-Lungbongsa (sons/daughters of earth), whose descendants now called as Khambu-Limbu, are the only owners and custodians of land and natural resources and Yethangdingsa, descendants of Sawa Yethang, sovereign people, who were earliest generation of Khambongsa-Lungbongsa, have inherited this right of ownership of land and natural resources from them. State authority (*yukpho*) should respect and safeguard persistently such customary rights of indigenous peoples (Khambongsa-Lungbongsa).
- (vi) Yakthung clan segments, being indigenous peoples of their country (*Yakthung Ladze*), have collective entitlement²⁵ or communal ownership on their lands or territory (later called *Kipat*) on which they inhabit. Forests, pastures, rivers, lakes, ponds, wild life, and other natural resources of the territory/ country should be under community management. Those who violate these rules/norms should be deprived of the use of land and natural resources forever.

²⁵ Yakthung communities were continually enjoying a system of collective entitlement to lands and natural resources till 1964 before the implementation of Land Reform Act of 1961 in Limbuwan, which was completely abolished by 1992 after the completion of cadastral survey there. This system was known as Kipat system. For detailed analytical discussion on Kipat system and associated issues, see Regmi 1978, Caplan 2000/1970, Forbes 1996, apart from research publications by other Nepali scholars, to mention a few.

- (vii) As maldistribution or unjust distribution causes various kinds of problems, ills and vices²⁶, distribution of primary goods including land, wealth, primary goods, productive resources, various kinds of services, opportunities, positions of power, and basic liberty, among others, should be distributed fairly and equally to all taking into consideration of their needs and merits without distinction of gender, or social/cultural or territorial origin and distribution and exchange should be fair enough in the optimal advantage of everyone holding distributive agents accountable for appropriate distributive principle/ procedures. Resources should be equally distributed universally so that problems like inequalities will not emerge because of people's unchosen circumstances and various kinds of 'disability'²⁷.
- (viii) Acquisition of some of the primary goods should not be the means of domination, monopolization and establishing hegemony leading to the rise of autocracy.

26. Concepts like *Kudak Kudhi Soma* (social ills/ miseries caused by the unjust distribution of food and drinks), , *Sammyang Yuppa Soma* (social ills/ miseries caused by unjust distribution gold and silver, i.e. wealth), *Hilli Mudhing Soma* (ills caused by the possession/dispossession of pearls and precious stones, i.e. property), *Netti Phungwa Soma* (ills/problems caused by maldistribution of health care services), *Phejum Pheya Soma* (evils caused by abuse/misuse of weapons), *Nahen* (envy and jealousy), *Sakmura* (imprecation, bane), *Thaksang* (struggle, conflict), *Khejek* (quarrel, discord, disturbance), , *Yemendang* (inequality), *Ningghum* (atrociousness, oppression), *Thakthang* (rebellion) and so on relating to distributive issues are found in Mundhum (See Menyango 2005).

27. Spirit of western complex conceptions of distributive justice enunciated by John Rawls (1999/1971, *A Theory of Justice*), Ronald Dworkin (2000, *Sovereign Virtue: The theory and practice of equality*), Machael Walzer (1983, *Spheres of Justice*), David Miller (1999, *Principles of Social Justice*), Iris M.Young (1990, *Justice and the Politics of Difference*), Takis Fotopoulos (1997, *Towards an Inclusive Democracy*), Jonathan Wolf and David Piachoud (2008, articles in *Social Justice and Public Policy*) and many others, are found embedded in ancient Mundhum-based conception of justice whose comparative discussion here is not possible as it deviates from the key purpose of the study, though some relevant points/terms have been borrowed for present discussion.

- (ix) First occupier and first care-taker or cultivator (individual or group) of the land (*khamkhu*) along with his/her group has first entitlement to that land and natural resources therein and their produce²⁸.
- (x) The traditions of complementarity, reciprocity, sharing and cooperation and humanity in relation to production and distribution should be maintained and who go against these social values, they should be deserted from society/community.
- (xi) Possession or accumulation of wealth, power, prestige and other social goods at the cost of well-being, progress and prosperity of others is a crime liable to punishment at par with the costs (material, financial, social, cultural, political inflictions and losses) involved.
- (xii) Human society is for collectively striving for survival, progress and prosperity and sharing, caring, reciprocating, complementing and exchanging benefits (goods/resources, services) and burden (duties, responsibilities) for collective welfare. These age-old norms should be protected and maintained. Violators of such norms should be isolated from society/community at the earliest possible so that they could not cause further damage.
- (xiii) Traditional skills and occupations such as weaving in handlooms, developing patterns on fabrics, metal craft, woodworks, stone works, bamboo works; game hunting; hoe agriculture/ plough agriculture improvement; wall painting

²⁸. An episode of Sigeru Yetthu:knama, first occupier of land for cultivation, indicates that only the first occupier of the land has the right to be owner (*kudangma*) of that land and entitlement to the produce grown on that land. This portion of Mundhum presents the principle that first occupier and thus, first care taker (corporate clan group or tribe) of the land has first entitlement (ownership) to the land occupied and taken care of and has first entitlement on the produce he/she/ family produced (see *Mudzingna Kheyangna Mundhum* compiled and translated in Nepali by Bairagi Kainla 2014: 64-65). This first entitlement principle hardly conforms with the 'thesis of self-ownership' or 'entitlement theory of justice' of Robert Nozick (1974, *Anarchy, State and Utopia*)

(*phung lakma*), tattooing, flower decoration, ornaments making; cooking dexterity like preparing special variety of moss and lichen with pork (*yangben, sergyam*), special preparation of chicken (*wamayuk*), pickles, *kinema*, (edible thing prepared from boiled/ fermented soybean), *thi* (local beer made from fermented grains), *khesung* (yeast made from herbs/plants); preparation of medicines from herbs and animal organs and applying therapies, etc. should be practiced routinely and rigorously for the retention of vocational identity, achieving higher productivity and attaining prosperity.

- (xiv) Knowledge and skills on the protection of seeds and growing seedlings, plantation, pest control, harvesting and storage and the making and use of agricultural equipment should be preserved, widely shared, further updated and refined continuously.
- (xv) Nali-kujem (remuneration) should be provided to all those who work for other and no one should be deprived of Nali-kujem in any pretext. Expert or layman who have been asked to work should be extended welcome (*lamlā*) with pork (*phaksa*) and strong beer (*pagu kuthi*). Reciprocity should be maintained in the exchange of work and remuneration. Value of work and service should be recognized and appreciated.
- (xvi) Men should always be equipped with bow and arrow (*li-tong*), sword (*phē*) and shield (*kho*) to protect themselves or their clan segment or their homeland and women should wear almost always ornaments like ear-ring of various designs (*nelotti, nariwet*), specific types of garland (*pondhe*), various types of necklaces (*pona, theklukla, yang-ichchhi, khambrokma, phangak, phaktang, tinglaing*), bangles (*huklangi*), anklets (*langbangi*) and adornments of precious stones (*muding*) and of head (*laloti, namloti*) to maintain physical and social equilibrium, apart from equipping themselves by weapons like sickles, knives and swords.
- (xvii) Not a single human being is impure except in two conditions for a certain period: women and her family members for three to four days when giving birth of a child and persons observing mourning period (three to four days) on the death of close kin. No rules of purity or impurity/pollution apply in relation to

flower (*phung*), water (*chwa*), thread and cloth (*chirik thallak*), silver and gold (*yuppa-samyang*), money (*yang*), animals and birds (*thaksa-pusa*), stone or rock (*lung*) and soil (*kham*).

- (xviii) Marriage institution: (a) A woman can have sexual relation with any man and can give birth to a child if she so desires in a society where marriage institution has not yet developed. Women have rights in reproductive capability and entitled to the rights of custody, care, and possession of her offspring irrespective of their genitor (biological father) in such society²⁹. In the same vein, a man can have sexual relation with woman who consents for such relation. The children thus born are regarded as offspring of biological mother (*genetrix*) and biological father have no rights on those children, though he may involve in taking care of pregnant or neo-natal mother and occasionally rearing the child³⁰. (b) Sexual relation between man and woman is legitimate or socially acceptable if such relation is preceded by deep love, mutual cooperation and profound intimacy. (c) A woman can have sexual relation with any number of men if she wishes and can declare husband in any number if she wishes and can manage with the approval of community chiefs (*tumyang*). (d) The children born from unknown father are called Lasa (offspring of moon), Namsa (offspring of sun), Sammet-Kujangsa (offspring of air), and Sammangsa (offspring of deities) depending upon the discretion of mother. (e) As freedom of sex leading to sexual anarchy generates incest (*sogen soma*), envy and jealousy (*tingding nahen*), social chaos/ evils (*labha eplek*) and biological degeneration (*thaksa pho?yo*) and hinders development of family system and social solidarity and goes

²⁹. Mundhum of Mijingna Kheyongnama reveal such social system. See Kainla 2014 (Mijingnama Kheyongnama Mundhum), Shreng-Limbu 1992 and several Mundhum compilations.

³⁰. Mundhums of Mijingna Kheyongnama, Lahadongna and Suhangpheba, Pajaiba and Irere Idhuknama, Luplina Wadannama, Tigenjangna Ipnana-Sarengdhangna (mother of Kesami and Namsami) and Mekkim Pungnawa Samlo expatiate in some details of such system practiced in the past. See Kainla 2014 (five volumes), Shreng-Limbu 1992, 1994.

against the natural law, it should be regulated by the community/ society³¹. (f) *Tentumyang* (managers/ governors of the country) and *Pantumyang* (scholars/ eminent persons) can review, rectify, amend and change the law relating to sexual relationship, institution of marriage, system of consanguinity or affinity and legitimate conditions of human reproduction and cooperation if *Yethangdingsa* (demos) feel necessary, deem appropriate and consent duly. (g) Marriage is an institution developed at the age of golden age of ancestors (*mangtochho-hangtocho*) to regulate sexual relations (husband and wife, spouse), to legitimate children born for sexual union, to maintain solidarity among the members of kin groups, and establish relationship of affinity between husband's family/clan members and wife's family/clan members and thus building alliance for survival and prosperity and a community/ society should not avoid it. (h) Marriage can take place if there is physical and emotional equilibrium between prospective bride and groom and such equilibrium (*nenduri pasanga*) can be maintained by adorning prospective bride in beads and bracelets along with sickle and other tools/swords and arming prospective groom in bow and arrows³². (i) Marriage should be ritually solemnized by a Phedangma (Yakthung/Limbu priest) with the approval of mother and father, and free, informed consent and expressed readiness of the bride (*yakla suhangumma*) and groom (*yakla suhangumba*) and participation of witnesses like *Yunchi Oppa* (associate of groom during marriage ritual), *Tanchi Oppa* (associate of bride during marriage ritual), and *Menchyaburukma/ Mekesama* (women/ girls accompanying bride during marriage ritual) and at the presence of close kith and kin and village leader to legitimate marital relation and make socially accepted. (j) Only thus

³¹. Such conception is found in Mujingna Kheyongnama Mundhum (including the narrative of Sawa Yukphung Kemba, the great hunter), Lahadangna and Suhangpheba Mundum and in some other Mundhum also.

³². An argument presented in Lahadangna-Suhangpheba Mundum proposes this rule. It is also argued that this rule or system gave birth of the system of bride price.

recognized husband or wife has exclusive sexual access to each other and sex outside the marital relation should be considered infidelity. (k) A man or a woman can marry several times if he/she desires in circumstances when their marriage malfunctioned or could not go for long due to divorce, separation or death of husband or wife. Thus, a divorced man or woman will be considered unmarried. Woman's fecundity will be highly valued instead of their chastity. (l) A marriage is a long process beginning from courtship, love, formal marriage, ritual of exchange/ reciprocal compensation through gift or prestation and other goods, and final ritual of separation (*nuse-phuma*) and if this process remains incomplete, the father's right over the offspring born from such marriage union will not be established as his lineage members and the offspring will be under the control of maternal uncle.³³ (n) Sexual relation or marriage between immediate relatives (*kai-phek*), particularly between parents and children and between siblings, is forbidden, and those who indulge in such relation should be separated from clan (given new clan name on request if community wants), isolated from society (left in dense forest or uninhabited lands, deserted places) and if they have already given birth to children, those children known as Kai-sodhoksa should be divided equally to mother and father by their consent³⁴. Marrying outside of clans and moieties or exogamy should be practiced for the well-being and secured survival of

33. Abundant literature are available on Limbu marriage customs (Yakthung mekkhim thim) that expatiate ancient marriage customs to recent ones. For examples, some of them are Chemjong 1961, 1966; Jones and Jones 1976, Jones, Shirely K. 1976, Subba, A. 1989, Yakthungba 1992, Shreng-Limbu 1993, Subba, C. 1998/1995, Kainla 2014 (*Pajaiba Mundhum*).

34. The narrative of Tetlara Lahadongna (F) and Sutchhuru Suhangpheba (M), sister and brother, is one of the key component of Mundum which depicts at some length about incestuous sex and consequent biological degeneration (long-term negative eugenic consequences) and social disorder. See Kainla 2014 (Lahadangna _Suhangpheba Mundum), Shreng-Limbu 1992, Phago-Pandhak 2003;

the concerned kin groups³⁵. (o) Affinity should be established and marriage between affinal relatives should be promoted. (p) Marriage between the members of the same clan will be possible only after eighth generation if clan segmentation or creation of new clan (after performing *saghek kakma* or *kai-phama* ritual) and division of territory take place with mutual consent after the huge growth in number of clan members spreading all over the territory³⁶. The same principle, that is, establishing matrimonial relationship after eighth generation, applies in the case of maternal lineage also. (q) Love marriage is preferred to arranged marriage and arranged marriage is allowed if prospective bride and groom give consent and promise to become faithful to each other³⁷. (r) Polyandry can be practiced if the family head and Tummyang permit. (s) A husband can permit his younger brother limited sexual privilege with his wife considering him (younger brother) as eventual wife inheritor. (t) A woman can divorce her husband if she feels or experiences that she cannot lead life with her husband together and the dissolution of marriage follow when she performs the ritual of *Najong* (rising up husband' head by paying compensation through mutual consent at the presence of eminent persons, experts of divorce convention, senior ladies and gentlemen and local leaders). In the same vein, a man can divorce her wife if he feels or experiences that he cannot lead life with his wife together and the dissolution of marriage will follow if he performs the ritual of *Khemjong* (rising up wife' head by paying compensation through mutual consent at the

³⁵. Pajaiba Mundhum (Kainla 2014) delineates the interesting development of institution of marriage outside of kin group.

³⁶. Ancient custom of clan fission is still in practice among Kirat Rai societies (for explanation see McDougal 1979: 130-35). The segmentations of major clans into several sub-clans among Limbu also divulge the prevalence of the same custom. Key informants of this research also share the opinion that clan segmentation/fission and Kipat territory division was in practice in Limbuwan till the last eighteenth century.

³⁷. Mekkhim Phungnawa Samlo compiled by Randhoj Shreng-Limbu (1993) and Hodgson Papers deal at some length about the evolution of the institution of marriage and marriage by choice of prospective bride.

presence of eminent persons, experts of divorce convention, senior ladies and gentlemen and local leaders). They can remarry again in future if they want so. (u) A married woman can abandon her husband anytime by throwing the Yupparung (silver coin given to her at the time marriage ceremony with promise of sincere treatment) back to her husband at the presence of family members and distinguished persons and go back to her natal home. She will be considered unmarried woman.

- (xix) A family head, with the consent of clan members, can adopt and integrate any person including his/her family outside of clan group or cultural group performing Chokphung Thim (amalgamation ritual) and persons thus integrated into a clan will be counted as descent of the adopting clan. They will have the same rights and obligations as of the members of the adopting family and clan.
- (xx) Serious concerns should be shown and special services should be delivered to desperate people like orphan children (*chundzi-yechchha*), widows or single women (*memeduma*), the aged without care-takers (*hondokpa*), and persons with disability (*ingekwa-sorekwa*). Presence of the state and society is justified only by the delivery of justice to such people.
- (xxi) Mediation and negotiation should be employed as better ways of settling disputes and dispensing justice as mediation and negotiation better use social/kinship networks, linkages, resources and cultural leverage and build new alliance of conflicting parties and forces.

Code of Political Affairs

- (i) Sawa Yethang³⁸, representative leaders of eight republics belonging to diverse groups of people should govern (exercise

³⁸. It is a primordial governing institution of eight great leaders/rulers. The term 'hang' is understood as 'king' today, but some episodes of Mundhum and oral Yakthung history reveal that 'hang' was wise leader or ruler elected by the people almost every year or every two or three year to rule the country or republic. Most compilations of Mundhum deal to a great length about Sawa Yethang and Pegi Phanghang. It can be assumed that such political structures were popular and effective till the beginning of first millennium.

executive powers) collectively, maintain social order and manage the affairs of confederation of eight republics. The country (*den*) should be governed collectively by enlightened leadership according to Yetchham Thim (code of Sawa Yethang and Pegi Phangsam).

- (ii) Pegi Phnghan, nine spiritual/intellectual leaders, should accompany Sawa Yethang and assist them in managing state affairs and make crucial decisions about religious affairs. They should provide spiritual guidance to the people and specialized services (performing life cycle rituals, clan and community rituals; officiating festivals and ceremonies; offering health/healing and educational/technical services and so on) to the people in need.
- (iii) State and religion should be separated and autonomous (two separate institutions: Sawa Yethang and Pegi Phanghang) and religious institution (Pegi Phanghang) can play advisory role to the state (Sawa Yethang), complementing each other.
- (iv) Institutions of council (*chumlung*), convention/conference (*chumbho*), forum for deliberations/ assembly (*yebhanglung*), security board (*yakchum*) should be kept alive and active to make the governance efficient, participatory, inclusive, fully democratic devoted to welfare, common prosperity and elevating dignity of people and various kinds of services like health care, education, security, justice delivery, protection of helpless and disabled (*chungji-yachcha, ingekwa-sarekwa*), spiritual enlightenment, cultural promotion, etc. effective and meaningful.
- (v) Yethangdingsa (descendants of Sawa Yethang), being self-legislating, self-executing and self-judging people (*tentumyangsa-pantumyangsa*) should formulate laws and policies for maintaining social and political order; attaining community solidarity, common good and prosperity; strengthening justice dispensation and enabling people to bring the state mechanisms under their control and develop just state institutions.
- (vi) Sovereignty (*khamukse:p*) and independence (*cho:kyum*) of the country should be defended by the government (*yukpho*) and peoples (*yethangdingsa*) and citizens (*tencha*) alike.

- (vii) Confederation of eight republics should strengthen self-determining autonomous territorial units to make services of the government universally accessible to and available at the door of the people and at the same time make unrestrained basic human and social/collective rights and freedoms realizable.
- (viii) Extensive and intensive systems of consultation, deliberation and seeking consent should be embraced and emphasis should be laid on 'procedural fairness' (*seseba pelam*) and 'background fairness' (without discrimination, exclusion and prejudice on any ground) for decision making and for the convergence of diverse, sometimes conflicting, opinions and interests into a desirable goal or common good, procedures like '*sunā ingdang*' (forged consensus or convergence of various, rational opinions/ideas for desirable goal) and '*waya ningdang*' (creation of shared, reasonable interests out of diverse, even conflicting, interests aimed at common good) should be rigorously followed. The state should be run by the spirit and norms of convergent procedural democracy³⁹ (*sunā-ingdang waya- ningdang yobhothim*) for the attainment of common good and realization of desirable goal of all.
- (ix) Representatives ((*pangmi /sedzo?ingmi*)) should truly represent the interests, opinions, aspirations of group or people they represented. They should be responsible to the people. People can elect, select, instruct, control and punish their representatives and rulers (*Sawa Yethang*) as needed and representatives are bound by issues and obligations, not bound by time or certain duration of tenure and rulers are constrained by obligations.
- (x) Yakthung spiritual values such as faith on Tagera Ningwaphuma (supreme goddess), Yobadangma (earth goddess), Sammang (pantheon of divinities/ supernatural entities), Sam (souls/spirits of both living and dead), nature, and heritage and their

³⁹. Concept of procedural democracy is relatively a new idea. Quite interestingly, some references of this concept are found in Mundhum that indicate that such democracy was practiced in ancient society. Some conceptual terminology referred here is borrowed from Lesley A. Jacob 1997: 25-27.

- cosmovision should be respected, sustained and promoted and transgressions of any sort on such values is a serious crime⁴⁰.
- (xi) The values, norms and principles of communitarianism (*sanglup-itthili*) and collectivism (*parup-itthili*) such as cultural integrity, spirituality, morality, equality, deep attachment to land and natural resources, reciprocity (*abhanglum*), solidarity (*thikhum thikthak*), common good (*kaktoba nowa*), justice, dignity, autonomy (*i:tyongba*), community well-being (*lupwaba aplung*), clean or unsullied government (*sangsangba yukpho*) should be safeguarded and sustained⁴¹.
- (xii) *Self-interest should be subordinated to community or collective interests and petty interest should be sacrificed in favor of larger interest in community or society. In the same vein, individual rights (thikkappa uk) and freedoms (choyumding) should not be permitted to overrun or undermine collective rights and freedoms as individual rights are realizable and enjoyable in community or society of which s/he is a part and fully protectable in the virtuous polity (sangsang yukpho) founded on community-centered politics (sa:nglupmiba hangdhim).*
- (xiii) Communitarian moral virtues (*sejolo*) like altruism (*phaimo*), compassion (*lungduk*), benevolence (*hanglungwa*), benign end (*nu tage-takmi*), righteous means (*nu pege-pekmi*), piousness

⁴⁰. Christian aggression on Hindu faith or Hinduism are taken seriously and penalized by the country code and authority of Nepal, but the irony is that Hindu aggression on indigenism or indigenous faith is always denied by the authority.

⁴¹. The spirit of communitarianism and collectivism is expressed in Tongsingtakma Mundhum in this way: *Sawara sase yethangding sase* (O! progeny of Sawa Yethang) *Khamjiri sase khambongba sase* (O! progeny of soil/earth) *Lungjiri sase lungbongba sase* (O! progeny of stone/mountain) *Alla, sawa pogi ang yetha pogi ang* (Now, we as a whole get together and rise/advance) *Hukso tangi ang tange tangi ang* (making harmonious movement of hands and feet at smart pace) *Ningkuwa kusik nachhing pogi ang* (swarming like a *Ningkuwa* [locust?] bee) *Namdhing kusik kapsang pogi ang* (being together like colors of rainbow) *Karangwa kusik timphk pogi ang* (making row like *Karangwa* bird [*Anthropoides virgo*] while in distant flight) *Apmen kaknura kuet kaknura* (surmounting the barricades and obstructions) *Sanglang pegiro angling pegiro* (let us start a virtuous journey with harmonious steps) *Wasa pegiro tholam pegiro* (we together make upward movement) Source: Kainla 1996, Shreng-Limbu 1992.

(*samyo*), well-being and security (*aplung tangsep*), gradual progress (*changhi thobo*), deep solidarity (*yetkap - phangkap*), virtuous path (*sanglam*), courteous treatment (*lamla:ma*), cooperation (*lakkappa*) and other benevolent qualities should be promoted, cultivated and sustained through various traditional institutions.

- (xiv) Unity and solidarity in a community/collectivity should be maintained for success, accomplishment, and fulfillment of attempted endeavors and gain from opportunities and political power⁴².
- (xv) The practice of alliance (*idzum/chumding*) should be retained and fostered as 'it is the source of all influence', means of 'conflict resolution' and 'political success', 'the standard of measure of social mobility' and 'the sign of social success', which 'leads straight to prosperity'⁴³.
- (xvi) Participation women (*yakla suhangma*) and men (*tutu tumyang*), adolescent girls (*sisa menchhing*) and boys (*nali thangben*) on equal terms and in proportionate number should be made mandatory for the legitimacy of decisions. Representation in any institution should be governed by the principles of gender parity. Biteral descent system should be retained to foster gender equality and community solidarity.

⁴². *Khahun* (instruction of sage Sirijanga) emphasizes on cooperation, consensus and unity/solidarity for gaining and retaining power which is expressed in this way (Chemjong 2003/1966): Langbe nugara wayem lo (if leg/thigh is strong, river can be crossed) *Phaktang tangara singbang lo* (if shoulders are harmonized, trunk of a tree can be carried) *Langben tanggara lang nu ro* (if stepping is perfect, the dance will be better) *Ingdanf nugara thum pa:n lo* (if deliberative procedures are good, the conclusion will be compelling) *Chumlung nugara adhumlo* (if alliance/organization is perfectly maintained, power will be retained)

⁴³. The concept referred here is borrowed from Philippe Sagant (1996:42) whose proposition is based on Mundhum, documentary evidences and field observation.

Environmental Code

- (i) Justice should be delivered to all animals, plants, birds, water/ rivers, not limiting to human beings as they all have souls; experience pain and pleasure, sorrows and happiness and rise and falls. Hurting them or cause any damage to them or failing in accepting liability to them is to perpetrate and perpetuate injustice to them⁴⁴.
- (ii) All natural entities should be treated humanly and equally and cruelty towards and annihilation of living beings like animals, birds, insects, fishes, trees and other living organisms and non-living things are punishable by up to death penalty depending upon the nature and severity of offence or crimes⁴⁵ committed.
- (iii) All aquatic plants and animals should be protected and well preserved to make the sea beautiful and perfect, water resources should be well preserved to sustain life on earth, birds and wild animal should be protected to let the forest beautiful and resourceful, and forests, ponds, lakes, grasslands should be preserved to make earth beautiful and life sustaining.

⁴⁴. Justice to animals, birds and aquatic animals and other ecological entities are thousands of year old esteemed concept in Mundhum (Padzaiba Mundhum, Lahadangna-Suhangpheba Mundhum and others), believed to be necessary for the maintenance of harmonious relationships in the nature (*chai:t*) or universe (*simiklung*), a basis for the genesis of the notion of bio-centric equality.

⁴⁵. Mujingnama Kheyangnama Mundhum, Lahadangna- Suhangpheba Mundhum, Pajaiba Mundhum, and Luplinama Adannama Mundhum contain elaborate laws regarding human relations with natural objects. Several episodes of Mundhum deal in some detail on how Injustices were perpetrated against faithful dog, sincere owl and other birds and other animals and plants, what were the consequences (social pollution to environmental pollution) and in what ways those injustices were addressed. For details, see Kainla 1994, 2014 (four volumes), Shreng-Limbu 1992.

- (iv) All human beings should keep environment (*wayam-chegam*) at the core of their actions and maintain balance in eco-systems⁴⁶. As indiscriminate destruction of trees, forest, birds and animals leads to the destruction of destroyers themselves as well as of society/community, community or society should take initiative to punish the offenders. Offenders of such crimes should be fined as per the loss and should be expelled from the society/community (*sangchum*) and from the country (*den*) as well, as a preventive measure for future.

Penal Code⁴⁷

- (i) *Samba:n* (punishment) is a must for wrong doing or evil actions⁴⁸ and committing crimes or perpetrating injustices for realization of corrective justice, holding offender liable to victim for the loss or injury, material or non-material, physical or emotional/moral. *Samban* may be of various forms ranging from corporeal punishment (*thaklinggembera samba:n*), compensation/ reparation (*yolem*), corrective measures such as social isolation or separation and wealth confiscation depending upon the nature, severity and frequencies of crime.
- (ii) Protection of life-flower (*netti-phung*), life like flower, is the primary duty of the state, society or *community* and each

⁴⁶. For example, Hunters have to worship hunter divinities (*puN sammaN*) before hunting (*sawa yukpuN*) and should pray for getting favour for abundance of hunted wild animals and birds to keep eco-system balance. Hunters maintain optimum alertness to take care of environmental protection for avoiding wrath (exhibited in the forms of landslides, soil erosion, flood, depletion of water resources, fertility loss of soil, wildfire, epidemic, unnatural deaths and other natural calamities) of forest divinity (*tambhuNna*).

⁴⁷. Most provisions mentioned here are based on Mundhum, some on published works and some are abstracted from the notes of key informant interviews and focus group discussions carried out in the field research.

⁴⁸. Mundhum of Suhangpheba and Lahadangna reveals that the concept of good and evil and punishment (*samba:n*) for evil acts evolved during the early age of Khambongba-Lungbongba (sons and daughters of earth or indigenous peoples) when civilization was evolving. See Kainla 2014, Shreng-Limbu 1992, Subba (Pondhak) 2001.

individual and those who resort to elimination of life, by intention, should face elimination of his/her/their life (capital punishment) as just punishment. Principle of 'blood for blood and life for life' should be followed to restore justice.

- (iii) In course of making judgment in society, a norm that 'no one other than the affected from injustice can punish the criminals, settle a quarrel, judge a wrong' also should prevail⁴⁹.
- (iv) Corporeal punishment such as slapping, hitting by sticks or batons, whipping, tying hands and legs, physical labor can be imposed for minor offences and deformation of limbs, capital punishment, slavery can be enforced for serious crimes and some measures of retributive justice can be adopted for redress of past wrongdoings, offences or crimes and deterrence of future wrongdoing or crime.
- (v) Criminals, sinners and wrong doers should be eliminated in different way and through various measures, as they are the persistent source of injustices and oppressions. Even violence ('spilling blood, compensation and slavery') is justifiable to redress the injustices and oppressions⁵⁰.
- (vi) For the realization of corrective justice, offenders/criminals should be meted out with punishments like paying respect to offended/victim with the offering of meat and liquor and money and asking for amnesty (for ill-treatment, disrespect, slandering, defamation, lying, etc.), keeping in confinement (in remote, inaccessible area) or social isolation (deserted area, thick forest, distant cave, etc.), imprisonment (*pungla*), coercive physical labor, expulsion from family and clan group, rendering apportioned services, fines, compensation, reparation,

⁴⁹. For conceptual clarity, see Sagant 1996:38.

⁵⁰. Philippe Sagant states: "Violence is the concrete expression of religious concept, the life force for each household head (of Yakthung). It is the part of Nahangma, the war goddess, which each man has within himself, in the right shoulder or on top of the head. It is stamp of the divine in man, the clearest sign of his humanity. Violence is life. In social life, the forms this violence takes have apparently become institutionalized. There are three ways to obtain the same effect, socially speaking: spilling blood, compensation and slavery" (1996:39).

restoration and other financial, physical and psychological penalties.

- (vii) Violators of cultural code, if they are institutions they have to bear the cost of loss and restoration, pay compensation and make financial reparation; and if they are individuals, they should be fined, physically punished, expelled or excluded from family, clan and community and left in mountain caves or thick jungle where ferocious animals live or roam never allowing to return depending upon the nature and extent of violations.
- (viii) Wealth (*kundhe*) of those who commit economic crimes should be confiscated and be used for the common good of the community/society or religious functions where the crimes have taken place. The limbs of the criminals who commit the crime of theft, looting and robbery using particular limbs should be made deformed or useless and they should be separated from the families or kin and their property accumulated in these ways should be confiscated.
- (ix) Penalties for sexual offenses range from compensation, felicitations to victims to fines of *certain* amount; imprisonment; exclusion or separation from family, clan and community; social isolation. Incestuous relations, as defined by sitting judges (*khasenlo:mba/ma*), should be prohibited and those who establish or maintain such relations should be separated with their children if they have and be made them to live in different places and the children so born should be given new clan name.
- (x) *Penalty* should be imposed on those who committed the crime of environmental pollution and destruction equal to the amount of costs of pollution and destruction as revealed by the cost assessment.
- (xi) The council of judges (*khasenlonba/ma*) should make decisions about the nature, type and extent of penalty taking various factors, conditions and situation into consideration.

Judicial institutions and procedural fairness

- (i) Khasen-Khara Chumlung, the council (*chumlung*) of judges (*khasenlo:mba/ma*), will dispense justice, which comprise Tentumyang (leader/leaders of the country or a certain territory),

- eminent persons (*pantumyang*), representing *ngamuksam* or five omnipotent entities- *mi* (fire), *chwa* (water), *surit* (air), *lung* (stone/substance) and *kham* (earth/soil) and public wisdom and other selected Sanglup Summiba/ma (community chief)⁵¹.
- (ii) Such customary judicial institution- Khasen-Khara Cumlung will remain active in each village (*pangbhe*), province (*khamkhu*) and at the centre (*lummo*). Village level Khara Chumlung will deal the cases of the concerned village and resolve conflicts. Provincial level-Khasen-Khara Chumlung will hear cases of those where concerned parties are from different villages. This institution at the centre level lay down principles and procedures of justice dispensation and monitor whether or not justice has been realized.
 - (iii) Procedures of justice dispensation should be fair (guided the norms and spirit of equality, equity, reciprocity and non-discrimination) and should ensure that justice is accessible, available, affordable to all; speedy and culturally sensitive; and judges should be wise, impeccable, impartial, austere, disciplined and tested in dispensing justice⁵².
 - (iv) Legal/criminal proceedings against accused should be brought in the grand meeting- *lachumlung namchumlung* (meeting as eternal, clean and impartial as moon and soon) of Khasenlo:mba/ma (judges M/F) and the proceedings should be open and anyone can observe the proceedings.
 - (v) Criminal/legal proceedings should be opened in a court (*khasenhim*) or platform made of stone or wood or convenient, accessible place for accused, relatives and neighbors of accused, witnesses, mediators, distinguished persons of the locality from where the case was registered. Judges can ask anybody, apart from witnesses, participating or observing the proceedings and adopt different methods or procedures deemed appropriate to find the truth and make sound verdict.

⁵¹. Mugaplung Khagaplung Samba is described as earliest expert of customs/ customary laws and a judge who was accessible and available at all time, everywhere to provide justice.

⁵². Some interesting discussions on traditional judicial institution and qualities of judges are also found in Chemjong 2003/1967:31-42.

- (vi) Oaths (*chemetthik*) and ordeals (*khamlung manghek*) should be used/ practiced for finding facts, collecting testimonies and evidences, justifying or falsifying accusations/charges and finding truth, distinguishing the acts of justice and injustice and ultimately making a sound judgment.
- (vii) Oath should be taken in the name of supreme goddess (*Tagera Ningwaphuma/Yumasam*), clan deities (*Thebasam, Kappoba, Tungtunge, Payamlungma*, etc.) powerful ancestor (*Hangsam*) to speak the truth and present evidences touching Shambhok (a kind of sacred grass, *Cynodon dactylon*) and Timiklung-Tadaklung (a kind of crystal stone), briefly known Samboklung, fire, water, and soil. Khara Cumlung can prescribe various methods or processes of ordeal to the accused to prove himself/herself innocuous.
- (viii) Chumlung of judges, community elders and Yethangdingsa-self-legislating people can simplify the procedures of justice dispensation and make procedure suitable to the parties concerned for better realization of justice with no need of appeal.
- (ix) Emphasis should be laid on mediation, arbitration, reconciliation and compromise as appropriate mechanisms to resolve conflicts, disputes and differences, not only as a measure of minimizing lawsuits in *Khasen-Khara Chumlung* (council of judges), or avoid litigations but also as a way of establishing social harmony and order.
- (x) Khasenlomba/ma (M/F) should have mechanisms to get information before the unjust acts happen and should intervene in time to stop such acts. They should alert the government (*yukpho*) and society (*sa:ngdzum*) to root out the root causes of injustice and monitor the remedial measures adopted by the government and concerned parties for the recuperation of harms and losses inflicted by injustice.

Customary Laws and Institutions of Middle Ages

Middle ages have been considered the period between early first millennium to the time of annexation of Limbuwan into expanded Gorkha kingdom for the convenience of the discussion here. Some episodes of Hindu epics and Mangenna *Mundhum* divulge that some of the Limbu groups came in contact with some of the Aryan groups

entered in South Asia during the period of last millennium B.C. and their political, economic and cultural interactions with the people and governments of Gangeti plains increased considerably by the first half of first millennium A.D. Such contacts might have influenced the customary judicial institutions, laws and rules (procedures). From the available evidences it can be assumed that ancient customary laws and institutions during middleages seem gradually updated, adapted, modified and expanded to face the challenges of the time (growth of states and governments, changes in economy), manage cultural influences and deal with growing complexities of demography and environment. After the overthrow of eight rulers of Yethang-Ladze, the rebel leaders- Tem Limbus instituted Limbuwan, a confederacy of ten small republics, in Yethang-Ladze in the later half of the first millennium and adapted and modified then prevailing laws and rules which was called *Thibong Yakthung Thakyudhim* (Customary Code of Ten Limbus)⁵³. By the time of rulership of Sen kings (1584-1769) when Limbuwan was enjoying full autonomy and Limbus were exercising self-government rights, the code was modified further. The environment created by the expansion of Limbuwan towards the plains of Gangetic belt in the south and the increased contacts with Hindu culture and religion compelled the then lawmakers and givers to review and update. However, the core doctrines of ancient law have been retained in the laws (national code) enforced during this period. The code outlined here and discussions/interpretations presented are based on literature review and analysis of data generated from field research (key informant interviews, focus group discussions, observation).

Cultural and Religious Code

- (i) Great teachings to follow: Sakwa Muing (sacred messages), Sikwa Khahun (great teachings), Peli-pandzang-Saga-ingdzang (divine revelations/analects) and Chinugen Pa:n (great ideas) treasured in Mundhum should be preserved, remembered all the time and members of Yakthung Suwang (Limbu nation) should be guided by them.

⁵³. For details, see Chemjong 2003/1966, 1948.

- (ii) Customs, religion and laws: Yakthung Suwang (Limbu nation) should always retain, continuously espouse and strengthen indigenous religion (*Yakthung samyo*), culture (*sakthim*) and traditions/ customs (*tha:kyudhim*) and practice customary laws (*thekyudhimba kubhang*) and adhere to the tradition of knowledge transmission (*nisam chatchhingma/ se:ma*).
- (iii) Continuation of performances of rituals: Rituals of Tongsing, Mangenna and Nahangma should be performed frequently and regularly following the seasonal cycle and according to the needs of the family and clan so that collective memories will be retained, knowledge about the 'golden age of the past' (*mangtochho-hangtochho*) be preserved, ethno-history revitalized, Mundhum and associated rituals rejuvenated and cultural integrity will be maintained.
- (iv) Sacred instructions to follow: Sikwading Khahun, invaluable instructions of Tagera Ningwaphuma- omnipresent, omniscient goddess, expressed in the oracles of king Mabohang (865-880), should be remembered and internalized by all members of Yakthung nation: (a) Everyone should listen to Siwading khahun (invaluable/enlightened instructions) contained in the Samjik Mundhum (metaphysics/ontology) to be away from sinful/evil acts (*layo-lasot*) and remain safe by the grace of Master creator (*chi:tdangba*), who destroys those who perform evil or sinful acts⁵⁴. (b) Mind and thinking should be virtuous (*sang-sang*), pious (*samyo*) and unsullied (*se-se*). Everyone should keep in mind that almighty goddess (supreme goddess *Tagera Ningphuma* appeared as *Suyenno sunuhangma*, that is, *Yuma* to interact with human beings), always accompanies, protects, directs and punishes everybody depending on one's deeds⁵⁵. (c) One should never oppress helpless, powerless, and deprived (*chungdzi yechchha*). To help (*phama*) others is to help oneself, to let live (*hingma*) others is to let oneself to live⁵⁶. (d) Yakthunsa should keep in mind that understanding

⁵⁴. Chamjong 2003 (1966): 110-11.

⁵⁵. Ibid: 113-14.

⁵⁶. Ibid: 114

(*kusingnipma*) and knowledge (*nisam*) is a great power (*yamba muk*)⁵⁷. They should preserve their indigenous knowledge and transmit to future generations in their own ways and institutions of knowledge transmission. (e) Womenfolk also equally can perform religious rites/functions.

- (v) Directives to adopt: Everyone of Yakthung nation should internalize the following directives (*khahun*) of King Sirijunga (880- 915): (a) If the inhabited lands or territories (*yukphung*) are clean and lovely (*nugara*), they are worthy to live (*yukna ro*) and if they are dirty and polluted epidemic or disaster (*minde*) will surely occur⁵⁸. (b) If soil is good/fertile, it is apt to yield good harvest and when the trade is good/fair, income will surely improve⁵⁹. (c) Good discussion/deliberations (*panthang/pandang*) is like a building wall by stones placing orderly together and lack or inadequate discussion/ deliberations is to invite quarrelling (*khema*) and conflict (*thang*). (d) If the mediator (*ingmi*) is good/competent, compromise (*kam lo*) between contesting parties will be possible, but when mediator is bad, conflict /dispute (*tura*) will surely intensified. (e) If the legs (*langben*) are strong, one can cross the running river (*wayem lo*), if shoulders (*phaktang*) are of equal height, a heavy log can be shouldered (*sing-bang lo*) and if opinions (*ing*) in a meeting is converged (*ingdang*), the resolution and its outcome also become strong and acceptable to all. (e) Respect/service (*hena*) towards mankind always yields a good reputation (*namnuma*)⁶⁰.
- (vi) Observation of life cycle rituals: Life cycle rituals should be conducted as laid down by the ancient customs: (a) Purification ritual of woman giving birth of child should be performed after three days of delivery of a female infant and after four days of delivery of a male infant⁶¹. (b) Step by step rituals of marriage should be performed for the legitimacy of conjugal relationship

57. Ibid.

58. Ibid: 127.

59. Ibid

60. Ibid.

61. Ibid: 27

and children so born. (c) Burial ritual should be conducted after death and three days of mourning period for female and four days for male should observed by the clan members of the dead person⁶². (d) Members of the deceased family should not take salt, oil, ginger and chilli within the mourning period. (e) After three (for female) and four days (for male) purification ritual (*khauma*) should be performed by the priest (*phedangma*) at the assembly of distinguished persons, including affinal relatives⁶³.

Social/Civil Code

- (i) Practicing Yetchham Thim: Yethangdingsa (descendants of Sawa Yethang, the sovereign people) should follow Yetchham Thim (Code of Yethang, primeval eight great leaders) generation after generation and should be practiced without failure even in the adverse situations (violent conflicts, wars, calamities, etc.) to maintain social order, retain communal harmony and sustain solidarity of diverse groups of people.
- (ii) Decoration with obligation: The tradition of equipping men with bow and arrow (*li-tong*), sword (*phe*) and shield (*kho*) to protect themselves or their clan segment or their homeland and women wearing ornaments like ear-ring of various designs (*nelotti*, *nariwet*), specific types of garland (*pondhe*), various types of necklaces (*pona*, *theklukla*, *yang-ichchhi*, *khambrokma*, *phangak*, *phaktang*, *tinglaing*), bangles (*huklangi*), anklets (*langbangi*) and adornments of precious stones (*muding*) and adornments of head (*laloti*, *namloti*) to maintain physical and social equilibrium⁶⁴, apart from equipping themselves by weapons like sickles, knives and swords should be kept alive and pursued rigorously.

⁶². Ibid:48. The difference of mourning period of three and four days for male and female respectively may be recent practice of last half millennium.

⁶³. Ibid: 28-31.

⁶⁴. In Mundhum, need of woman's ornaments is described as to maintain physical and social equilibrium (*tenduri pasanga*) with man equipped with bow and arrows.

- (iii) Prevention of evils: No efforts should be spared to eliminate social evils (*labha eple:k*) that cause social disorder and conflicts and in the similar vein, to control disinformation/misinformation (*pa:nbhot ingbhot*) that pollute and corrupt heart and minds of the people.
- (iv) Sexual relations: Sexual relations will be legitimated only by marriage (*mekkhim*): Marriage can be performed in three ways: (a) Young man and woman come together in some places on certain occasions and sing and dance sharing emotions, feelings and life expectations along proposing to love each other. After some months or years, the wooer and wooed elope from their houses with mutual consent and perform love marriage (*nanumna-khemna mekkhim*). Formal step-by-step rituals of marriage rituals can be completed later. (b) Marriage can also be performed by the arrangement (*naksingma mekkhim*) of parents by the negotiation of matchmaker and formal betrothal. All formalities of marriage are conducted as planned in this kind of marriage. (c) Marriage can also be performed when a girl is made to run away with her paramour from her natal home (*khumna mekkhim*) and agree to enter the house of her paramour⁶⁵. (d) Some amount of money as a compensation for the loss of family members and care taken to her called *pekosama* should be paid as a first condition of marriage. It can be paid even after the performance of formal marriage ritual. Amount of the money to be paid to parents (usually called bride price) can be negotiated (e) A marriage should always be legitimated by the Headman of the village on payment of Rs.1 accompanied by a wooden pot (of about one litre) of liquor as a marriage tax and should be recognized by the community. Such levy should be called the Pharsut Yang⁶⁶. (f) The recognition of a marriage should always be given evidence by the second Headman of the village for which a tax of Rs.1 should be paid. It should be called the Singchem Yang⁶⁷. (g) A sum of Rs.2 should always be paid to the girl's father for the separation of

⁶⁵. For brief discussion, see Subba 1998/1995: 119.

⁶⁶. Chemjong 2003/1966: 58.

⁶⁷. Ibid.

his daughter's family title from him to that of his daughter's husband's family title. It should be called Semui Yang⁶⁸. (h) A marriage, violating the above rules would be announced as illegal and the children from such illegal marriages would be called Khosa or Bustard. They will have no right to inherit their father's property. (i) They can be legalized by following the rule of Samyok Lung Thim (ritual of sacred grass and crystal stone) of the Ten Limbus⁶⁹. (j) Marriage is a long process having several stages to be matured and stable. (k) Mekamma Thim (ritual of establishing union of bride and groom) is the key part of the marriage ritual without whose performance marriage should not be regarded as valid marriage. If groom's father and mother had not gone through this ritual, he will be ineligible to participate in this ritual and Mekamma Thim of father and mother should be performed first to be eligible for Mekamma Thim⁷⁰. (l) Close relatives and community members can offer some amount of money- Panyang during marriage ceremony as a financial support to the family of married couple. (m) Divorce is allowed when marriage union become non-functional due to various reasons, either husband or wife can initiate the process. A divorce from the husband side is called "Khemjong" and a divorce from wife's side is called "Najong". (n) When a man divorces his wife by his own will and if he has not paid the price of his wife in full (not completed the step-by-step rituals), the man will have no power to take his children with him⁷¹. (o) A levirate, marrying or inheriting widow of the older brother by a younger is permitted if the widows accept him as her new husband and the offspring born from such union should be considered as descendants of the deceased brother as well as of wife (widow) inheriting brother. (p) A husband can permit

⁶⁸. Ibid. It is traditionally known as a levy of Nuse Phuma (separation from lineage) or Mellung Phuma (final payment of price) also.

⁶⁹. Ibid: 58-59.

⁷⁰. Yakthungba 1992:28-33.

⁷¹. Ibid.

his younger brother limited sexual privileges with his wife with the consideration that the younger brother is eventual inheritor of his wife (rarely practiced in 20th century). (q) Sororate, marrying wife's sister, is allowed after the death of the wife. (r) A man can marry step mother if she agrees after the death of father provided that father had paid bride price and fully completed marriage rituals and he should observe the ritual of exchanges of gifts (*phakwa chepma*) with affines for their recognition of new relationship (banned by Bhimsen Thapa, Mukhtiyar, equivalent to Prime Minister, during his reign-1806-1837). (s) A man can marry mother-in-law if she agrees or wishes so (annulled during the reign of Bhimsen Thapa).

- (v) Adoption: (a) Any person can adopt son or daughter (*sesi:ngba/ sesi:ngma*) and can become jural father or mother with all liabilities of taking care of adopted child/ children (*sesi:ngba/ ma*). (b) Children born from former husband of wife can be incorporated in the clan of present husband after performing the ritual of Sadapla Epma (seeking permission from maternal uncles).
- (vi) Adultery: (a) When a man's wife lives with her parents and goes away with another man other than her married husband, then the parents of that woman are responsible for her. But, if a woman quits her husband's house and goes away with other husband, then in such case the husband himself will be responsible for her⁷². (b) If a wife divorces her husband, she should refund her price to her husband in front of the court (*khasenhim*). Then she will be declared an unmarried girl and will be allowed to marry again⁷³.
- (vii) Incest prohibition: (a) The matrimonial connection between father-daughter, mother-son, brother-sister should be prohibited; (b) There should not be any marriage between a step-brother and step-sister; (c) The system of marrying cousins should also be stopped; (iv) No one should break the blood relation from the father side; (d) The blood relation from mother's side should be opened after the fourth generation only; (e) Young

⁷². Ibid.

⁷³. Ibid:60.

girl of a different blood (non-agnate group) should be brought for wives and their marriage should be solemnized through their priest (*phedangma*) and his witness would legalize the girl's status as a legal wife of a legal husband; (f) The children born of an illegal wife or illegal husband will be illegal and they cannot have any right to parental property. They will be under the disposal of their maternal uncle.⁷⁴

- (viii) Status of children: (a) Children born from married couple, who have completed all rituals of marriage, are their legitimate descent and heirs. (b) Children born from divorced wife will be called Khosa. The maternal uncle will be their guardian and they will be under his disposal. It is called the rule of "Kwajani"⁷⁵. Children from the former husband of wife, accompanying her at the time of her remarriage with present husband by mutual consent are also 'Khosa', but are absorbed into a lineage of new husband with the approval of maternal uncle. (c) But if the man does not want his wife and yet wants his children, then he can do so by legalizing the children under the rule of Samyok Lung Thim of the Ten Limbus. (d) The divorced wife will be treated as an unmarried girl and will be allowed to marry again. (e) But if the man has paid the full amount of his wife's price and yet divorces her, then he will have no claim for the refund of his wife's price from his father-in-law. He can take away his children with him. (f) If a divorced wife is married again and first man wants to refund his wife's price from the new husband of the divorced wife, he can do so according to the Tenga-Henchhing Thim, rule of the Ten Limbus⁷⁶. (g) The children of a Limbu either from a Tibetan woman or a Indian woman should be reckoned as the legal issue and should be allowed to inherit his father's property, provided the children of such connection be recognized by a body of meeting (*chumlung*) represented by members of the Ten Limbus⁷⁷.

⁷⁴. Ibid: 27.

⁷⁵. Chemjong 2003/1966:59.

⁷⁶. Ibid.

⁷⁷. Ibid:69.

- (ix) Chokphung thim: Conversion of non-Limbu into Limbu, non-clan members into clan members, war prisoners or conquered peoples into Limbu race can be done observing Chokphung Thim, the sacred ritual of absorption or integration.⁷⁸
- (x) If a member of the Limbu family commits an offense, which separates from the rest of his family, then he should be accepted again in his family by performing a function of purification of Samyok Lung Thim, a ritual of repentance, confession leading to acceptance⁷⁹.

Code relating to land, natural resources and economy

- (i) Land and territory⁸⁰: (a) Lands of ancestral territory (*khamkhu khamlek*) should remain under collective ownership and the boundary of such territory can be marked by a standing stones, stone mounds, stone circles and stone pillars or marks on the rocks. Ancestral territories should be identified by the sacred places of ancestors and are demarcated by rivers and ridges. (b) Collective ownership of land of Yakthung Ladze (Limbuwan) is inviolable, inalienable, and non-transferable. (c) Territory can be divided to clan/population segments for the convenience of use and agricultural activities and land should be used collectively by corporate clan segments according to rules set by council (*chumlung*) of clan/population segments. (d) Wetmiba, persons whose father is not known, who is also known as *ltthungkemba* (tall person of the land of bushes) or persons living maternal uncle's house, do not have the right to own collective/communal land (later called Kipat). (e) The long-held custom that the lands of Limbus under collective/communal ownership are inalienable, non-transferable and non-sellable should be retained and respected. (f) Production activities on lands and pooling resources from natural endowments should be done collectively by clan/ population

⁷⁸. Chemjong 2003/1966: 60-62, Kandangwa 1994.

⁷⁹. Ibid:55, 63-5.

⁸⁰. Customary laws outlined here are based on pre-historic and historical trend of development of land tenure system in Limbuwan.

segments and these products or resources (gifts of nature) should be equitably shared by maintaining the spirit of reciprocity, complementarity and unity. (g) Exchange between the people of highland and lowland of their produce should be done fairly and cooperate to meet the needs of each other. (h) If the collective agricultural activities in large areas with a huge number of people become unmanageable and inefficient and distributive complexities arise, the land can be fragmented into certain patches and allotted to small groups of clan segment or families/households for usufruct purposes. (i) One should erect a pole with stone hanged on the land claimed for ownership or restrict access of others on such patches of land and *Chumlung* should be held to resolve the issue of ownership. (j) High yielding seeds of crops should be protected and agricultural activities should be promoted. (k) Emphasis should be laid on the development of better tools and methods of agriculture for higher production. (l) Knowledge and skills of agricultural development and natural resource protection and management should be preserved and shared widely for the benefit of the concerned communities. (m) Community members should extend support for agricultural activities to those families who are in distress due to illnesses, diseases and affected by disasters and are short of human resources to carry out such activities in time. They should also extend various kinds of support to those who are constructing their houses. (n) Exchange of labour in relation to agricultural activities can be done between corporate kin groups cultivating separate plot of land. (o) Land and agricultural management should be done in such a way that never let to occur the scarcity of foods and beverages (*chamending thungmending*).

- (ii) Natural resources: (a) Leaders/rulers of the ancestral homeland territories should protect, control, preserve and manage the utilization of natural resources including rivers, mountains, pasture lands, grazing fields; ponds, lakes, wetlands; forests; wild life like elephant, rhinoceros, tiger, bear, wild cow, wild buffalo, deer, blackbuck, antelope, musk deer, mountain sheep, etc.; birds such as hawk, falcon, starling, lophophorus; rock-bee; subsurface minerals and treasure trove and so on of the

wider areas under their governance. (b) Head (*summiba/ma*) of the corporate clan segment should control, protect, preserve and manage the utilization of the lands and all kinds of natural resources of his clan territory. (c) Each village should allocate certain areas of forest to meet the necessities (firewood, timber, fodder, grass, etc.) of the people. (d) Leaders/rulers of the ancestral homeland territories should collect tusks of the elephant, horns and tough skins of rhinoceros, horns of wild cow, antlers and hides of deer, hide and internal organs of tiger and bear, Yak tail, skins of mountain goat and sheep, and musk and skins of musk deer and keep them in a store safely for the use in religious ceremonies, cultural festivals and special occasions as well as in medicine preparation and fort decoration also. (e) The leaders/ rulers also can adapt and enforce customary hunting and gathering rules and regulate extraction of minerals like iron, copper, gold, mica, lead, precious stones, etc. (f) No one should be allowed to destroy forest, extract surface and subsurface minerals and materials and pollute environment and such acts should be considered crime against community. (g) Women will have a preferential access to natural resources.

- (iii) The agrarian law of Limbus⁸¹: (a) After clearing the forest for cultivation, one should not immediately start agricultural activities. One day should be observed for the worship of mother earth (*yobadangma*), forest deity (*tambhungna*), nature divinities (*kui kudap*), crops divinity (*sigera yabhungekma*) asking for their blessings. (b) Cultivator should not work in the fields for four days after the first rumbling noise of the Thunder in the month of February, the beginning of the new year and perform worship of the nature divinities praying for abundant harvest during that period; (c) No cultivator should work for four days after the day when the first storm blows, or rain falls for the first time, of the year and perform religious activities to avoid natural calamities and disaster. (d) A special day each should be observed for the propitiation of nature divinities for

⁸¹. Adapted from Chemjong 2003 (1966):68-69.

the first-time hailstorm, first fog which covers the ground and first thunderbolt. (e) When a man buys a horse, he should not work in the field on that day so that his horse will remain unhurt. (f) A day of marriage ceremony should be observed. No one should work in the field on that day. The day should be spared for the blessing of the new couple for long conjugal life and prosperity and participation in marriage feast. (g) When a child is born, one day should be observed for fasting and prayer should be offered to god for his/her safety; no one should work in the field on that day. (h) When a domestic animal bears a calf or kid or pig, one day should be observed and no work should be done in the fields.

- (iv) Levy on land: One-tenth part of the income of a land should be paid to the king as land revenue⁸².
- (v) Animal husbandry: Animal husbandry should be promoted and sheep farming should be done at highland pastures and flock of goats, cows, buffalos and horses should be reared in mid-hill and high hill grazing fields. Transhumance should be practiced depending upon the ecological conditions of seasonal cycle and long distance access to grazing lands should not be restricted.
- (vi) Private property: (a) Property (*yangsa*) earned from remuneration (*nail-kudzem*) of specific services or labor and exchange of gifts and various kinds of rewards or prizes will be private property of the earner. (b) Surplus (*sep*) of products of the apportioned land to a collectivity can be divided among the members by collective decision and property so acquired will be individual private property of each member. (c) The share (*lak*) of the agricultural produce and portion of sales of fowls and cattle reared by the family that goes to the purses (*pasyang*) of daughters become daughters' private property. (d) Wealth (*kundhe*) generated by specific skills and occupations by women (weaving clothes, carpets, etc.; making yeast cakes, preparing varieties of liquor and selling them, raising chickens and pigs and so on) will be their private property. (e) Income

⁸². Ibid: 56.

(*indhak*) acquired from specific skills and occupations like basket weaving, earthen pots making, carpentry, crafts, metal works, etc. will be private property of professional groups or members of the group. (f) The wealth generated from cash economy will be the private property of the earner.

- (vii) Special occupational zones⁸³: Traditional occupations should be protected and promoted. Special occupational areas such as Thegeyungmi (place of cane splitting), Negeyungmi (place of mat making), Sappoyungmi (place of basket making), Singkeyungmi (place of carpentry), Lungkeyungmi (place of stone works), Phusikyungmi (pottery), Phenkedhak Pangbhe (village of metal works), and other places/ villages of occupational activities should be developed and each person should be equipped with skills for a promising career.
- (viii) Trade and commerce: Trade (*lenghang*) and commerce (*lengjik*) should be promoted for wealth (*kundhe*) creation. It can be conducted by an individual, by collectivity or by a state but should not undermine the community values and spirit of sharing, cooperation, reciprocity, non-discrimination, non-exploitation and fair dealing.

Code relating to State Affairs

- (i) Republican system: Age-old republican system of governance should be retained and strengthened.
- (ii) Elected rulers and legislators: Rulers/leaders (*hang*) and representatives (*pangmi/ sedzo-ingmi*) as legislators should be elected every three years from certain number of people (*tenchha*) living in a particular area (*tengap*) in each republic (*yobhodhim*).
- (iii) Diversity of representation: Representatives should include every racial or ethnic group (*suwangmi*) with gender parity.
- (iv) Quality of rulers and representatives: Leaders/rulers and representatives should be wise, mature, impartial and well known for their virtuous services.

⁸³. Description of occupational zones is found in Tongsing Takma Mundhum. See Kainla 1994.

- (v) Collective leadership: Republic should be governed by collective leadership. Rulers should be guided and inspired by the customary values⁸⁴ of collectivism (*parup-itthili*) and communitarianism (*sanglup-itthili*).
- (vi) Recall of representatives: Rulers and representatives can be recalled any time by the citizens/voters of their constituencies if their performances are not found satisfactory and can also be punished by depriving representation by electors for their wrongdoings and immoral acts.
- (vii) Review and Evaluation Meeting: Meeting of Tumbugenyebhang (legislature) should be held every six months to review the performances of the rulers and a meeting should be organized annually to evaluate functions of the government (*yukpho*).
- (viii) Grand Meeting for Overall Evaluation: A grand meeting (*lachumlung namchumlung*) of rulers, representatives, eminent persons and community chiefs should be organized every three years to evaluate the performances of the governments of confederacy, regions and villages.
- (ix) Confederacy: Small republics should come together and build confederacy (Yakthung Ladze/Limbuwan) to meet the challenges of internal security and effectively counter the aggression of large country or powerful kingdom or empire retaining some autonomous powers and institutions for themselves.
- (x) Governance in confederacy: Confederacy (*hang-dzumbho*) will have an executive, legislature and judiciary represented by all participating republics to administer and manage the confederated states affairs.
- (xi) Local autonomous units: Self-determining autonomous units of governance should be created at the grassroots level (*yukphungen i:tyang*) to make goods and services of the government and justice available at the door of each households in the locality.

⁸⁴. Values believed to have evolved during the golden age of gods and humans ruling and managing the world together (*mangtochho-hang-tochho*).

- (xii) Participatory and deliberative process: The tradition of procedural fairness in governance should be retained. Accordingly, the processes for making executive and legislative decisions will be participatory (*laklaba*) and wider, effective deliberation, consultation and discussion will take place for convergence of diverse opinions (*sun-ingdang*) and varied interests (*waya-ningdang*) before making decisions at all levels.
- (xiii) Each constituent unit of the confederacy (Yakthung Ladze/Limbuwan) can raise units of army depending upon the resource capabilities in order to maintain law and order, territorial integrity and defend the country from external aggression.
- (xiv) Judicial institutions and procedures: Judicial institutions and procedures of justice dispensation should be reinstituted to adapt with the changing situations for speedy realization of justice. Structural changes can be made in the judiciary.
- (xv) Barriers of justice: Barriers of language, ethnicity, religion, region and gender in accessing justice should be removed and justice should be made accessible universally without obstacles of money, knowledge of the law and legal procedures, social networks, etc.
- (xvi) Participation in justice dispensation: Wider participation of concerned people in justice dispensation process should be encouraged to make judicial decisions fair and just.
- (xvii) Application of indigenous jurisprudence: Indigenous jurisprudence should be the guiding principles while adapting or modifying customary laws, judicial institutions and jural procedures.
- (xviii) Customary laws of Limbuwan: As customary laws and institutions are dynamic and adaptable, Sawa Yetchham Thim (ancient laws of primordial leaders), can be modified in the form of Thibong Yakthung Thakyudhim (customary laws of ten Limbus) to suit the changing political contexts. *Thibong Yakthung Thakyudhim* is flexible, as they are believed to be the construction of the self-governing Yakthung people.

- (xix) The sons of a Limbu family when reach the age of 12 years must learn the art of archery⁸⁵.
- (xx) Every house of a Limbu must give one of his sons to serve the State as a soldier when he reaches the age of 18. His name should be enlisted as Thoksuba⁸⁶ (soldier).
- (xxi) When the number of Thoksubas in a village reaches 300, it must have a Thokpeba or a leader to command Thoksubas⁸⁷.
- (xxii) There should be one Thoktumba (chief commander) to command over five Thokpebas. They should always be ready for any kind of emergency⁸⁸.
- (xxiii) A Thoktumba is liable to get a big plot of land from the king for the maintenance of all the military officers and soldiers. He should keep a piece of land for his requirement and distribute the rest to his junior officers and soldiers and he is empowered to keep or remove any officer or soldier from such military service⁸⁹.
- (xxiv) Soldiers should stay in their own homes not in barrack, but remain always alert to defend the country.

Penal Code⁹⁰

- (i) A murderer should be given a death penalty.
- (ii) A thief's hand should be dipped into boiling water.
- (iii) A mischievous person should be asked to confess his fault before the place of worship.
- (iv) A man who breaks his blood relation should be enslaved or sold.
- (v) A man who breaks his mother's relation should be expelled from the village and kept in cave.
- (vi) Persons committing minor offenses should be scourged.

⁸⁵. Chemjong 2003 (1966): 55.

⁸⁶. Ibid:56.

⁸⁷. Ibid.

⁸⁸. Ibid.

⁸⁹. Ibid.

⁹⁰. The provisions cited here are from Chemjong 2003:56 except the last three provisions.

- (vii) Criminals who pose threats to the member of society/community should be kept in prison (*pungla*).
- (viii) Provisions of ancient penal code should be retained and adapted to the changing situations.

Judicial institutions and procedures

- (i) Hang should head the council of judges retaining the tradition of Khasen-Khara Chumlung, the council (*chumlung*) of judges (*khasenlo:mba/ma*), which comprise Tentumyang (leader/leaders of the country or a certain territory), eminent persons (*pantumyang*), representing *ngamuksam* or five omnipotent entities and other selected Sanglup Summiba/ma (community chief). He can accept the title of Raya or Subba from the kings or emperors of neighboring states or empire.
- (ii) Five Tumyang (eminent persons), who are experts of customary laws and legal proceedings and have good reputation for fair trial and justice delivery, will the judges (*khasenlo:mba/ma*) and members (*pasing padang*) of the council.
- (iii) Such council can be instituted at all levels: village, region and confederacy.
- (iv) Stone platforms will be constructed with the participation of people at suitable places for the open court proceedings and sacred grasses and plants are planted and standing stones or wooden pillars are erected to make the proceedings holy and truthful.
- (v) Customary practices and procedures (proceedings) of justice dispensation can be adapted and employed depending upon the situations.

Customary Laws and Institution after Annexation of Limbuwan into Expanded Gorkha

It is almost clear that customary judicial institutions, laws and procedures for justice delivery of Limbus went through several revisions or adaptations in the first millennium A.D. due to political development, regime changes and increased inter-cultural interactions in this belt of Himalayan region. Their interactions with outsiders were not new phenomena for them. Some evidences evince that ancestors (leaders and the public alike) of Limbus were

in frequent contacts with the people and rulers of China (*Sinyuk*) thousand of years ago and were acquainted with the pre-historic Yellow River Civilization. With the memory of devastating deluge of Yellow River and impression of pre-historic Yellow River Civilization, a substantial proportion of Limbus population started expedition towards Tibet, stayed there for centuries and finally, crossed Himalayas and entered the lands in the southern side of it⁹¹. After some generations, they entered to the plains of Gangetic basin and came in contact with the people and rulers of Gangetic plains⁹². Inter-cultural contacts may also have impacted the customary practices. The large area of Yakthung Ladze under the rulership of Yethang (eight rulers), a legacy of primordial governance institution, changed into Limbuwan under the collective leadership of ten Limbus at the beginning of second half of the first millennium A.D.

Customary practices reveal that Thibong Yakthung Thakyudhim (customary laws of ten Limbus) evolved by the late centuries of first millennium, which was the modified or adapted version of Sawara Yetchham Thim (ancient laws of primordial eight leaders/rulers). In the early centuries of second millennium, they frequently came in touch with Hindu rulers of the south plains because of the expansion and exploration of their territories and 'Hang' were conferred the title of 'Raya', which they accepted as recognition and respect. Kings and emperors of neighboring countries conferred most Limbu leaders/rulers (*Hang*) with the title of 'Raya' and became popular with this title by late sixteenth century. By the early seventeenth century when the Sen rulers brought southern belt of present Nepal, including Morang-Bijayapur of Limbuwan under their

⁹¹. In the Mundhum of creation of earth and lives on it (Chai:t Mundhum), devastation caused by great flood and measures adopted to save lives are described succinctly. The description is also found in Chemjong (1961). A brief reference is also found in Mangenna Mundhum.

⁹². Mangenna Mundhum delineates the difficult, long, inter-generational expedition of Limbus from China, Tibet (*Sinyuk*, *Muden*) to the the Gangetic plains or southern lowland country (*Temen Ladze*) and back to Yakthung Ladze. This narrative is reminded every six months by performing Mangenna ritual by each household.

sway with cooperation of Limbu rulers (*Hang*), they also reconfirmed their 'Raya' title with traditional powers and privileges. Limbus were employed in the administration and courts also⁹³. Some of the Hang were conferred the title of Subba to administer allocated areas by Sen kings also. The traditional collective institution of justice dispensation became more personalized because of powers and privileges attached the position/office by late seventeenth century. This way, changes in or modifications of customary judicial institutions and laws became rapid and by the time of Gorkha conquest they were transformed considerably.

Customary laws

Customary laws of Limbus are known as Thibong Yakthung Thakudhim, the laws of Tem Limbus, which is the remnant of Sawara Tetchham Thim, the laws of primeval eight great leaders. Whenever inconsistencies or ambiguities found in Thibong Yakthung Thakyudhim, one had to resort to Sawara Yetchham Thim to resolve the problems of such nature. It is evident that 'The laws of Ten Limbus' had gone through several revisions in the last one and half millennium. It is almost clear that Limbu leaders had to revise their laws when they came in contact with Sen kings in sixteenth century and accepted the positions of Raya, Subba, Chautara or Ministers since seventeenth century. They had to rethink about their customary laws and practices when their association with Hindupati

⁹³. An example of seventeenth century: King Bidhata Indra Sen, the king of Morang, appointed a Hang named Boajit Rai for the court (palace) of Chanjitpur in 1684 enjoying the Jagir land of his forefathers (Chemjong 2003: 159). Another example from Buchanan Hamilton (1819:148,157): ..king Lo Hang Sen appointed three Kirat (Limbu) ministers of Sering, Chongbang and libang Limbu families of Limbuwan for the administration of his country and placed them in the court of Makwanpur.

kings⁹⁴ of Palpa, Makwanpur and Bijayapur increased and Bahun, Chhetris were allowed to settle in Limbuwan as a result of their frequent contacts with them. They sometimes had bitter relation with Hindu Sen kings of Bijayapur because of their customary practices like beef eating. It is likely that Limbus had to make some compromises in their customary practices to gain power and resources of the southern country. Despite cultural contrasts, Limbu leaders remained powerful top officials in Bijayapur, in some occasions even more powerful than the king, and autonomous rulers of their sovereign territories (10 in number) till 1774. After the annexation of Limbuwan into expanded Gorkha, Limbu leaders had to make several revisions in their customary laws to avoid confrontations with the new government and win favor for strong autonomy, self-government, territorial integration and control over land natural resources. Limbus were guaranteed to own their land and territory (natural resources therein), govern the country (Limbuwan) according to their customary laws, retain their customary institutions and enjoy social, cultural, religious, economic and political rights and privileges conferred by the Lalmohar of 1774 (document of agreement between King Prithvi

⁹⁴. Iman Singh Chemjong (2003: 152-155) provides historical account that king Murey Hang Khebang of Phedap, Limbuwan was given the title of Raya/Rai by Hindu king Bijaya Narayan Raya (1584- 1609) of Morang whose capital was Bijayapur and was appointed as Prime Minister despite his custom of beef eating. As the princess despised Murey Hang for being beef eater, he defiled her. King Bijaya Narayn, being furious, gave death penalty to him. Bajahang Rai, son of Murey Hang, took revenge by killing Bijaya Narayan in 1608 with the support of the force of Lo Hang Sen, the king of Makawanpur. Lo Hang Sen made him Prime Minister of Bijayapur, apart his own autonomous republic and gave him new Hindu name Bidhya Chandra Rai. Thus, Limbu leaders' contacts with the newly converted Hindu kings of the South were almost regular. As regards to 'Hindupati', Richard Burghart (1996: 264) notes: "An early instance of the word Hindu referring to the faith or way of life of a people dates from the late seventeenth century in Makwanpur. The town of Makwanpur, situated between the Nepal valley and the Plains, was chosen by King Lohangga at the turn of the seventeenth century as a place from which he governed the territory extending from Bagmati river eastward toward the Sikkim frontier. It was Lohangga's grandson, Harihar Sen, who in the late seventeenth century claimed the title of Lord of the Hindus (*hindupati*)".

Narayan Shah and Limbu leaders) and Lalmohars (royal decrees), Sanads (royal orders), and Rukkas (official orders/ instructions) issued in different contexts to Limbu leaders of different areas from time to time thereafter. The laws enumerated here represent different ages to most recent centuries and so, some are pristine and some are syncretic ones.

Code relating to religion and spirituality

- (i) Limbus should follow their own religion espoused through several generations exhibited in the deep faith on omniscient, omnipresent and omnipotent goddess Tagera Ningwaphuma, a Mang, also appeared before human beings in the interacting form of Yuma, a Sammang. They should never change their customary belief system to live together with ancestors (*samyuknaden*) happily after death.
- (ii) Limbus can only be saved from spiritual crisis, emotional disturbances, intellectual retardation, impotence of rationalization, and devoid of agency of self-determination if they adhere to their own Indigenous religion.
- (iii) Mang (supreme deities) should be remembered, revered and worshipped all the time, day or night, morning or evening, in home or outside of home, within country or abroad and Sammang (divinities who interact with human beings) and Sammangchyang (retinues of divinities) should be propitiated by organizing various religious functions and ceremonies. Sire, spirits of natural objects as primeval sources of knowledge and power, should also be revered and propitiated from time to time.
- (iv) Divinities such as Yuma Sammng, Khawalung Thakphut Mang (divinity of the house), Hangsam Theba Sammang (ancestor divinity), Kappoba (clan divinity), Akwanama (protector of the house and family) and other clan deities/divinities should be worshipped inside the house and nature divinities (*kui kudap*) like Tambhungna (forest goddess/ divinity), Misekpa (divinity of rain and thunder), Taksangba (divinity of highland/hunting divinity), Khanjdzama (female divinity of lowland), Warakma (female divinity of lake), Wagangma (divinity of river) and others should be propitiated outside of house with due rituals. These

divinities should be propitiated regularly (in every six months) ceremoniously for the health, happiness and prosperity of the family and clan members.

- (v) Each Subba or Householdhead and a person with position of power should perform Nahangma ritual every year to gain valor (*mukkkumasam*), vigor (*hangsam*), power (*muksam*) and raise dignity (*Chotlung*) every year⁹⁵. It should also be performed in time of distress to avoid unfortunate situations.
- (vi) Mangenna ritual should be organized in every six months during autumn and spring for warding off evil influences and gaining good health, happiness and progress of the family members; revitalization of collective memories of ethno-histories; commemoration of the long, inter-generational journey of ancestors; and exhibiting reverence to the sacred land first settled (*mangenna lungdhung*) and a fort first built (*mangenna yak*) to defend the land⁹⁶.
- (vii) Sumsemba Yagrangsing, special religious ritual of three nights and five days, should be performed every three years by clan members together to commemorate ancestors and their contributions; gain good health, happiness, prosperity, perfection; acquire knowledge of cosmology, metaphysics or ontology, ethics, state and laws and subject matters relevant to human life; rejuvenate the love for land and environment and enhance the spirit of solidarity and revive the recollection of glorious days of golden ages of the past (*mangtochho hangtochho*) and retain distinct identity. At least, Tongsing Takma ritual, essential component of the Sumsemba Yagrangsing ritual, should be performed each year to achieve the aforementioned objectives. Nahen Mundhum (Mundhum of envy and jealousy), narrated during Sumsemba Yagrangsing, reminds every generation of Limbu that envy and jealousy (*nahen*)⁹⁷ is the root cause of social disintegration, individual

⁹⁵. For the scholarly discussion on the importance of Nahangma in the life of Limbus, see Sagant 1996: 12-49.

⁹⁶. For discussion on Mangenna Yak, see Subba 1998/1995: 107-118.

⁹⁷. See introductory notes of Nahen Mundhun (Kainla 1994) for pungent discussion on Nahen (envy and jealousy).

as well as collective downfall and eventual misery and it should be brought into control by cultivating indigenous spirituality in each person.

- (viii) Themang Dema, ancestor worship by all clan segments together, should be organized in every twelve years or at least eight times (*yetchhing dema*) in the life of a generation to win blessings of ancestors (*thesam*) for long life, vitality, wealth, clan solidarity and power.
- (ix) Hunters should worship hunting divinities (*misekpa, taksangba, tambhungna*) and offer prayers asking for replenishment of hunted fowls and animals and abundance of game before pursuing hunting activities and after hunting accomplished, they should offer blood and roasted piece of meat of hunted fowl or animal to the hunting divinities soliciting forgiveness for taking life of others.
- (x) The myths of each divinity should be narrated, recalled and shared in each religious function.
- (xi) Sacred sites and objects such as altars (*sangbhe*); supposed places of congregation of divinities; places divinities first appeared, visited and took rest; places and objects Mundhum has described; sacred structures like Yaks (*mangenna yaks, nahangma yak, kusayak-kummayak*, etc.) and standing stones, stone circles, stone pillars and platforms and sacred symbols like Silam Sakma, Sambhok/Samyok, Mijaklung/lung, Nisha and so on should be preserved and protected.
- (xii) Sacred scripture like Mundhum, Khahun, Sakwa Muing, both written and oral versions, should be preserved, protected and promoted.
- (xiii) Phedangma, Samba, Yeba (M) and Yema (F) are the only eligible persons to officiate ritual performances. Phedangma should officiate life-cycle rituals (from pre-birth to death) and Samba should perform special collective rituals like Tongsing and Yagrangsing together with Yeba/Yema and recite Mundhum. Yeba or Yema should perform rituals of unnatural deaths. They all are commonly called Phedangma also. They are priests, shamans or exorcists, mediums, healers, fortunetellers and experts of Mundhum. They all should confine in their areas of their specific expertise.

- (xiv) Phedangma, Samba, Yeba (M) and Yema (F) should be extended welcome by offering liquor with pork (*phaksara lamla*) when inviting to perform certain ritual. They should be given remuneration (*nali kujem*) for their contribution. Parts of the sacrificed animals should also be offered to them.
- (xv) Sacred performers should be respected and materially supported. Each household in the village should allocate small amount of their agricultural produce for the support of sacred performers like Phedangma, Samba, Yeba (M) and Yema (F).
- (xvi) Every member of Yakthung society should defy the replacement or alternative of Phedangma, Samba and Yeba/Yema initiated or enforced by dominant religions and cultures.
- (xvii) Phedangma, Samba and Yema/Yeba should perform Phungsok (graduation) ceremony after completing courses of their learning and practicing and learners should pay tribute to their teachers (*sikwa*) on this occasion to make tradition of knowledge production, sharing, and transmission lively and perpetual.

Cultural Code

- (i) Retention of institutions of knowledge transmission: Institutions of knowledge transmission, diffusion, and construction or production like Phedangma, Samba, Yeba/Yema, Samkelo Kewaphung (music and songs/ lyrics), Lodenhang-Phungdenhang (dance, musical instruments), Palam (lyrical discourse), Tummyang (wise persons / knowledge protector) should be preserved, kept alive and promoted for ensuring cultural survival, heritage conservation, intellectual growth, and spiritual enlightenment. Indigenous knowledge of Limbus should be preserved and protected and should be recognized as their collective intellectual property.
- (ii) Observation of Yokva festival: Every year in March-April before starting agricultural activities, all members of the community/ village should gather at the top of the hill and perform worship of Yobadangma (female divinity/controller of the earth), Khamjiri Khambongsa (first people of the earth), Yabhungen Yabhungekma (female divinity of seeds), and other nature divinities and pray for favorable monsoon, fertility of soil, plentiful crops and avoidance of natural calamities, pests and diseases

and celebrate Yokwa or Yumangkhoma festival (festival of worshipping mother earth/ mother goddess, nature, the cosmos and celestial bodies) for the blooming of life on earth.

- (iii) Celebration of Chasok festival: Chasok Tangnam (harvest festival) should be observed after the harvesting of the crops produced for the first time in a year usually during September-October. Family and community members should celebrate this festival by worshipping Yuma (household goddess) and Tambhungna (female forest deity), Sigera Yabhungekma (female deity who imparted the skills of farming for the first time) and other natural divinities praying for their blessings for good harvest and health and enjoying music and dance events.
- (iv) Himlili festival: After the construction of house and before entering there to live in, a ritual of Himlili (ceremonial entry into a new house) should be conducted and a special drum dance-Himge should performed to save the house from termite and other insects (*mudhak thaknam*) and ward off evil spirits and ghosts (*muyek yetnam*). Clan members and neighbors should be invited on the occasion and a feast should be organized.
- (v) Observation of other festivals: Various festivals of seasonal cycle such as Kakphekwa Tangnam (festival of new year eve), Sisekpa Tangnam (festival of crops planting) should be celebrated each year to revere the nature and rejoice its gifts enjoying foods and drinks and participating in the events of sports (*paklung, li-tong, thak thakma*, etc.), singing songs (*palam, hakpare, sewa samlo*, etc.), dancing (*yalang, kelang*, etc.) and others.
- (vi) Eradication of evils: Evils like sexual anarchy (*so?gen so?ma*), deceit and mislead (*labhak eplek*), intolerance (*naso thappan*), slander/ defamation (*che?ya*), disinformation/ misinformation (*pa:nbhot - ingbhot*), sinful acts/ deeds (*layo-lasot*), offending treatment (*sangdo-eplek*), greed (*khimbrak*), self-centeredness (*khakkhawa/ wengdzang*) bribery/ corruption (*nali che?yang*), and domination/ oppression (*ningghum*) breed and nurture systems and institutions of discrimination (*senchhing-khesing*), oppression, exploitation, inequality, and other myriads of social ills leading to injustices that corrupt societies, disrupt order (*tangdzem*) and harmony (*nadang*), weaken system (*cho:kthim*)

and structure (*kudzo:kcho*). Such evils of Yakthung society should be prevented or eliminated observing due rituals.

- (vii) Participation: All men, women, youths and children should equally participate in cultural celebrations, ceremonies and festivals and no one should be barred from participation.
- (viii) Arts, music and language: Traditional dance (*lang*), music and songs (*samlo*), musical instruments (*pangmung*), folklore (*pangsap*), arts (*cho:*) and other aesthetic objects, and mother language (*ma:ba:n*) and literature (*sapsak*) should be protected, practiced and promoted without hindrances.
- (ix) Use of language: No one should be barred to use mother language in government offices, public interactions and communication, and preparing documents of various purposes.
- (x) Women's freedom of entertainment: Women and girls are free to take part in music, dance, and other entertainment activities and can compete with men and boys in such activities and are free to love men or boys they liked and chosen.

Social/Civic code

- (i) Guiding principles of way of life: Limbus should follow the norms and rules prescribed by Tagera Ningwaphu Ingghang (sacred commands of supreme goddess Tagera Ningwaphu), Sakwa Muing (valued instructions of deities), Siwa Khahun (great teachings of primeval teachers) and Peli-pa:njang Saga-ingjang (directives of wise ancestors/persons) and should not deviated from the pious path (*sanglam*) they have shown.
- (ii) Customary laws to follow: Limbus should follow and practice their own customary laws (*thakyudhim*) containing their customary worldviews, values, principles, code of conduct, which are built on inter-generational, cumulative knowledge and experiences of their ancestors for their survival and well-being.
- (iii) Performance of life cycle rituals: Limbus should perform their distinct life cycle rituals from conception to death in their own ways.
- (iv) Sappok Chomen: Sappok Chomen (womb worship) ritual should be performed before the birth of a child for the safe delivery, and safety of the baby in womb. Close kin and distinguished persons of the locality should attend the ceremony and

Phedangma should officiate the ritual. Pig, chicken and ducks are sacrificed to propitiate different divinities.

- (v) Yangdang Phongma: After three/four days of delivery of a baby, Yangdang Phongma (hanging cradle /naming the child) ritual should be performed for the purification of woman giving birth to a baby and her family members at the presence of family and clan members and community leaders⁹⁸. Phedangma, the only authority of life cycle rituals, should perform this ritual. Phedangma should give the name to the child according to his/her own conventional standards to make him/her full member of the clan (*suma*). A party can be organized on the occasion.
- (vi) Changwa Lekma ritual: Changwa Lekma, the ritual of changing clothes, should be performed after the children come of age. This ceremony should be observed at the presence of clan members and maternal uncles and community leaders. Phedangma should perform the ritual explaining the purpose of the ritual and injecting the sense of adolescence into the mind of the grown up child.
- (vii) Mekkhim Lakma (marriage): Mekkhim Lakma, marriage ceremony, should be performed when the boys and girls are physically and mentally mature. (a) Marriage process begins with pre-nuptial activities. They include young man and woman introducing each other and interacting, sharing feelings, singing and dancing together, exchanging views through songs, courting and loving each other, rendering service by young man to would-be father-in-law's house during agricultural season for days or months living (but not cohabiting) in his house to win parental favor and finally reaching negotiation. (b) Marriage could be of any type: Nanumna Khemma Mekkhim (marriage by free choice), Khumna Mekkhim (marriage performed after girl running

⁹⁸. Some experts of Limbu customs claim that purification of mother giving birth a baby after three days (female baby) or four days (male baby) is a perverted custom not based on Mundhum. They claim that impurity prevails till the ninth day, irrespective of male or female baby. (Chandra Kumar Serma-Limbu referring Mahaguru Phalgunanda, 2010, *Sohraun Rastriya Bibhuti: Mahaguru Phalgunand.*)

away with paramour), and Naksingma Mekkhim (arranged marriage). Marriage ceremony mostly takes place in groom's house and occasionally in other's house also depending upon the situation. It should be officiated by Phedangma (clan priest, who is well-versed in clan's history) at the presence of groom's parents, relatives, neighbors, friends and community leaders. (c) As part of the pre-nuptial negotiation with parents, Pekosama (compensation in the forms of valuables or currency given to parents for human-power loss in the family and guarantee for good treatment towards would be wife, often called bride price⁹⁹) should be offered to the parents of the betrothed girl/woman by prospective groom or by his party. This should be paid without pre-nuptial negotiation also in any type of marriage. (d) Consent of the prospective bride or groom should be obtained by offering Yupparung/ Yuppallung, certain amount of money and valuables like precious ornaments, dress and others to her satisfaction before marriage and during marriage ceremony as a way of maintaining physical and psychological equilibrium between prospective bride and groom through sincere consent and presentation of gifts. (e) A ritual of Inglatapma (making vows) should be performed for the solemn promises to be made by groom for loving and taking good care of wife and by his parents for behaving as close family member/ daughter and providing household responsibilities. Both groom and his parent should also be held accountable for the success of the married life. (f) Mekkam Thim (rites of marriage union), a sacred ritual of

⁹⁹. It has remained a controversial issue among Limbu society and social reformers had argued it was against the spirit of Mundhum. Mahaguru Phalgunanda Lingden, a great reformist and Mundhum expert, launched a campaign to reform Limbu customs and practices that he thought to be detrimental to the progress of Limbu society. Bride price was one among the practices to be reformed. He called a grand meeting of Subbas of 10 Limbus of 17 Thums (districts) on May 1931 and a Satyadharmako Muchulka (sacred resolution paper) was prepared and declared by the meeting. However, the practice could not be stopped with some exceptions as it was associated in ancient unbroken practice of Pekosama (gift of daughter to mother in a small basket hanged over hearth when leaving home with lover to lead a conjugal life) prevalent in Limbu society.

conjugal union, should be performed as the key component of marriage ceremony. It includes Mekamma Mangenna (ritual of glorifying conjugal union and incorporating bride into clan group and keeping safe in groom's *mangenna yak*) to be conducted at the presence of parents, relatives, ladies (*mekesama/menchhyaburukma*) accompanying bride, neighbors, community members and leaders. It makes the bride member of the family. Kelang (Limbu drum dance should solemnize the occasion. The occasion should be rejoiced by singing, particularly singing Phungnawa Samlo by gentlemen and ladies and dancing Yalang (paddy dance) by young men and women. (g) Exchange of gifts, such as Phudong (an animal or a carcass of a slaughtered animal to entertain the guests), Hukwa (special preparations of foods and drinks), Yokthowa (pig or male goat for a meal), Phakha:k (whole body of the slaughtered pig with entrails taken out) and liquor in various quantities accompanied with different types of relishes should take place after marriage ceremony. This process can continue for two-three years. (h) Nuse Phuma/ Mellung Phuma (ritual of separation of married woman from her lineage to be included in the husband's lineage), the final ritual of marriage, should be performed after children are born and married life become stable. Parent should refund the money (bride price) they received with additional money they can provide and close kin should also make their monetary and material contributions on this occasion as a last separation ritual. If this ritual has not been conducted due to various reasons, the children born from such couple become 'Khosa', illegitimate children as slaves (*yok*) without rights to land and descent and fall under the authority of maternal uncle (*kwajani*). Khosa as they come of age can redeem themselves from the authority of maternal uncles by conducting Nusephuma/ Mellungphuma ritual, which their father failed to conduct, a ritual known as Khebja. (i) A husband or wife can divorce if they feel that they cannot lead their conjugal life happily. Both Najong (divorce initiated by wife) and Khemjong (divorce initiated by husband) can be practiced with compensating each other and bearing the cost incurred in marriage. (j) A divorced woman can remarry with any one she

loved or preferred and divorced husband also can remarry to any woman he likes under any kind of marriage: arranged marriage or love marriage. (k) if a man marries wife of another person or if a woman marries the husband of another woman, such relationships are adultery, liable to heavy punishment. (l) Incest, as defined by Chumlung of Tumyang (distinguished persons) and Khasenbomba (judges), should be prohibited and incest couple should be sent abroad and should not be included within the clan. (j) Consensual sex with other than close relatives should not be considered adultery, unless and until it creates family discords and social disorders. Couple under such relation should be given choices for marriage or separation. (k) Traditional rules of adultery developed in the recent centuries should be observed according to decision of Tumyang¹⁰⁰. (l) Levirate (marrying elder brother's wife after death of brother) and sororate (marrying wife's sisters) can be practiced observing conventional rules. (m) A man can marry step mother if she agrees after the death of father provided that father had paid bride price and fully completed marriage rituals and he should observe the ritual of exchanges of gifts (*phakwa chepma*) with affines for their recognition of new relationship (banned by Bhimsen Thapa during his reign- 1806-1837). (n) A man can marry mother-in- law if she agrees or wishes so (annulled during the reign of Bhimsen Thapa as Mukhtiyar, equivalent to Prime Minister). A man can marry any woman of affinal groups with her consent.

- (viii) Death rituals: (a) After the death of person a death ritual (*Yagu-changsiren khajok*) should be conducted following the due processes such as Sam Lammepma (bade farewell to dead person/ask soul of the dead person to leave house), funeral procession (*chesama*), burial rituals (*ipungden thim*), Netyungma (observing mourning), Samsama (ritual of handover of the soul of dead person to chief ancestor (*hangsam*) and finally Khau:ma (purification ritual/ complete separation with

¹⁰⁰ For detailed discussion on Limbu marriage, see Subba 1998/1995, Yakthungba 1992, Thebe 2012.

dead soul). (b) Mourning period (*netyungma*) of deceased children, whose first appeared teeth have not fallen, should be observed one day only and those of grown up children or men and women should be observed three and four days respectively for women and men¹⁰¹. During the mourning period mourners are forbidden to eat salt, oil, ginger, garlic, chilli, meat, but can drink liquor made from fermented grains. (c) Ritual of Yumsama or Yumnakma (asking permission to eat salt) can be performed after three or four days of mourning observation and final ritual of Khauma can be performed at favorable season. (d) During Khauma ritual the presence of village/ community leaders/elders, gentlemen and ladies, young men and women and relatives from mother side is a must. Only the affinal relatives (cognates) can legitimate the purification ritual. (d) Relatives and villagers can offer Chamyang or Khu:kyang (money offered as support) to support the cost of feast organized at the time of Khau:ma. (e) Nephamma (postponement of Khau:ma ritual) is permitted if the sons and daughters of the deceased is absent or staying in distant away at the time of death or they are seriously ill or the situation at that time is adverse to conduct Khau:ma ritual and it can be conducted at appropriate time. (f) Persons who do not perform death rituals are considered impure.

- (ix) Chokphung thim: Conversion of non-Limbus into Limbu, non-clan members into clan members can be done observing Chokphung Thim, the sacred ritual of absorption or integration. Thus, Limbus absorbed become decent of the persons who have absorbed them and can enjoy the rights and privileges equally as descent. Chokphung Thim legitimates clan fusion.
- (x) Samyok Lung Thim: Any person who has committed crime against his/her family or clan and has been excluded from the family and clan community, and If he/she has realized the wrongdoing or crime and so, appealed for amnesty, he/she can be accepted as a member of the family and clan after

¹⁰¹. Some Mundhum experts claim that mourning period of death should be eight to nine days. It sounds consistent with the spirit of Mundhum as philosophically, the number eight represents perfection and nine culmination in Mundhum.

performing purification ritual- Samyok Lung Thim, a ritual for repentance and confession.

- (xi) Sasing lapma (adoption): Someone, who has no offspring to inherit, can adopt any one who is ready to be his son/daughter, by observing the ritual of Sassing Lapma. In this ritual Tumyang are gathered for this purpose. They sprinkle holy water (*lungdung-pakwa singdung-pakwa*- water from upside ditch of stones, water from upside hollow of trees) on to be adopted person and tell him/her to take oath by touching Samyoklung promising loyalty to adopting parent¹⁰².
- (xii) Kai-phama/Sadapla epma: A clan can be segmented after eighth generation into two or more sub-clans. Segmentation can be done by consensus. Clan fission can be said usual after eight generations. It also can happen in difficult situation like unwanted incidences of incest. The offspring from incest are given new clan name.

Code relating to land, natural resources and economy

- (i) Land of the Yakthungden or Limbuwan is an inheritance of Limbus handed down through generations of their ancestors (probably inherited since more than twenty thousand years when their ancestors were hunters, gathers and fishers of this region, who later invented agriculture here¹⁰³) and they collectively own the land they inhabit.
- (ii) Land denotes part of the earth containing cultivated, cultivable and uncultivated lands, waste or barren lands, grasslands, open fields, forests, bushy areas, sacred sites or areas, historical spots, heritage sites, hills, mountains, ponds, lakes, wetlands, rivers, wild life, minerals and other natural resources.
- (iii) The land collectively owned and occupied by Limbus are inalienable, non-transferable, non-sellable and non-taxable.

¹⁰². Thebe 2012:53.

¹⁰³. In fact, Mundhum is a compilation of narratives of hunting and gathering age and primitive agricultural period. On the basis of Mundhum and other evidences some experts have assumed that Limbus were living in this belt of the Himalahan region since 30 thousand to 20 thousand years ago when they were hunters and gatherers.

- (iv) Council (*chumlung*) of distinguished representatives (*tumyahang*) of various communities (*sanglup*) and peoples of the territories (*tenchha*) look after the administration and management of land as custodian.
- (v) Territories (*tengap*) of Limbuwan should be identified and resolved by examining pre-historic standing stones, stone circles, cairn, stone pillars, stone walls and stone mounds.
- (vi) Pre-historic or historic territories of Limbuwan can be divided by the decision of Tumyahang Chumlung according to the habitation of certain clan groups. Each clan group can further divide the territories into villages (*pangbhe*) according to the spread of clan population for the convenience of utilization of land and agricultural activities. The lands, however, will be under collective ownership of the clan or sub-clan.
- (vii) Communal (clan) land (known as Kipat land by late eighteenth century) can also be further divided among households to intensify agricultural activities and face challenges of private property regime and flourishing feudalism. However, cooperative farming (labour exchange/support, etc.) can be practiced for the success of the cultivation of crops.
- (viii) If the land becomes vacant without its occupant or tenurial rights holder due to various reasons, the tenurial rights of the vacant land reverse back to the community or corporate clan group. The Chumlung of the Tumyahang of the clan group can allot the land to appropriate member of family or clan group.
- (ix) Any person, usually immigrant, willing to settle in Limbuwan can settle there only with the permission of Yakthunghang (Limbu leaders/rulers) and approval of the concerned Chumlung on certain conditions. Tenurial right of the settler will be different than those of Limbus.
- (x) If a migrant settler abandons the land tenurial/usufruct right on the allocated land, Yakthumghang can allocate the land to any person or family on certain conditions prescribed by the clan community.
- (xi) People (*tenchha*) have inherent right to natural resources. Such resources should be under the judicious management and care of the community and their Chumlung of Tumyahang.
- (xii) People, especially Fishers (*ngajichong*), should have right of

unrestricted access to river and ponds for fishing and can share fishes they caught with community. People are collective owner of everything that live and flow (*dahata bahata* in Nepali language) in water. Fishers should offer some portion of the small bitter fishes (*khiknga*) caught in the spring season to the head of the clan/community. Chumlung of Tumyahang can issue rules for the abundance of aquatic animals and plants with the prior, informed consent of the fisher folk.

- (xiii) Miners (*phunim keta:mba*) should have right to extract sub-surface minerals (*gadanta* in Nepali language) and free to share the produce with community, metal workers and others equitably. Chumlung of Tumyahang (later Subbas) can issue rules relating to mineral extraction and protection of people and environment of the areas from where minerals are extracted with the prior, informed consent of the concerned people. Free share of the community or government should not exceed 10 percent of the production.
- (xiv) Tradational bird hunters (*pujichong*) can hunt birds of all kinds that fly (*udanta* in Nepali language) including hawk, falcon, eagle owl, pheasant, etc. or catch in traps without restrictions by giving prior notice to the clan heads or owners of the lands to avoid incidences.
- (xv) Tradational game hunters (*apcharaba*) can hunt any type of animals except elephant, wild cow, rhinoceros and musk deer. They have to seek permission of Yakthunghang (leaders of Chumlung/later Subba) for hunting elephant, rhinoceros, wild cow and musk deer and surrender one tusk of the elephant, part of horns and skin of the rhinoceros, one horn of the wild cow and some portion of the deer and skin of the musk deer to Yakthunghang for using them in religious and cultural festivals. They should distribute the meat of hunted animal (*sabamphe*) to their villagers equally.
- (xvi) Game hunters have to inform Yakthunghang when they put a bait/trap in hunting areas so that Yakthunghang (later Subbas) can inform the people of the areas to avoid human incidences.
- (xvii) Phedangma, Samba, Yeba, Yema and others concerned should have unrestricted access to medicinal herbs and should be allowed to collect and use organs and other body parts like

peaks, feathers of dead animals and birds for medicine and ritual purposes.

- (xviii) All people living in the Yakthung territory should have easy access to timber (*sing*) for house construction, thatch (*ning*) for thatched roof, firewood for cooking and funeral pyre, medicinal herbs of the forest, water sources for drinking and irrigation and pasture for animal husbandry.
- (xix) Immovable property like land and houses can be inherited by sons and movable properties like fowls and animals reared in the household, equitable share of the produce of cultivated fields, ornaments, cash earned by the household can be inherited by daughters.
- (xx) When a married woman (daughter) lives in her parental home with her husband, she can inherit parental property (land and other properties) equal to the share of her brother(s) and if there no brothers to inherit, she will be the sole inheritor of parental property and should fulfill the obligations of the family that clan community expect.
- (xxi) Property of the mother such as ornaments, cash, and even land if she has acquired as a gift from her mother's home or bought from her own purse, share of the conjugal fund can be inherited by daughters and sons cannot claim on them.
- (xxii) Traditional occupations should be promoted and skills should be imparted to the new generations. Encroachments on traditional occupations should be stopped.
- (xxiii) Trade and commerce (*lenghang*) should be fair and customary values of reciprocity (*abhanglum*), altruism (*pha?imo*) and benevolence (*chamen-yamen*) should not be forgotten while doing trade and businesses.

Code relating to state affairs

- (i) The state (Limbuwan) should be governed by the council of leaders (*Hang Cumlung*) and the leaders (*tumyahang*) should be wise, fair and skilled and experienced in managing state affairs representing diverse groups of people and territories.
- (ii) The state should be a confederation of republican territories (*10 Khamghu*/provinces) and chief of the confederation should be elected by rotation each year.

- (iii) The confederation (Limbuwan) should be administered and managed collectively through the Council (Hang Chumlung) of Leader (*tumyahang*), which may serve as executive and Yebhanglung, House of Representatives of diverse groups of people and territories, serve as Legislative, and make constitution (*phangnambhe*) and formulate or amend laws (Thibong Yakthung Thakyudhim).
- (iv) There should be a sacred council (*lachumlung namchumlung*) of judges (*khasenlomba/ma*) and eminent persons (*tumyang*) to dispense justice in the confederation and ensure realization of justice.
- (v) There should be an autonomous government (*yukpho*) in each republican territory/ province with all executive, legislative and judicial powers controlled by representatives of people.
- (vi) Elected local people should directly govern each village directly.
- (vii) Universal justice (*mudhang khara*) should be secured by instituting judicial institutions at all levels. The council of judiciary/adjudicators (*khasen khara chumlung*) should be made effective in every locality of the village and region.
- (viii) The governance should be participatory to hold legitimacy. People from all walks of life have to get opportunity to participate in the governing processes.
- (ix) Decision making process should be fair, deliberative and decision should reflect the convergence of divergent/ conflicting opinions and varied interests and concerns (*nsuna- ingdang*, *waya-ningdang*) of diverse groups of people.
- (x) The functioning of the government should be guided by community-centered virtuous politics (*seseba hangthim*).
- (xi) Subbangi or Subba system should follow customary practices of governance and enforce customary laws and serve as customary judicial institution for efficient justice delivery as well to fill the void left by formal (state) institutions (courts).

Penal Code

- (i) No one is immune of penalty (*samban*) for wrongdoing or committing crime, even gods had to accept the punishment¹⁰⁴.
- (ii) Penalties (*samban*) should be imposed taking into consideration of socio-economic condition and cultural and gender background of the culprit. Imposition of penalties from the norms, values and standards of judges (jurisprudential bias) they adhered to should be avoided. Customary practices of imposition of penalties should be respected.
- (iii) Penalties should serve the purposes of rectification, retribution, retaliation, reparation, restitution and compensation as deemed appropriate to particular cases.
- (iv) If the cases or disputes are settled by conciliation or compromise reached, none of the disputing parties should be fined. But the parties of the case should bear the cost or levy (*sadpla yangdapla*) of purification of the session of the adjudicators/judges (*sabha suddha* in Nepali) only, which have been made impure by the discussions of crimes.
- (v) If a person commits murder by intention or commit genocide he/she should be given capital punishment and his/her property should be confiscated.
- (vi) If someone commits murder unintentionally or by mistake he/she should be given life imprisonment or imprisonment of some years depending upon the nature and circumstances of the murder.
- (vii) If a minor or mentally ill person commits murder he/she should be kept under strict supervision of guardians or in confinement under caretakers for a few years.
- (viii) Various types of physical punishment can be given who commits minor crimes such as petty property crimes, trivial physical violence, slandering, verbal abuse, defamation, etc. They can be fined some amount of money depending upon the nature and magnitude of their crime.

¹⁰⁴. In Mundhum, there are some examples of gods being punished, like porcupine had punished the sun on behalf of living beings on earth for releasing unbearable heat. See Kainla 1994 (*Nahen Mundhum*). For discussion on it, see Thebe 2012: 29-34.

- (ix) One who misbehaves his/her father or mother and do not care at the old age, he/she should be given penalties ranging from *sir utauni* (raising head) consisting of some rupees as allocated by council of elders/ gentlemen and ladies along with a pot of liquor to confiscation of half of the land and other property of the accused apart from obeisance fees (*Amal Baksauri* in Nepali).
- (x) Criminals of property crimes of grave nature, serious physical violence/abuse, rape, social disruptions, and law breakers should be given life imprisonment and their lands and other properties should be confiscated.
- (xi) When punishment is given in monetary terms, obeisance fee of judges or office of the judges should also be imposed along with actual fines. Fee equivalent to 10 percent (*dasaud*) of fine to accuser as winner (*jitauri*) and 20 percent (*bisaud*) to accused as loser (*hauri*) should be imposed.
- (xii) A person who violates cultural code should be excluded from his/her family and group or society, should be kept in isolation and no one should interact with him/her. If he/she observe public penance or accept public opprobrium, he/she can be relieved of the penalty.
- (xiii) If a person destroys objects/items of Yakthung heritage, his/her land and other property should be confiscated and should be excluded from the community.
- (xiv) If the litigants agree to resolve case through negotiation or some sorts of reconciliation or compromise, none of them will be liable to punishment.
- (xv) Penalties for sexual offenses (*chak-chakui*), including incest and adultery, should be imposed by the decisions of council of elders and other distinguished persons of the community and should be approved by Subba.
- (xvi) A person who marries or take away a married woman without prior divorce should reimburse the cost of marriage to former husband with levy for *najam* (*sir utaune*) and he should be fined for his offence (*laba kupma*). The council of Bubba should decide the amount of the fine.
- (xvii) Fines on various offenses could be imposed as follows in line with the official order of 1847: (a) Child murder fine Rs. 15, (b)

Incest for man Rs.15, (c) Incest for female Rs.12, (d) sexual infidelity for male (*chak*) Rs. Rs.12, (e) sexual infidelity (*chakui*) for female Rs.10, (f) physical injuries /strokes Rs.5¹⁰⁵. Subba could share fine in such proportion: (a) five rupees out of 15 and 12 rupees to be given to victims of sexual offenses and the rest to Subba, (b) if authorized killer of paramour wanted to redeem his former wife (*chakui prajani*), Subba could allow by taking 35 rupees, (c) five rupees fined if someone hurt by shedding blood to someone with exception of child whose teeth (first appeared) not changed¹⁰⁶.

- (xviii) The fleshy part of the buttock between the hip and the knee (*phila*) should be given to Subba of the hunted animal, but if not captured in trap, hunters had to inform Subba.
- (xviii) If ambush and traps were planned while hunting in forests and someone killed by accident, Subba could fine them five rupees, if wounded only half of that amount was to be fined.
- (xix) If a widow married, Subba could impose marriage costs to the new husband of the widow and could declare legal husband¹⁰⁷.
- (xx) Rapist (male) should be kept in shackles for days and should be made to pay compensation in an amount the victim demands.
- (xxi) As the deliberations of the offence or crime or evil act pollute or make impure the court and council of adjudicators or jury and observers alike, parties of the case should pay levy according to the principle of *dasaud-bisaud* (equivalent to 10 percent and 20 percent of the fine) for the purification of the council or jury (*sabha suddho*). For the participants or observers of the court proceedings, *Sadapla Yangdapla* or *rato achani chiso chhapani dastur* (levy for meat and liquor) should be arranged from the levy raised to purify them.

¹⁰⁵. Ingham and Ingham 2013:199.

¹⁰⁶. Ibid 2013:201.

¹⁰⁷. Ibid.

Customary judicial institutions and procedures

- (i) Thibong Yakthung Hang (ten Limbu leaders/rulers), also addressed as ten Rayas later, were the ultimate authority of ten republics of Limbuwan. They were exercising executive, legislative and judicial powers since time immemorial.
- (ii) Yakthung Hang (Limbu leader/ruler) had autonomous states or territories of their own which was recognized by their suzerain state/kingdom as well as by neighboring states¹⁰⁸. Autonomous state or kingdom enjoyed executive, legislative and judicial powers.
- (iii) Limbu leaders/kings had good relations with Sen rules¹⁰⁹ and received Raya and Subba designation from Sen Kings since 17th century. They had also served as Chautariya or Prime

¹⁰⁸. For example, Bajahang Rai, with the Hindu name Bidhyachandra Rai, son of Murehang Rai, was given full autonomy over his kingdom of hill areas and power of administration over Morang by Lo Hang Sen after capturing Bijayapur in 1609 and Dalai Lama of Tibet had recognized him as Chief Ruler of Phedap that consisted of seven districts including hill and plain (Tarai) areas (Chemjong 2003: 155-56). By mid-seventeenth century, the king Phunchho Namgyal gave 'full autonomy to Limbu chiefs' of their districts (Northern Limbuwan: Tambar, Yangwarak, Northern Panthar, Ilam, Phakphok and Darjeeling, including Siliguri, the habitat of Mech and Dimal Kirat people) who agreed to regard him as their king and authorized to rule their districts 'under the title of Subha with all the facilities of enjoying their tribal rites in social and religious functions by beating the Royal drum called Nagara or Cattle Drum (Chemjong 2003: 162-64).

¹⁰⁹. Limbu leaders and soldiers had to bring back king Shubha Sen of Makwanpur from the captivity of Nawab of Purnea under the request of the queen and had to protect palaces in Makwanpur, Chaudandi, Hariharpur, Chanjitpur and Bijayapur. Because of internal conflict within the royal families, conspiracy of Brahman ministers like Pradi Yamuna Padhyay and military officers Parsuram Thapa against Subha Sen (1684-1706), Sen kings were becoming weak. After first quarter of eighteenth century Sen kings were nominal kings, ministers were major decision makers, for example, Kirat chiefs (ministers) elected Mahipati Sen as king of Bijayapur after the death of Queen Padmidhata Induraj Rajeshwari. Bichindra Chandra Rai, Prime Minister of Bijayapur did not accept Kam Datta Sen as king of Bijayapur because he knew Kam Datta Sen was not legitimate son the king (Chemjong 2003).

Minister (highest ranking official) of Morang state apart from governing their autonomous regions¹¹⁰. Chautariya had judicial powers also apart from general administration. They were also Mantri Dewan and Chautariya of the Sen kings at Makwanpur and Bijayapur by rotation among Limbu leaders of 10 provinces for the period of five years each since the time of Lohangga Sen in later half of seventeenth century (Bishnuprasad Ghimire, *Palparajyako Itihas, BhagII* pp. 166-170). Kings of Sikkim and Dalai Lama of Tibet recognized them as Subbas following the administrative system of Mogul Empire under Akbar the great (1542-1605)¹¹¹.

- (iv) Yakthunghang (Limbu leaders/rulers) enjoyed the same powers and privileges after the annexation of Limbuwan into expanded Gorkha, now known as Nepal in 1774 by an agreement between the king Prithvi Narayan Shah and the then prominent

¹¹⁰. For example, King Bijaya Narayan Rai (1584-1609), descendant (seventh) of Kirat king Pungla Ing, who founded greater Morang state spreading over the area of Kankai river to Koshi river, Sangori fort to Jalalgaad, close to Purnea, with a capital in Baratappa, east of Bijayapur, and whose son Pungla Ing adopted Hinduism and renamed Amar Rai, brought Murey Hang, one of the chiefs of Limbuwan to Bijayapur to discharge the duty of a Prime Minister (Chemjong 2003: 152, 177). Murey Hang was the king (*Hang*) of Phedap and Chautariya (Prime Minister or top ranking official) of king Bijayanarayan Raya (1584-1609) of Bijayapur. Bobajit had retained the title of Raya inherited from his grand father Suna Raya, served at Bijayapur Darbar with extensive tenurial rights and powers over several villages and regions of eastern Tarai during the reign of king Indrabidhata Sen and Mahipati Sen (1684 – 1725) and similarly, Sadhawa Raya was awarded extensive powers and land tenure over extensive areas of eastern Tarai in 1750 and others in 1751 and 1752 and he had judicial rights of imposing punishment over subjects residing in 18 villages part of the Sadhawa territory and Kamadatta Sen had made Hansu Raya his top official with the privilege of owning income of 18 villages in 1761 (Sangraula 2011: 85, 127).

¹¹¹. Iman Singh Chemjong (2003:48) is of the opinion that the headman of a federal state of Shan people in middle of Burma was called Showbwa from which the term Subba is derived. On the other hand, historians- Baidya and Manadhar (1996) claim that the term Subba was borrowed from Mogul administrative system and opine that Subbas were the governors of conquered provinces during the reign of Mughal empire.

- rulers of Limbuwan, which they had been enjoying in the past¹¹².
- (v) The king Ran Bahadur Shah first introduced Subba system in 1780 (Manjeet Raya was designated as Subba for the first time), after six years of Gorkha conquest.
 - (vi) Raya or Subba was understood as an administrator, law and rules maker, adjudicator, protector of the culture and religion, commander of the army and defender of the country, tax collector and negotiator of international trade and relations¹¹³.
 - (vii) Subba became the highest position since 1780 with extensive powers assured by a royal decree. Raya, later called Rai, became second highest position in the hierarchy of autonomous local functionaries.
 - (viii) Subba was assisted by team of six other functionaries, which replaced ancient system of Khasen-Khara Cumlung (Council of Judges). They were called Rai, Karta, Karbari, Budhyauli, Gaunbudha and Pagari, together known as Tummyahang. Subba and his functionaries enjoyed some remission of taxes (Rs.3.5

¹¹². A portion of the agreement reads thus: "Although we have conquered your country by dint of our valour, we have afforded you and your kinsmen protection. We hereby pardon all crimes, and confirm all the customs and traditions, rights and privileges of your country... Enjoy the land from generation to generation as long as it remains in existence. ... In case we confiscate your lands...may our ancestral gods destroy our kingdom" (Regmi 1978: 540). According to Philippe Sagant, "Prithvi Narayan granted the Limbus peace with honour for two reasons. First, the area was still troubled, and the Indo-Nepalese (Gorkhali) forces were needed elsewhere for more urgent tasks. Second, the country (Limbuwan) was strategically situated. Sikkim and Tibet could be expected to oppose out and out annexation. The British of the East India Company had had their eye on the region for a long time. They suspected that eastern Nepal had gold, and they wanted to secure the mining rights. Above all, their hold on east Nepal would provide them with the commercial access they were seeking to Tibet" (1996: 320-21).

¹¹³. An example in relation to international trade and relations: 'Pasenyama Rai was the minister at Bijayapur who established friendly relation of Bijayapur with Nawab Shaolat Ahmad Khan Abdullah of Purnea State and conducted trade agreement between two states in 1721 allowing to sell 'all the commodities produced from Purnea State' 'to any market of Morang state as well as hilly country' and in the same vein, to sell the products of Morang and mountainous country 'such as wood, yak tail, musk and medicinal herbs' 'to any market of Purnea state at a general rate' (Chemjong 2003:169).

remission in homestead tax of Rs. 6.5). They assisted Subba to carry out the administrative, judicial, cultural, social and economic (particularly relating to land, natural resources, financial transactions, business, customs, trade, tax) functions and obligations for, uses and platforms, check posts etc. Phedangma, Samba, Yeb/Yema, experts of Mundhum and traditions, served as advisers of Subba as needed. This new structure transformed Subba's kith and kin, customarily known as Yethangdingsa- self-legislating, self-executing and self-judging people, into Dokebhai- burden sharing brothers, a new status as a source of dissensions that eventually generated rift within a corporate clan segment, and made settlers Raiti (subject) and Dhakre (load carrier, that is, load of free labor and various types of levies carrier) after 1795 when the load of tax began to become heavy.

- (ix) The office of Subba was called Subbangi, which was integral to Kipat system¹¹⁴ (communal land tenure system).
- (x) Subba enjoyed extensive powers ranging from adjudication, tax collection, natural resource management to maintenance of law and order, border control and security and development of basic physical infrastructure.
- (xi) Subba could raise a small army with weapons like swords, shields, guns, and drums (*nagara*) and flags with decorated stands and spikes (*nisan*) to capture accused/ criminals, to maintain law and order, to protect sacred/historical sites, to supervise borders and check permission documents of persons entering country, guard prisons kept by them, and provide security to him and government officials while visiting in his

¹¹⁴. "Kipat system in its present form is a relic of the customary land tenure that the Mongolian communities established in the areas occupied by them prior to Indo-Aryan penetration (Regmi 1978: 538)...Kipat represents a communal form of land tenure... In its present form, Kipat land is used on an individual basis though subject to "the reversionary right of the community as a whole. ...Rights on Kipat land are therefore divided between the community and the individuals belonging to the community, in the sense that each individual has an unchallenged right to use the plot of land. If he ceases to exercise it, the right to determine the nature and extent of its use by others is enjoyed not by him but by the community (Ibid: 534).

areas¹¹⁵. Subbas had to send some of their soldiers to the government in time of war and dozens of Subbas had sent selected soldiers to Kathmandu in the request of the government (Jang Bahadur Rana) in time of Nepal-Tibet war of 1854-55¹¹⁶.

- (xii) Subba had to allocate certain patches (irrigated fields) of Kipat land (which were converted into Raikar land) for the maintenance of the army of the government and for the construction of bridges on rivers. They had to provide certain patches of land as remuneration to surveyors and postmen (*hulaki tengo baksauri*). Subbas had to offer paddy fields to government when government contracted to any person to build suspension bridges to buy needed materials like iron, wood and other materials and payment of skilled persons and laborers¹¹⁷. They had to surrender certain plots of irrigated Kipat land for the exemption of annual levy for enjoying customary practice of purification instead of Hindu practice (*nitiwade*), and exemption from annual levy of forced labor (*jharawade*).

¹¹⁵. Ingham and Ingham 2013: 62. In 1782 Atahang Raya had received 252 *khunda*, 25 guns and 227 bullets. On May 1783 Rainasingh Rai (Limbu) had received 300 *khunda*, 32 guns and 228 bullets; Dev Rai 250 *khunda*, 30 guns and 220 bullets and Shubhawanta Rai had received 160 *khunda*, 20 guns and 140 bullets (Ingham and Ingham 2013:63). As regards to *Nagara and Nisan* (drums and colors/flags), Mahesh C. Regmi comments thus: "A special privilege traditionally granted to Limbu Talukdars is that of maintaining drums and colors. Since this privilege presupposes the existence of an "army" under the Subba or Rai, it is obvious that this is nothing but a relic of the period when Pallo-kirat was divided into petty chieftainships" (Regmi 1978: 574)

¹¹⁶. Ingham and Ingham 2013: 238-39.

¹¹⁷. For example, Tatuwa Rai of Atrai had received contract during 1791 to build bridges over Tamor river at Handrung, Phunguwa, Yakchana, Simara, Pinangsi, Nakkale, Henwa Ghat from the government. Subbas had to offer their Kipat lands for the payment of contracted amount and had submitted 1345 muri khet (327.34 ropanis, one ropani is equal to 5476 sq. ft.) to the government, which the contractor received (Ingham and Ingham 2013: 243-4). This is just one example.

They also had to provide Kipat paddy fields (*khet*¹¹⁸) to the government as asked for the purpose of *jagir* to the army personnel and other officials and emoluments (*khang*) of the government officials serving in Limbuwan which they never got back¹¹⁹.

- (xiii) Subba's judicial rights and privileges (*khainpain*) enjoyed since the time of Sen Kings included right to settle all types of criminal cases except 'five crimes' (*panchkhat*): execution, bodily mutilation, banishment, expropriation and enslavement (some lists also include degradation of caste)¹²⁰, which have been retained under Shah rule. Subba had extensive judicial powers to settle all types of cases and conflicts in his areas of their jurisdiction for the realization of justice to all¹²¹. Justice

¹¹⁸. One *khet* was equal to 25 *ropanies* or 100 *muries*, that is, 136,900 square feet or 3.25 acres.

¹¹⁹. Inngam and Inngam 2013:245-47.

¹²⁰. Burghart 1996:217; Pradhan 1991:165.

¹²¹. All types of conflicts and cases to be dealt at the local level fall under the jurisdiction of Subba. The list of cases to be settled is exhaustive, some of which include cases of family/clan discords/wrangles, group confrontations/issues, verbal abuse/ defamation, slandering, lying, dishonesty, ill treatment, filial disaffection, cutting/slaying (*chhinari*), violating customs/ conventions, immoral/evil acts, feud, sexual offenses (*chakchakui*); plundering, looting, burglary, theft, land and other property right claims, land and property division/partition deeds (*bandapatra*), disputes of land boundaries, claims of ownership/ entitlement of lands, exchange of lands and commodities, inheritance disputes/issues, crops sharing, disputes on types of land (Raikar or Kipat), property of person without heir/child (*aputali*), deception, cheating, disputes on gift/charity (*dan bakas*), financial malpractices; attempts of murder, limbs mutilation/deformation, threats of life, group violence; disputes regarding access to forest resources, access to pasture lands; hitting, beating, cutting, wounding domesticated animals, destruction of crops by domesticated animals: control of frauds, scoundrels, hooligans, gangsters, cheaters, thieves, dacoits and other antisocial elements; concluding *milapatra* (bond of reconciliation/ compromise) among others (Sangraula 2010: 166-259). *Milapatra* was very popular under the Amal of Subba (Ibid:224). Subba's archives divulge that loan paper with *sinke sahi* (+ like signature by small piece of bamboo stick) was in practice from 1855 to 1904 (prior to 1855, probably loan system was absent) and later prints of middle or ring finger were put in loan paper or any contract paper and finally print of right and left thumb became essential for validity of loan or contract paper and Amal (Subba's office) had its own stamp of clay, later of iron or brass, or copper and other metals to authenticate and validate the related documents (Ibid: 232-36).

dispensation and fines/levies collection was the main functions of Subba that accrued some monetary benefits to him¹²². Fines imposed on offender/ accused and special levy paid by accuser (*dasaud*- amount equal to 10% of the fine, part of *Amal Baksauri*- obeisance levy to Amal) and accused (*bisaud*-amount equal to 20% of the fine, part of *Amal Baksauri*-obeisance levy to Amal) were deposited in the treasury of Subba to run his office.

- (xiv) Subba had crucial responsibility of developing basic physical infrastructure like construction and maintenance of bridges, track/trails, irrigation canals, rest houses and platforms, check posts, forts, etc. as instructed by the government mobilizing voluntary labor from each household and making various services available to the people, specially during the time of natural calamities.
- (xv) Subba served as a crucial figure to provide legitimacy to marriage relation and divorce, clan fusion (*chokphung*) and clan fission (*sadapla epma*), inter-cultural relationships and add validity and sanctity of cultural and religious functions and celebrations, customary practices, conventions and community affairs. 'The local administration had no jurisdiction over intra-communal affairs, thus ensuring that life in each community was regulated by its own traditional customs and usages'¹²³.
- (xvi) Subba served as clan segment leader and had to protect his clan members, prevent aggressions on customary practices and control violations of customary laws, and had to resist in various ways interventions of the government on Kipat lands and customary practices on behalf of the people and appeal with the authority to stop interventions that affect them adversely.

¹²² Lalmohar (Royal Seal authenticating Royal Decree) given to each Subba at the time of their appointment and Sanads (official order) issued to Subbas from time to time delineate the jurisdiction of Subba that divulge extensive powers till 1882, gradually reduced through elaboration by 1820 and further reduced afterwards with the increase in number of Subba.

¹²³ Regmi 1999: 34-5

- (xvii) Subba was the only authority without whose permission no one could occupy land, hold title and settle in the Kipat territory of Limbuwan¹²⁴. Transferring land title to settlers was under the sole discretion of Subba. They, however, had let immigrants to settle receiving token amount (*char dam*, that is, one paisa; later *sorana*, that is, one rupee) as obeisance levy for land entitlement to raise land levy and other taxes under the pressure of the government (*rasti rasaunu, basti basaunu*, means irrigate the lands and let settlers to settle).
- (xviii) The state had confirmed land rights under the Kipat system to Subbas or Rais. These functionaries had retained these rights in their fiduciary capacity as representatives of the community. Peasants had to cultivate their individual holdings subject to the reversionary rights of the community. In case, any holding fell vacant because of the death of the occupant or otherwise, the Subba or Rai had the right to reallocate it to any suitable applicant within the community. Village headmen had

¹²⁴. Government's policy of encouragement to the immigration of other communities to Limbuwan was a contentious issue between Limbu leaders and government of Nepal since the early days. 'In 1804, a dispute between a limbu and a Brahman settler in Chainpur was decided in favor of the latter and the judgment issued in this connection stated: "Limbus do not tolerate Brahmins, but they shall not be allowed to displace any Brahman". ...' Since the lands reclaimed by non-Limbu communities could no longer remain under Kipat tenure, this insured that a growing area of Kipat lands was converted into Raikar. Such immigration, in addition, helped to break the Limbu hegemony in Pallokirat. This policy was actually started around 1796, but it assumed a more concrete form when the government issued the following order to Limbu Kipat owners in Pallokirat in May 1806: "Cultivated areas and settlements on your Kipat lands are your own. We have given authority to (our officials) to promote settlement on waste and uncultivated land there. In case you obstruct efforts to make our country populous, you shall be severely punished". In September 1811 an order was issued again that stated: "We have received reports that you have refused to let Khas, Magar, Brahman (and other) people from the hill regions settle on your lands. We have sent them to reclaim lands which can be converted into paddy fields. ... In case any (Kipat owner) whose holdings contain irrigable lands which can be reclaimed as paddy fields... does not let hill people settle thereon.. he shall be awarded severe punishment" (Regmi. 1999: 51-52). (Note: hill people- Parbate or people of the western hills).

- also exercised similar right in respect to vacant Raikar holdings also, but in such cases the ethnic status of the applicant was not the sole factor that governed allotment¹²⁵.
- (xix) Till 1794 Limbuwan was a tax-free region. Subba had to pay special levy of Rs.10 (*bhedbhara* and *Dasainbhag*) in total annually since 1784 and the number of Subba was less than two dozens in the whole Limbuwan. By 1806 homestead tax (*sermal saune-phago*) of Rs.5 to Kipat holders was enforced and land tax to occupants of non-Kipat lands (*Raiti* of Subba) was made effective and extensive. By 1820, the system of Tekka Thiti had imposed tax provisions of Rs.6.5 and Rs.7.5 (including amount of Rs.1 of *jhara* or compulsory labor) respectively to each homestead of Kipat holders and Hale tax (land tax of Rs. 3 and one *anna* for Raikar land of plough agriculture) and Kodale tax (Rs.1 and one *anna* for Raikar land of hoe agriculture) to Raikar land holders (*Raiti*, usually non-Limbus) and occupational taxes to various caste groups regularly and occasional levies for the functions of the palace. Since then Subba had to collect various kinds of taxes extensively, including custom duties from custom office (Gola) of their areas¹²⁶ and they had to transmit the proceeds to the

¹²⁵. This interpretation is solely borrowed from Regmi 1999: 49-50.

¹²⁶. In the year 1770 AD, Raja Buddhikarna Rai issued a royal order by which a Limbu chief Phungma Rai of Chaubis *thum* was given the right of collecting the custom at the custom office of Letang Gola on condition that he should render a military service to the Bijayapur Government (Chemjong 2003:183). It was the retention of old practice. There are some Golas in Limbuwan from where customs were collected till its incorporation into Nepal. When customary practices were guaranteed by the state, Subbas had naturally inherited the right of collecting custom duties of their areas till the date government posted its staff.

concerned office of the government after deducting their commissions within the due date¹²⁷.

- (xx) Nepal government encouraged Limbu leaders/heads of the clan segments to become Subba with devolution of extensive powers to them throughout the last quarter of eighteenth century at a time when Limbuwan was passing through turbulent years because of sporadic rebellion against Gorkha occupation. The processes of appointment of Subba gradually changed with the changes of the state policies towards

127. Subba had to collect taxes from both Limbu homesteads and non-Limbu landholders. Taxes collected included – *vedbhara* of Rs.5 and *dasain bhag* of Rs.5 for himself, homestead tax of Rs.5 from *dokebhai* (brothers sharing burden) of Subba and other taxes till 1820; *theg tiro or dhurikar* (*saunya, phagu, megezine*, etc. in total Rs. 6.50 and 7.50 per homesteads of Limbus) on Kipat, land taxes (*serma*) from ryots (landholders known as *Raiti* or *Dhakre*), and other various types of levies: *nitikar*- levy for the enjoyment of customary expatriation for the violation of caste-based sexual norm (introduced in 1810, and annulled in 1963 only), *salamikar*- obeisance levy, *khetmukhikar*- levy on inheritance from childless person, *megjinkar*-levy for the supply of bones and skins of dead cattle (since 1813 at the rate of two annas per homestead, by 1827 four annas per homestead for resisting cow slaughter prohibition), *jharakar*- levy in place of compulsory labor, *walakkar*- fees charged on various occasions of functions/ ceremonies in palace like *goddhuwakar* (a levy imposed on the occasion of the wedding of princess), *chumawankar* (a levy imposed on the occasion of the sacred thread investiture ceremony of a royal prince, *gaddimubarakkar* (a levy imposed on the occasion of a royal coronation) etc., *chandrayan kar*- levy charge on the offenses of violations of caste rules, norms, etc.); occupational taxes like *chhipo-chhapo* of Newar, *tal* of Kami (blacksmith caste), *palyanti* of Sarki (leather working caste), *sujiyaro* of Damai (tailoring caste), *jogikar* (jogi tax or tax on mendicants); and *sukumbasikar* (levy for landless people); *dharmaputrakar* (levy for the adoption of son) and so on. Homestead tax (*saune-phagu kar/ serma*) of five rupees was introduced in Limbuwan for the first time in 1794 (by the royal order of king Ran Bahadur Shah to Phago Raya, Deo Raya and gradually to others Rayas (in 1803, 1806, 1820, 1827). Subbas had to collect commodities also like salt, minimum one *mana* to four *manas* (or rupees to buy salt, minimum four *annas*, that is 25 *paisas* to maximum eight *annas* or 50 *paisa*) and cotton, *bisauli* (a weight of about 1.20 kilogram) to two *dharni* (close to 4.80 kilograms) to supply to the government where these commodities were available nearby and cotton was grown (Sangraula 2011: 241-42).

Limbuwan and Kipat land and later became more flexible. Becoming Subba or obtaining Subbangi included several processes: (1) through royal decrees and orders authenticated by royal seal (Lalmohar) during early stage (1780-1827) that enunciated all powers, rights and privileges enjoyed since the time of Sen kings of Makwanpur and Bijayapur except settling of *Panchakhath* (five severe crimes) including cow slaughter and allocated or demarcated certain Kipat territory to each Subba title holder (Lalmohariya Subba); (2) through claiming Subba submitting application along with surrendering Kipat lands and Salami (obeisance) fee to the central authority¹²⁸ and obtaining the office of Subba through royal decree (Lalmohar) or Sanad (official order) after the introduction of Tekka Thiti saytem (arrangements such as fixed amount of homestead tax to Kipat holders never to be remitted, remission of Rs.3 on the annual homestead tax of Subba and his six assistants, extensive administrative and judicial powers to Subba, and division of Subbangi) in 1820s (for both Lalmohoriya as well as Sanadiya Subba); (3) through registering application with submission of land and Salami Dastur (obeisance levy) to the local official at the time of cadastral survey as the process was further simplified after

^{128.} Under Thekka Thiti system introduced after 1820, Kipat holder who surrendered 60 *muris* of Kipat Khet land which were converted into Raikar and paid a Salami (obeisance) fee of Rs. 52.00 could be enrolled in the position of Subba by the government. If he surrendered only 30 muris of land and paid a fee of Rs. 26.00, he could become Rai. On land converted into Raikar in this way a tax of Rs. 0.50 per muri was payable. This arrangement was apparently intended to gradually bring Kipat land within the ambit of land taxation system (Regmi 1978: 129-130). [Note: Muri- a measure of land equal to 1,369 square feet (since 1907) in the hill districts and Kathmandu valley (Ibid: 862)]

1838, and obtaining Subbangi through official order from local land record office¹²⁹ (called Sanadiya Subba); (4) through division of Subbangi, when any Bhaiyad or Dokebhai (close kin sharing burden) surrendered 60 Murimato irrigated land, that is, irrigated Kipat land that could generate land tax of Rs.30 annually and presented Rs. 52 as obeisance fee (*salami*) at the time of appointment (popularly called Phuti Subba); (5) by paying all dues of a Subba who failed to collect taxes and transmit the proceeds in time (known as Thami Subba), (6) by just paying Rs. 52 as obeisance fee (*salami*) and promising payment of additional Rs.1 in homestead tax (Rs.7.5) annually (known as Tiruwa Subba), and (7) by just paying Rs. 52 as obeisance fee (*salami*) and promising to pay additional Rs.1 obeisance fee annually along with homestead tax (total Rs.7.5

¹²⁹. Notable period and years of issuing decrees (Lalmohar) and orders (Rukka) were 1790-91, 1803, 1810, 1819, 1820, 1824, 1827, 1835, 1842, 1844, 1853, 1859, 1865, 1868 and later period till 1940. Subba through application was designated mostly after 1827 who surrendered Kipat land and obeisance fee due to new policy regarding Subba (1827-1834). More simplified process of appointing Subba- just registering name at the official record (Pahad Bandobasta Repot Phant of Sadar Daftarkhana Adda) after offering land obeisance fee at the time of periodic cadastral survey (initially almost in every one or two year and after 1834 every ten year, but the provision not much respected, for example carried out in 1838, 1841, 1844, 1853, 1859, 1868). In 1865, 15 Limbus of Mewakhola (6 Subbas from Lingtep, Maiwakhola alone), Phedap and Atrai became Subbas offering Rs.52 each as *salami dastur* (obeisance levy) at a time with a single Lalmohar (Shiv Kumar Shrestha 1985 cited in Sangraula 2011: 106-108). Almost all Subbas registered after 1868 did not receive Lalmohar and Rukka. Several Subbas were registered at the time of cadastral survey of 1880, 1891, 1893, and 1940 (ibid:104). During the period of 1880 to 1940, 649 new Subbas (pure Subba, Tiruwa Subba, Raipagari and Tinge Subba) were registered in Tehathum district (Atrai, Phedap, Chhathar Thums) alone (Ingnam and Ingnam 2013:45). After 1940 non of the Subbas were registered. ... The Thekka Thiti system of tax collection was introduced in Pallo-kirat during the revenue settlements of 1820 and 1827. ... Tax liability on depopulated Kipat landholdings was automatically assumed by the Talukdar (Subba). Thus, In case any Kipat owner died, absconded or migrated, or was unable to pay his taxes, the tax liability (on the vacant homestead) was devolved on the Talukdar (Subba). No remission was granted on any account (Regmi 1978: 561.]

instead of Rs.6.5) without any Raiti/Dhakre and judicial powers (called as Thing Subba). The powers and privileges were also reduced depending upon the hierarchy/ category of the Subba (Lalmohariya Subba to Thing Subba).

- (xxi) Relaxed processes of appointing Subba and division of Subbangi increased the number of Subba rapidly. Division of Subbangi also created rift in the community, rivalries among Subbas, gradual constriction in Subba's jurisdiction¹³⁰, and decrease in Kipat land area with the subsequent increase in Raikar land (land under state ownership, that is, individual ownership) and immigrant population¹³¹. By the end of Autocratic Rana regime, it was estimated that the number of Subbas had reached already close to 5000. "In 1966, there was an average of one headman (Subba) for every twenty households, and sometimes more. The considerable powers each headman (Subba) had over his subjects cancelled

¹³⁰. Clashes between new and old Subba after 1834 began as old Subbas denied to divide their jurisdictions and in late 1844 an order was issued to share their jurisdictions and privileges such as Kipat areas, money matters (*damkam*) of Limbu homesteads and settler (*dhakre/ raiti*) homesteads, *theki* (fixed amount to be paid to occupy land), *chardam* (token fee to be paid by settler to Subba to get ownership of land), *asar* (unpaid labor during rice plantation), *dasai dastur* (levies in the form of fruits and other eatables of Dasai) (Ingnam and Ingnam 2013:199).

¹³¹. In relation to Subbangi division Mahesh C. Regmi remarks: "Obviously the right granted in 1827 to the relatives of Limbu Talukdar (Subba) to become Talukdars themselves after subdivision was motivated primarily by political objectives. So long as the leadership of the community remained in the hands of a select group of Talukdars, it was unified and effective. But the inevitable proliferations in their number as a result of the subdivision of Talukdari holdings (Subbangi) dispersed the communal leadership too widely to make it effective. Internal power rivalries were exploited to undermine communal authority. Moreover, as a result of this measure, the government succeeded in creating a class of vested interests in the Limbu community who owed their power and existence to statutory authority rather than to the community, which in fact, ceased to have any voice in the selection of its leaders. Acting as an intermediary between the community and the government the Talukdars were naturally jealous of their newly acquired status and privileges and competed among themselves in demonstration of loyalty to the government" (Regmi 1978: 566-67).

themselves out whenever two neighboring Subbas clashed. The Nepalese administration cleverly divided to conquer.¹³²

- (xxii) Subba could be inherited according to the rule of primogenitor: priority to first-born son or heir. If the heir was minor, the wife of the Subba could become Subba and registered in the concerned office of the government till the minor came of age (16 years). If the legitimate heir was unwilling or incapable, then the second elder son would inherit Subbangi and and if non were available in the family, close collateral kin would inherit. By the late of twentieth century, Raitis (Subba' subjects or settled immigrants) also could select Subba if the position became vacant due to various reasons.
- (xxiii) Subba also could provide a deed of authorization (*patta*) to anybody on whom he/she had confidence to deal the cases of another areas (*mauja*) if petitioned him/her for justice and to report him/her. This provision was abolished in 1895 as it created lot of confusions and disorders after the dramatic increase in number of Subba¹³³.
- (xxiv) Subba had to settle efficiently the cultural clashes (*nitima chandrayan*) regarding the norms and rituals of purification between Hindu formal laws and indigenous customary laws of Limbus, time and again, with the resolution that Limbus should be allowed to observe customary expiation (*singmang-lungmang*) if they came in sexual contact with or accepted water and cooked food from women or men of untouchable castes and retain own ethnic identity after paying levy (*chandrayankar*) to the government in place of observing *patiya*¹³⁴ (Hindu ritual of purification) from Dharmadhikar (Bahun

¹³²- Quoted from Sagant 1996: 325.

¹³³- Ingham and Ingham 2013:231

¹³⁴- Richard Burghart notes: Father Ippolito Desideri noted in 1722 that Newar travelers, before being readmitted to Nepal from Mughal territory had to 'undergo purifications by bathing for forty days in cow's urine, drinking it, and eating cowdung occasionally.' After their conquest of Nepal in 1768-9 the Gorkha rulers continue to preserve the purity of Nepal as their locus of authority. ... Gorkhali envoys returning to Kathmandu from Tibet underwent three days of purification at Nuwakot, just outside Nepal (Burghart 1996: 232). Such practice was polluting, abhorring, and culturally highly incompatible to Limbus difficult to adopt.

priest serving as religious authority)¹³⁵.

- (xxv) Subba had the full authority to control, protect, manage and judicious exploit of the natural resources: forests (Daskhateban or Sanadiyaban, Raniban, Kipotiyaban and others), bushes, pastures, waste/barren lands, slopes and steep slopes, mountain, hills, ponds, lakes, wetlands, rivers, anything or organisms that live and flow in rivers (*rahata-bahata*), wild-bee honey (*mahabhir*), wild life (*bankar*), aquatic life (*jalkar*), specially *titemachha* (small fishes of bitter taste), birds or others that fly in the territorial sky (*udanta*), elephant tusk (*hatti dant*), rhinoceros' horn (*gaindako khak*), wild white-cow's horn (*gaurigaiko sing*), minerals/ substances and treasure trove under the earth surface (*gadanta*) of a territory and others as enunciated in Lamohars (royal decrees), Sanads (official orders) and Rukka (official commands) issued from

¹³⁵. Royal order of 1810 imposed fine on *nitima chandrayan* (violation of caste rules of purity and impurity/ pollution) which is as follows: fine of Rs 5 who commit crime/ immoral act (sexual intercourse with low caste people), 8 annas per household who share water of the same well/tap or water-source, 2 annas per Sarki households serving the village households and after payment of fine, they should be allowed to perform own rituals of purification/expiation and thus to retain membership of the group (Ingnam and Ingnam 2013: 188). By this time (1810), Limbus were already divided into Niti and Samriti and by 1816, compulsory expiation from Dharmadhikar was imposed to both Samriti and Niti limbus, but Samriti Limbus followed with slightly lowered concessional rate of Nitichandrayan levy. But Niti Limbus resisted, instead Subbas of different Thums together petitioned and after negotiations, they presented 10/12 *khets* (250-300 ropanis or 32.5-39 acres) from each Thum to the government to be allowed to practice customary expiation, which was accepted by 1818 and customary purification ritual was reconfirmed in 1840 again. Due to some confusions, an order was issued again in 1843 to legitimate customary expiation free of levies (Ibid: 188-190, 249), which was reconfirmed in 1860 by an order (*rukka*) (Ibid: 249-50). Subbas who could not pay *nitikar* (*nitibade*) had to offer their Kipat lands. Subbas were paying *nitikar* of 8 annas (50 paisa) per homestead till the new land tax was introduced after cadastral survey of Limbuwan according to Land Reform Act of 1964.

tome to time¹³⁶. Subba had to protect reserved forests/bushes above and below the paddy fields, irrigation canals and water sources and plant trees on both sides of tracks/pathways and on platforms built on the pathways and had to irrigate Kipat barren lands (*kalabanjar*) to save them from appropriation and conversion into Raikar¹³⁷. Subbas were active to preserve forest despite several orders related to forest since 1820 that attempted to bring forest of Kipat area under the jurisdiction of the government.

- (xxvi) Subba had to manage transportation of government loads/ equipment/logistics (particularly of army and civil personnel) without remuneration (*jhara* basis) from place to place and mail parcels or materials of post offices within their areas.

¹³⁶-Conflict over the jurisdiction on the Limbu's customary rights to natural resources had arisen since early 1800 when Government took control of the mines in 1800 and started to operate directly appointing functionaries for each mines and later manage under contract system (Regmi 1999: 162-63), thus transgressed Subbas' jurisdiction of '*gadanta*' operation and management. Since 1830s, government interventions became more aggressive. Government officials intervened on the right of Limbus on hawk/ falcon (*udanta*) caught in a trap on ground; adultery and sexual offenses (*chakchakui*); tusks of elephants, horns of white wild cow (*gaury gai*) and rhinoceros collected. After hostile reactions from Subbas, Government issued an order in 1831 that confirmed the customary rights in this way- hawk/falcon though trapped on the ground is an *Udanta* and so government officials should not trouble to Limbu hawk hunters, adultery and sexual offenses fall under the jurisdiction of Subbas, left horns and tusks of white wild cow and rhinoceros and elephant belong to hunters and the right horns and tusks should be submitted to the head of the government (Sangraula 2010: 96). Limbus had a lasting reputation as elephant hunters, but the sale of elephant became state monopoly Sagant 1996). To address the problem of migration of Limbus to Darjeeling and Sikkim leaving Kipat land barren due to heavy tax and exorbitant interest rates and psychological torture of money lenders, maltreatment of government officials, a Lalmohar of King Rajendra Bir Bikram Shah during the Premiership of Jang Bahadur Rana was issued in 1850 which appealed migrated Limbus to return back to their lands; ensured their ownership and enjoyment of Kipat lands, exercise of traditional customs (*thiti-riti*) without restrictions and three years rebate of homestead tax; restricted money lenders/ creditors to arrest and put pressures (*dharpakad*) to their debtors (Limbus) for 10/8 years, and warned that if some Amalis, inspectors (*janchaki*), conspirators/accomplices (*rakami*) do injustice to them (Limbus), they could directly approach king (probably via Prime Minister Jang Bahadur Rana) for redress. (Sangraula 2010: 101-2). However, government policies enforced in the later years continued to encroach on the natural resource rights of Limbus as in the past.

¹³⁷. Sangraula 2011: 130, 156.

They had to communicate crucial local and international information to the central government through provincial government (Chainpur and Bijayapur).

(xxvii) Subba had to provide food and beverages when the government personnel came in his areas to supervise collection of taxes and fines, assess law and order situations and capture criminals. They also had to assist government officials to capture murders and other serious criminals and paste subpoenas at the doors of concerned houses.

(xxviii) The most difficult task in the history of Subbangi was the resolution of cow/bull slaughtering for food, which Limbus had practiced through ages. When Subbas fell under the suzerainty of expanded Gorkha they received the first call in 1786 to stop cow slaughtering and shun beef eating. Since then they received repeated calls from the government with strong warnings, the most serious warning was given at the gathering of Subbas in Kathmandu in 1827 after the announcement of Thekka Thiti sастem, as they undermined the order relating

to cow slaughter¹³⁸. Hindu norms and rules (laws) of edible food and inedible foods and commensality were completely alien to Limbus and contrary to their customary practices. Subbas had made several attempts to deal a compromise.

¹³⁸ King Ran Bahadur Shah had issued an order in April/May 1805, which reads: "From today killing of cows is prohibited, inform (everybody) that, if somebody does (cow slaughter), capital punishment will take place and his property will be confiscated. From now on killer of a cow shall be killed by Ambali (district officer)"(see, Michael 1997: 86).

In the same year, officials deputed in Solukhumbu were directed thus to enforce the ban on cow-slaughter: 'In case persons guilty of this crime are punished with death or enslavement, most of the inhabitants of that area will have to be so punished. Accordingly, the heaviest possible fines should be imposed on persons who committed cow-slaughter after that area came under our rules, as long as they have wives, sons, daughters and bondsmen available for sale (to pay such fines). However, those who committed this crime after March 1804 should be either beheaded or enslaved' (Regmi 1999/1972: 119)¹³⁸.

Probably the first case of severe punishment is evidenced from the Royal Order to Bichari Hiranda Tiwari dated March 1806 when the rumor spread in Kathmandu that a Damai from west Nepal had killed a cow, the order given was: "Cut off flesh from his back and put salt and condensed citrus juice on the wounds. Make him eat the flesh himself and kill him" (Michael 1997:87, Source: RRS XII.11:169).

Punishment was almost similar for killing oxen. The Royal order issued in 1810 to the administrator of the Salyan area reveals that punishment for killing oxen is no less severe which states: "persons who commit the heinous crime of slaughtering oxen in Hindu land flayed alive, impaled, or hang(ed) upside down until they are dead. Their property shall be confiscated and members of their families enslaved" (Michael 1997:87, Source: RRS XII.11: 170).

Not only slaughtering cows and eating beef was a heinous crime, but to sell cows to neighboring countries where beef eating practices are normal or conventional was also equally serious crime. The royal order had forbid Limbus to sell cows to Sikkim and had warned them severe punishment if violated the order. Balahang Limbu of Ilam had to suffer the mutilation of his nose and degradation from the status of '*pani chalne*' (water acceptable) and had to migrate to Sikkim. Later in 1816 his appeal for restitution of his caste status (*pani phoi* /water acceptable) on the condition of leading life as landless tenant renouncing customary land title was accepted and allowed to return his country (Pradhan 1991:168).

Eating beef of slaughtered cows/oxen was fully prohibited and annual fees, a kind of fines, had to pay even to eat flesh of the dead cattle (mainly of cows/ oxen). The severe legal provisions relating to cow- slaughter and related activities (eating meat of slaughtered cows or dead cattle) were slightly relaxed with some elaboration after the promulgation of 1854 Country Code.

Finally, Subbas of 14 thums (districts), except the Subbas of Maiwakhola, Mikwakhola and Yangwarak, agreed to pay four annas (25 paisa) from every homestead annually as Megjinkar additional to fixed homestead tax of Rs. 6.50. for the retention of customary rights of slaughtering cows/bull for beef. The agreement, however, did not last long (only a few decades), but the provision of Megjinkar remains in force till the end of Kipat system in Limbuwan¹³⁹.

- (xxix) Subba had to maintain religious equilibrium by offering irrigated Kipat land as a trust to the newly built Hindu temples for maintaining expenses of worship and Bahun priests, observing festival of Dasain sacrificing bull-buffalos, attending religious functions organized by Raitis (immigrants settled in Subba's Lands), on the one hand, to avoid confrontation with government and district government officials and please Raitis and, on the other, observing and celebrating traditional Limbu religious rituals, practices and festivals like Mangenna, Nahangma, Tongsing, Chasok, Yokwa and so on to retain and invigorate age-old customs, traditions, conventions and mores that are the sources of legitimacy of his authority and power.
- (xxx) Subba had to be proficient in formal (state) laws and customary laws simultaneously. He had to apply formal laws when dealing the cases of Raitis (particularly non-Limbu Hindu castes) and had to employ customary laws to settle the cases of Lmbus. In most cases customary laws also were applied to Raitis and Limbus alike to respect the law of the land (Limbuwan).
- (xxxi) Subba had to safeguard his Raitis from external threats and aggressions of Limbus and immigrants of his territory or others' territories. He had to exert utmost efforts to make Raitis not to feel injustice even at the cost of his lands.
- (xxxii) Procedures of justice delivery: (a) Subba used his house as his office (*Amal*) and his houseyard was used for court proceedings. Court proceedings could also be organized at the appropriate place (stone platform, large flat stone, open

¹³⁹ Ingnam and Ingnam 2013:183-5.

grassland at the centre of the village or places where incidence of dispute had occurred) depending upon the nature of the case. All his formal assistants (Rai, Karta, Karbari, Budhyauli, Gaunbudha and Pagari) had to be present at the time of the hearing of the cases and legal proceedings. Subba conducted preliminary inquiry when the case recorded in his Amal using his formal assistants and security personnel. Subba fixed the date of hearing and court proceedings as soon as possible. Witnesses were summoned to provide details of the subject of conflict, crux of the issue, relevant evidences or testimonies. Distinguished persons (*Tumyang/Suhangma*) and third party representatives were also invited to observe the proceedings and examine and verify the statements, evidences or testimonies presented, assess their trustworthiness to find the truth and give conclusions. (b) The accuser and accused and witnesses could use the most convenient language, usually mother language, in which they could fully express their views or feelings and language barriers were fully removed for realization of justice. (c) The rules of the proceedings were made gender sensitive also. The observation and monitoring of the proceedings by distinguished lady (*yakla suhangma*) was mandatory. (d) Suggestions of the third party (unconcerned with litigants) were taken seriously for maintaining impartiality in making judgment. (e) Subba along with his team could pay field visit where the incidences have taken place that led to litigation to observe the real situation, to be acquainted with the facts and find the truth. (f) If the cases were not of serious consequences, the team of Subba gave verdict the same day of the court proceedings. If the cases were of serious consequences, Subba conducted extensive, but in-depth, inquiry immediately and reached to the conclusion. (g) Customary methods of oath and ordeal (*dubo-dhungo chhuwaune* or *samyoklung thim* and other difficult tests for Limbus and touching *tama-tulasi* or copper and Tulsi plant, sacred religious books books of *Geeta*, *Chandi*, *Haribansa Puran* for Bahun-Chhetri and other conventional methods of their own to other groups) were employed to litigants (accuser and accused) and witnesses to speak the truth in course of

investigative process. (h) Customary laws were applied when settling the cases of Limbus and formal state laws were employed when settling the cases of non-Limbus and if the parties of the cases are Limbus and non-Limbus, then Subba had to use discretion which laws or parts of the laws to apply depending upon the nature of the cases and culture of the litigants. The institution of Subba (government appointed and designated position) was the metamorphosed from of ancient Council of Justice Despensors (*Khasen Khara Chumlung*) gradually evolved as an interface between informal and formal justice systems. This way, Subbas had efficiently practiced legal pluralism in their areas avoiding legal conflicts. Legal pluralism never caused problems. (i) Subba could also use *thinro-mungro* (shackle and staff) to violent or difficult offenders/ criminals to make them tell the truth. (j) Subba could use appropriate procedures by his discretion to identify and punish liars, cheaters, fraudsters, conspirators, criminals and accomplices of criminals and in absence of his own prisons could refer to the government court for imprisonment. (k) Family members of accused and accuser were also given opportunity to vent their feelings and give opinions during the course of court proceedings so that they would realize right or wrong or good or evil actions committed by their relatives and the spirit of judgment done by the adjudicators. (l) Subba had to give verdict with the perception that society/ community always assesses soundness and fairness of judgment and he should accountable to his society/community to which they belong. Subba always had to afraid of his community /society and clan deities. (m) As Subba emphasized on conciliation and compromise and bond paper of conflicting parties prepared by his office rarely challenged in the government appellate court and such formal bond usually had created a kind of social alliance and had lasting positive impact. The case in the Amal (court) of Subba never remained pending or undecided. It is assumed that each Subba settled at least one case in each week and more than 50 cases a year of his/ her area by 1960. In each village of approximately five thousand populations, Subbas of that village area settled 200-300 cases

of minor to grave offenses in a year mainly through mediation, reconciliation and negotiation.

(xxxiii) The office of Subba was liable to termination (1) if Subba himself renounced the position and requested the government of his renouncement, (2) if he died, (3) if he migrated in other places other than his own Kipat territory or abroad, (4) if he was found land (Kipat paddy fields and other uncultivated lands) concealing during cadastral survey and the concealed lands confiscated and converted into Raikar¹⁴⁰ and (5) when he failed to collect taxes and transmit the proceeds to the concerned office in due date.

(xxxiv) Encroachment on the authority and jurisdiction of Subba was associated with Kipat system, which encompassed customary collective/communal land tenure system, spiritual practices associated with lands, sacred sites, history of the lands, land management along with local administration, and customary judicial system. At the same time, encroachment on the authority and jurisdiction of Subba was the intrusion on the traditional institutions and customary laws of Limbus. The authority and jurisdiction of Subba were encroached thus:

1. The traditional system of conferring Subba designation to the Limbu leaders (Hang) of certain territories practiced since the time (sixteenth century onwards) of Sen kings of Palpa, Makwanpur and Bijayapur was replaced by the system of Nepal Government's approval of the appointment of Subba delineating the powers, authority and jurisdiction of Subba, subject to periodical revision, and demarcating his Kipat areas within Limbuwan that made Subbas to remain loyal to the government than to be autonomous.
2. Lalmohar (royal decrees) provided to Subbas after 1774, constricted the judicial powers of Subbas by restricting to settle the cases of *panchakhat* (five serious crimes) like murder, armed robbery, limb mutilation, enslavement, cow slaughter, which they have traditionally dealing and by the end of eighteenth century these offenses no longer came

¹⁴⁰. Ibid: 135.

before Subba and they were judged by the Nepalese royal court which sat for the time being at Dhankutta.

3. Since the establishment of Morang court in 1805, the court tried to bring uniformity in the patterns of punishment (fine) of Amal and set the claimed amount (*bigo*) of Rs.100 of the case to be heard or settled by Subba and made arrangement of appeal on the verdict of Amal (Subba) and set the rate of fines in 1806 which was conformed by the order of 1810¹⁴¹ though Subba resisted arguing that court order could not overrule the provisions of royal decree¹⁴². The system of appeal was gradually institutionalized after the establishment of Provincial Court in Chainpur for Limbuwan after 1806 and Sadar Court in Kathmandu and Subba's court- Amal turned into the lowest court and as the government offices and officials increased (whose major cost had to bear by Subbas surrendering Kapat lands and paying various kinds of levies), they began to interfere gradually on the affairs of Subbas. The Civil Code of 1854 amended in 1870 limited the judicial powers of Subba to deal the cases of maximum amount (*bigo*) of Rs 100 reconfirming the order of 1806/1810 and fine up to Rs 25¹⁴³. Till 1847, indigenous way of purification ritual of *dubo dhungo* performed when cattle (cow and ox) died by falling in step rocks or ensnared in ropes or traps. Hindu way of expiation (*patiya*) became compulsory in 1847, which was first transgress on indigenous Yakthung customary practices. Thus, imposing limitation on the total sum (*bigo*) of the case and amount of fine, beginning to draw cases from Amal by District court and Amini and starting to call Subba to be present at court during court proceedings (a humiliating arrangement for the dignity of Subba, later repealed) and to give new verdicts accepting appeal against Subbas' verdicts, provision of compensation to be paid by Subba to affected person by his

¹⁴¹. Sangaula 2011: passim.

¹⁴². Ingham and Ingham 2013: passim.

¹⁴³. Shrestha 1985: 201-2.

decision (later revoked), imposition of complicated legal procedures for justice dispensation ¹⁴⁴ and denial of indigenous customs were gross violations of Subba's jurisdiction.

4. By the turn of the nineteenth century Government began to issue several orders after orders that limited the Subba's jurisdiction over natural resources and infringed Limbu's customary rights and monopolies over resources (hunting, gathering, fishing, mining, etc.). The government controlled the mining by the first decade of nineteenth century. Limbu people were only used to capture elephants, but sale of elephant became the sole monopoly of the state.
5. Gradual infiltration of Gorkha forces, installation of several military posts, imposition of homestead tax and other levies, 'systematic encouragement of arrogation of virgin lands and settlement of immigrants by the arrangement of conversion of lands under communal Limbu Kipat system cleared by non-Limbu into Indo-Nepalese Raikar (numerous decrees of 1795, 1797, April 1804, May 1804, May 1805, etc.), repeated recognition of autonomy in theory, but secretly attacked in practice inch by inch rendered Subbas¹⁴⁵ resourceless, powerless bound to make conciliation in the form of *Thekka Thiti* system which transformed the old system introducing several measures of justice administration, division of Subbangi and parcelling of Kipat land, tax collection, conversion of communal Limbu Kipat land into Raikar, encouragement immigrant settlers, promotion of feudal economy, etc. that paved the way for the death of traditional institutions and customary laws.
6. The system of appeal on the verdicts of Subba, verdicts to be written in Khas-Nepali language, the compulsion to follow the lengthy legal procedures of the government court while dispensing justice instead of adopting customary practices, cases to be referred to government courts or cases under

¹⁴⁴. Sangraula 2010: 183, 196.

¹⁴⁵. Sagant 1996:121-323.

consideration to be reported to nearby courts, fines to be imposed according to state laws, need of new legal capability of Subba to settle cases, non-recognition of traditional judicial institutions like Khasen-Khara Chumlung (council of judges/experts/community chiefs) and imposition of Hindu jurisprudence gradually made access of justice remote, difficult, selective, and hardly realizable that eroded the credibility and integrity of traditional institutions and customary laws.

7. Measures of Thekka Thiti system 'laid the legal foundations for a multi-ethnic society in which immigrants were integrated into the social framework of the local population, thereby striking a fatal blow to traditional Limbu structures. The tendency was to move away progressively from the clan segment with its leader, its community, and its territory, towards the much vague notion of clientele. The new rules governing land transactions were to favor the emergence of nuclear families over the big three-generation families. The specific immigrant legislation and the parallel landholding systems slowly created numerous links among clienteles, not always in the interests of unity. ...Many kinds of social solidarities crumbled in this way. .. Less than ten years after the system was created, its effects were already being cruelly felt. Enslavement for debts had become the scourge of the country. For the poor (Limbus) there was only one solution: flight to Sikkim or Assam. A tide of immigrants surged into India, a bleeding wound weakening the social body... In 1834, a worried administration issued decree after decree in an attempt to stem the flow¹⁴⁶. The prolonged period of Tekka Thiti system with several revisions in it had eventually caused the loss of traditional institutions and customary laws and lands with attendant injustices and miseries to Limbus.
8. Tekka Thiti system that transferred the lands from Limbus to immigrant non-Limbus, brought changes in the local economy, ended monopoly of Limbus over natural resources of their territories, drastically reduced the administrative and judicial

¹⁴⁶. Sagant 1996:325.

powers of Subba in hundred and thirty years and thus, settler Bahaun-Chhetri became the main beneficiaries of the system and Limbus, the party of the 'conciliation' became the sufferers¹⁴⁷.

9. The Subbas' successful resistance of 1827 over the transfer of lands from one tenure system to the other; of 1855 over the declaration of new households to be taxed; of 1870-88 over relation between landowners (Limbus) and tenants on the land (usually immigrants); of 1883-9 over Subbas' judicial powers, which the administration was trying to restrict; of 1917-19 over the practice of redeeming mortgaged lands; of 1936-9 over the declaration of taxable households¹⁴⁸ ultimately failed to protect their traditional institutions, customary laws and collective/communal ownership of Kipat land due to internal division, mutual competition for position and resources, greed of individual benefits and privileges, increased tendency of seeking personal favor from the government authority, increased Hindu influences, erosion of traditional cultural and religious values, norms and ideals, pervasive envy and jealousy (*tingding nahen*) among Limbus, gradual loss of communal solidarity and capability to challenge government.
10. Doctrinal contrasts between Hindu jurisprudence/ theory of justice and Yakthung (Limbu) jurisprudence/ theory of justice were also the factors for weakening of Limbus' traditional judicial institution and customary laws and undermining them without declaring null and void for almost two centuries (see *Table 1*). The increasing domination of Hindu jurisprudence through the application of formal (state) laws over customary laws based on indigenous jurisprudence also gradually limited the access of Limbus to justice, in some cases, even perpetrated injustices instead. Severe punishments (like limbs mutilation, heavy fines) for newly defined sexual offenses, capital punishment on practicing cow slaughtering as usual and heavy fines for conventional practice of beef eating, heavy

¹⁴⁷. For in-depth analysis, see Caplan 2000 (First Print 1970): 53-72.

¹⁴⁸. Sagant 1996:326-7.

finer and imprisonment for violations of unknown caste rules of commensality are some of the examples of injustices (loss of life, liberty, property and dignity) perpetrated against Limbus because of their ontological position, axiological principles and epistemological considerations that contrasted with those of dominant caste Hindus. Heavy fines led Limbus to indebtedness and landlessness (erosion of Kipat land). As long as legal monism with antagonistic doctrines and values persist at the cost of legal pluralism that respect and recognize pluralistic doctrines and values of the diverse groups of people, it is unlikely to improve the access to justice, particularly of powerless people with customary way of life like Limbus.

11. Introduction of Panchayat at the village level with similar powers of Amal attempted in 1926, such institution could not be established in those villages where Subbas opposed (Regmi 1978: 572), again attempted in 1944 but could not succeed (Sangraula 2010: 186-87). Attempt to establish Village Panchayat was made in 1957 enforcing Village Panchayat Act, Limbus strongly resisted though the Village Panchayat had no judicial powers/jurisdiction. The issue of the Amal system vis-à-vis the Panchayat system again came to the forefront in 1961 when the government formulated a comprehensive program aimed at remodeling the entire political and administrative structure on the basis of the Panchayat system¹⁴⁹. Village Panchayat elections commenced on February 18, 1962 throughout Nepal, including areas where Amals were in existence. Nepali media reported that the programs encountered initial opposition in Pallo-kirat Limbuwan, however, several prominent Limbus expressed the view that "the Limbu people sincerely believe that the village Panchayats will never interfere with their traditional privileges, and ultimately the village Panchayat elections in Pallo-kirat

¹⁴⁹ Regmi 1978: 572-73.

Limbuwan were completed on schedule¹⁵⁰. Subbangi system was made redundant by the introduction of Panchayat System in 1963 in Limbuwan, replacing Subba and his assistants (team) by Pradhan Panch and members by bestowing judicial rights within their areas (Panchayats). After cadastral survey that started from 1971 in Morang and completed by 1995 in Sangkhuwasabha, Subbangi system along with Kipat system completely came to an end.¹⁵¹

¹⁵⁰. Ibid.

¹⁵¹. Ingham and Ingham 2013:282-3.

Table1: Summary of the doctrinal contrasts between Hindu jurisprudence/ theory of justice and Yakthung (Limbu) jurisprudence/ theory of justice

Hindu jurisprudence/ theory of justice	Yakhung (indigenous) jurisprudence/theory of justice
1. Casteist individualism	1. Indigenous collectivism/ communitarianism
2. Homo Hierarchicus: Brahman supreme human, Kshetri superior human, others inferior and untouchables most inferior humans by birth, hierarchically divided caste society; hierarchical entitlements to rights, goods and services, human dignity, privileges and opportunities appropriate to caste hierarchy	2. Homo Equalis: All humans are equal by birth, non-hierarchical egalitarian society; egalitarian entitlements to rights, goods and services, human dignity, privileges and opportunities without distinction of birth or place of origin
3. Omnipotent, hereditary monarchism	3. Participatory, deliberative republicanism
4. Monarch or his representative/ regent as sovereign	4. Chumlung (Council of people's delegates) as sovereign
5. Monarch as law giver (his counselors may be his law makers)	5. Chumlung (Council of people's delegates) as lawgivers
6. Rule of decree	6. Rule of rituals/customs
7. Divine legitimacy of sovereign powers	7. Community legitimacy (legitimated by people) of sovereign powers
8. Henotheism (different gods in pantheon successively supreme) and	8. Animism (all spiritual beings pervading universe) and polytheism (several

kathenotheism (each god is supreme in his turn)	goddesses and gods with one supreme goddess)
9. Values: Accumulation, regulated competition, personal success, individual good, hegemony	9. Values: Reciprocity, complementarity, sharing, caring, cooperation, solidarity, common good
10. Masculine power (brahmaism, vaisnavism and shaivism,)- faith on trinity of supreme gods (Brahma, Vishnu and Mahesh/Shiva)	10. Feminine power (<i>shaktism</i>): faith on single omniscient, omnipresent and omnipotent goddess Tagera Ningwaphuma
11.Touch as a threat to racial/ caste purity and racial/ caste superiority	11.Touch as a means of intimacy, love and consensual move of procreation for survival of human beings
12.Prescription of caste appropriate foods/ inedible categories like beef, pork, chicken meat, etc.	12. Regulation of age and health appropriate foods: beef, pork, chicken meat, almost all categories of meat edible
13.Use of books of sacred Hindu scriptures, copper and basil (a plant) for purification, oath and ordeal	13. Use of sacred Samyok lung (a kind of grass- <i>Cynadon dactylon</i> and crystal stone) for purification, oath and ordeal
14.Rigid	14.Flexible, adaptable
15.Laws to be based on Brahmanic epistemology (ways of knowing), ontology (social reality) and axiology (value systems)	15.Laws to be based M u n d h u m - g u i d e d epistemology (ways of knowing), ontology (social reality and axiology (value systems)

The Lalmohars (Riyal Decrees), Sanads and Rukkas (official orders equivalent to laws) issued since 1774 repeatedly recognized and conformed customary laws of Limbus and the country (Pallo Kirat Limbuwan) to be governed according to their customary laws and autonomous tradition and rights and ensured privileges enjoyed since the time of reign of Sen kings¹⁵². Customary judicial institutions and laws of Limbus have been classified into three categories depending upon their distinctive features for the convenience of discussion in this report: (i) ancient judicial institutions and laws, that is, Mundhum-based judicial institutions and laws, (ii) customary judicial institutions and laws of the middle ages (from the later half of the first millennium to the late eighteenth century), and customary institutions and laws after annexation of Limbuwan in expanded Gorkha (1774). Despite the end of Subbangi system (modified customary judicial institution), several provisions of customary laws (*Sawara Yetchham Thim* and *Thibong Yakthung Thakyudhim*) still prevail in Limbu society and serve as code of conduct. Observation of religious functions, regulation of cultural festivals, observation of life cycle rituals including marriage and divorce or separation, food and sexual taboo, standards of purity and impurity, family/clan affairs, social conducts, and ethical norms and values are guided by these customary laws even today.

¹⁵² See Regmi 1978, Shrestha 1985, Sangraula 2011, Chemjong 2003/1966, Ingham and Ingham 2013 for details.

CHAPTER IV

SANTHAL CUSTOMARY JUSTICE SYSTEM

Stories of Santhal Origin

According to the Santhals' creation story, the universe was dark and filled with water. From the foam of water were created *thakur ji* (Thakur Father) and *thakur gaga* (Thakur Mother). They created wind and cleared the smoke. They then created a pair of ducks and water plants. Later, they created the land out of four quarters of ocean and then created animals and plants of all types.

Then *Thakurji* named the land thus created as *hididi Pipidi* and created the primordial man and woman, and named them *pincubudha* and *pincubudhi*. Thus, Santhal consider *hididi pipidi* as their land of origin and *Pincubudhâ* and *Pincubudhî* as their primordial ancestors. There were five sons and five daughters from this couple, and they intermarried and procreated. Because there were no rules, there was sexual promiscuity, and population increased indiscriminately.

Thakurji was very disappointed with promiscuity. He ordered the couple to advise their children to stop promiscuity, but the children did not heed to the advice of the couple. So, one day *Thakurji* took the couple to a cave in a high hill and set ablaze the rest of the land and killed all the humans. Then the couple again reproduced seven sons and eight daughters, but this time the sons were given different surnames. Moreover, to segregate them, *Pincubudha* went to live with his sons in a place named *Caya* and *Pincubudhi* lived with her daughters in a different place named *Campa*.

When their children became adolescent, *pincubudha* and *pincubudhi* arranged their meetings in a jungle so that the adolescents would be attracted to each other. Later, the parents made their children drunk, which led to sexual intercourse.

After many generations, population increased, and to maintain social order they created seven positions and assigned responsibilities for managing and organizing the community. Later,

they chose a king from Kisku clan, army and police from Soren clan, priests from Murmu clan, judges from Hembram clan, ombudsmen from *Hasda* clan, merchant from Marandi clan, and ironsmith from Tudu clan. At present, there are 12 clans in Santhal.

Santhal began to live in Majhare along with Rajput, Nuniya, and Gangai by clearing of forest. In the past, due to the nomadic way of life, Santhals would clear forest at one place and cultivate for two to four years and then move away in search of new land. Most of the land of Santhals were confiscated and expropriated by the people close to the state power. During the FGDs both in Majhare of Morang and Haldibari of Jhapa, the participants said with no hesitation that they were displaced from their lands by the high castes, landlords, and merchants.

Who are the Santhals at Present

The ethnonym Santhal is said to be etymologically related to the words *santa* and *satya*, both of which means simple, honest, saintly, or truthful, which Santhals attribute as their characteristics. Santhal, Santal, Satar. These are the three different ethnonyms to denote the groups of people whom they call themselves Santhal at present in Nepal. Mostly the English literature published on 'Santhals' during the 19th and early 20th century British-India period seemed to have written 'Santal'. Similarly, calling them Satar now is understood to be associated with derogatory meaning. This report also adopts the term Santhal /santhaal/ to denote the peoples under the study following their own claim and pronunciation of their ethnonym. However, while differentiating between themselves and other non-Santhal groups, Santhals use two words: *hor*, which means *manchhe* (humans or 'man' in generic sense), and *diku*, which means *dukha dine* (trouble giver) in Nepali translation. The Santhal way of naming the other non-Santhal groups as *diku* indicates that the outsider non-Santhals who came to contact with them seemed to have exploited the Santhals in the past. In fact the term *diku* was originally used by the Santhals of India to denote the caste groups belonging to the Hindu Varna system. (Rai 2066; Ghimire 1990).

The population of Santhals is a little more than 51,173 in Nepal (CBS 2012). They are one of the main *adivasis* inhabiting the lands in Jhapa, Morang, and in marginal number in Sunsari districts in the eastern Tarai region. The government of Nepal has classified the Santhal as one of the IPs (Indigenous Peoples)—*adivasi*—groups in Nepal. Recently in April 2017, the government of Nepal has also enlisted the Santhals as one of the 98 minority groups in Nepal. NEFIN (Nepal Federation of the Indigenous Nationalities) has classified the Santhals as one of the *Highly Marginalized Groups* considering their low level of achievement in human development indices.

Santhals, while they relied on hunting-gathering for their livelihood, say that they entered Nepal side many generations before in search of games and hunting. Another anecdote is that the ruling groups—even the Ranas—brought Santhals to Nepal for clearing the Tarai forests for turning into cultivable land. Santhals, with their extended family groups entered the forests of Morang in Nepal from the Jharkhand region of India during the Rana period. This is how

Map Showing the Santhal Population Concentration in Jhapa and Morang Districts



(Map adopted from Gurng and Tamang 2014)

Santhal villages began to settle along the banks of the rivers Singiya and Lohondra in Morang (Rai 2066). However, Santhals remained to be one of the least included groups in terms of the indicators of national social inclusion including per capita and land ownership. On the other hand, Santhals are one of the best functioning and self-rliant groups in terms of practicing their own customary justice as well as political organization (Gurung 2014).

The above map presents the Santhal population's concentration within the lands of Jhapa and Morang districts. Although the map above shows the presence of Santhal population scattered throughout the country but in the areas other than Jhapa and Morang districts, their number is only a few. In Morang, Santhals have highest population in Bhatigang, Majhare, Hoklabari, Babiya birta, Sisawani Jahada, Govindpur, Darbesa, Sijuwa, and Keron respectively, and they are less populated in Dainiya, Rangeli, Katahari, and Pokhariya. There are more Santhals in Jhapa than in Morang, where they are numerous in areas such as, Haldibari, Saranamati, Kumarkhot, Maheshpur, Korobari, Dharpane, Dangibari, and Garamuni.

Santhal Customary Justice Institution and its Functioning Mechanism

***atu*: Santhal Village**

A single unit of village or hamlet of Santhal settlement is called *atu* meaning village. When there is an *atu*, there is also their religious shrine called *mahi than* erected within the village. Santhals would not start a new settlement without founding their shrine, the most sacred place for the community. It was observed during the fieldresearch that about three dozens of landless Santhals had just reclaimed about three hactres of land at the bank of the river Lohondra. The research team observed that there were 35-36 huts, which seemed to be built only recently. But there was their *majhi than* already established even in that new settlement. Therefore one cannot think of a Santhal village without their *majhi than*. One hamlet called Badhi Tola consisted of 45 households. In Majhare area, hamlets consisted of number of households ranging from 30 to 150.

majhi hadam

Santhals have their own customary justice system, which is integral to their society and social institutions. Various types of conflict, and cases regarding economic, social, political, and family and community related cases were reported to be resolved by the community. For this purpose, Santhals have an elaborate and sui generic social institution to look after different cases.

majhi hadam is the fundamental social institution of the Santhals so much so that the totality of Santhal society can not be studied as a whole in the absence of *majhi hadam* institution. *majhi hadam* looks after and settles all kinds of cases from simple individual level debates to the issues in relation to various rituals and festivals. It may be said that *Majhi hadam* is the governing institution for the Santhals. No individuals could think of living outside the *majhi hadam*. In this regards, it may said that *majhi hadam* functionally binds all individuals in the society.

majhi hadam is both an elaborate form of social institution as well as a designation of the leader individual who leads the institution. In this regards, *majhi hadam* is associated with seven different individual designations/posts with their own duties and responsibilities, namely *majhi hadam*, *pranik*, *jag majhi*, *jag pranik*, *naike*, *kudum naike*, and *gudit*.

1. *majhi hadam*

majhi hadam is the apex leader/headman of both the Santhal community and customary institution. *majhi hadam* is the main leader of the whole village and is elected by villagers. His term may be for a few months or whole lifetime, depending on his behavior and capacity to resolve disputes impartially and capacity to manage the affairs. He participates and leads all major social, economic, cultural, and political, and judicial activities in the village. He is responsible for solving disputes and fights, planning and giving verdicts. He hears and gives his decisions in front of the whole village. The fee for filing a complaint is two bottles of locally distilled alcohol. The leaders consume the alcohol after the meeting or hearing. A *majhi hadam* does not receive any remuneration or salary

for holding the post or for justice dispensation. This post can be seen as an excellent example of social service.

majhi hadam's wife is called *majhi budi* which denotes social prestige and honor. *majhi budi's* role is important when there are cases of women involved. For example, in the cases that involve husband, wife or men and women (domestic dispute, violence, divorce, elopement, adultery), quarrels or any cases among women, *majhi budi* were said to be involved in meditating and resolving the the case. Regarding this example, it may be said that the Santhals' customary justice system is gender friendly too.

Unlike the 'mainstream' societies' cases where the headman or the community leaders are usually seen to be enjoying a well-off economic status compared to those common members of society, *majhi hadam's* economic position did not seem to be better than those of his fellow members in the community. Rather, in the research team's observation during the FGDs, the *majhi hadam* did not seem economically a better well-off person than his fellow members, in his body language, demeanor, and the way he was dressed up. Furthermore, the *majhi hadam* did not even spoke more often than others whereas he let other fellow members and other sub-functionaries of the institution speak before him. The research team's observation of this fact during the FGDs and KIIs suggests that the *majhi hadam's* is not a dominant role played in the groups' presentation and decision, unlike other "mainstream" societies.

2. *pranik*

pranik fulfils the similar roles of *majhi hadam* in the absence of the latter. There are no specific duties and responsibilities of *pranik* unless deputed and designated by the *majhi hadam*. But it was observed in the study area that *pranik* fulfilled their active roles in resolving the cases where the *majhi hadam* was in his elderly stage. Regarding this, *pranik* seemed to be much younger than the *majhi hadam*.

3. *jag majhi*

jag majhi is associated with rather specific and different duties and responsibilities compared with the other three designations mentioned above. *jag majhi* is responsible for maintaining order and peace during the festivals, and various rituals. As rituals and festivals are associated with copious amount of consumptions of alcohol drinks and meals, some individual arguments and quarrelling or even scuffles among the participants may occur. In such events and cases, it is the *jag majhi* who not only maintains the order and peace during the entire period of event but also resolves all types of cases erupted therein. The cases of disputes that erupt during the social feasts, festivals, ceremonies are not taken care of by the *majhi hadam*. Rather all cases occurred in such feasts and festivals are under the jurisdiction of *jag majhi*. *jag majhi budi* also has roles if women involved in such cases.

4. *jag pranik*

jag pranik's duty is to assist the *pranik* and fulfill the duties in the absence of *pranik* and the *majhi hadam*.

5. *naike*

naike's duty is to perform the religious rituals and events in the society. *naike* will not look after any kind of cases or disputes in the society. But every Santhal village has a *majhi than* (sacred place) built in the vicinity of the village. All rituals and worshipping take place in the *majhi than* and the *naike* is the in-charge of the *majhi than*. In this regard, *naike* performs the roles in worshipping the dieties and divinities. In Majhare, *majhi thans* were built along the roadside, in front of the village where the *than* (temple) is publicly visible.

It is also to be noted here that the main motor road passes through the Santhal villages in Majhare. Since the government has the Road expansion project to be implemented soon in the area, local Santhals were worried that the road expansion project might remove their *mahi thans* built along the edges of the road.

6. *kudam naike*

Kudum naike is an assistant to *naike*. While *naike* does puja, *kudum naike* does the sacrificial offerings. Before sacrificial killing, he should offer a few drops of blood from his own body. He may do provisional worshipping in the absence of *naike* too.

7. *gudit*

gudit is the messenger. He is the one who communicates with the villagers about the meetings and the hearings by the *majhi hadam* and other responsible dignitaries. Although *gudit*'s role seems like that of a messenger who walks around the village announcing the *baisi* (assembly) meeting for case hearing or else, *gudit* is also called *marang majhi*¹⁵³ literally meaning 'big headman' [of the village]. Such an honorific name for the *gudit* demands an explanation here. A *gudit* seems to be low-level post in the *majhi hadam* system. The person fulfilling the roles of *gudit* might feel sometimes that his role is inferior than those of the others in the *majhi hadam* system. Therefore, so as not to let the *gudit* down, *gudit* is also known by another name: *marang majhi* = big headman.

Except for the post of *gudit*, all posts are held for free. All other posts are economically unrewarding. The 7 different posts presented above are assigned with specific roles as briefly described above. There were no written rules and regulations for dispensing justice or the verdicts given by the *majhi hadam*. Instead, the *majhi hadam* system is well founded in the norms and values of Santhal society. This is why *majhi hadam* may be called social institution. Any social institution has the capacity to reproduce itself; hence such institutions may be called the system *sui generis*.

majhi hadam institution was found to be integral to the Santhals from both field sites from Majhare (Morang) and Haldibari (Jhapa). In fact, very few Santhal individuals prefer to go to the government's official legal dispensations offices when in need of justice. They seemed to rely solely on their own *majhi hadam* for settling most

¹⁵³. *marang* = big, great. *majhi* = headman. *marang buru* = great mountain.

of the disputes and cases happening within the village. The respondents even reported that when there were certain cases taken to police and district administration office, even the government police, and district administration office suggested the concerned Santhals for the trial within the community first and try to resolve the case. In such cases, the research team members were reported about some incidents that even the district court and district administration office resolved the cases by having the witness of the *majhi hadam*.

Testimony of a *pranik* Panna Lal Hembram

Panna Lal Hembram (53), a resident of Sirtung Tola, has been a *pranik* for ten years now. Since the *majhi hadam* of his *atu* (village) is an elderly person, hence unable to carry out the assemblies, the cases that occur in Sirtung Tola are taken care of by Panna Lal. Before, he used to resolve at least 5-6 cases monthly, while only about 15-16 cases annually now. Panna Lal says that the reduced number of cases of disputes these days is because of the political parties' intervention and taking over the cases. Panna Lal has resolved various cases, such as minor family disputes, beating up between husband and wife, property inheritance dispute, land-boundary dispute, illegal marriage (marriage between the same clan group), divorce etc. In the understanding of Panna Lal, the *majhi hadam*'s verdict well respected and accepted by the fellow villagers as well as the plaintiff and defendants. In case of dissatisfaction over *atu* level *majhi hadam*'s verdict, either side of the dispute may go the appeal to the *digor* level *baisi*.

Panna Lal, also an activist of the Adivasi Santhal Utthan Sangh (Indigenous Santhal Upliftment Association), also insisted that the Santhals' customary justice dispensation system be recognized and incorporated into the formal legal system by the government.

Testimony of the Police Officer of Local Police Post

The police themselves have acknowledged the practice of resolving disputes by Santhals themselves. Sometimes even after the case has been filed at the police office, Santhals withdraw it and solve through their indigenous institutions. The research team had

interviewed the in-charge of police post in Majhare. Although he was newly appointed there he was not fully aware of the fact that local Santhals had their own justice dispensation system. When asked if he (police in-charge) would suggest the local people to try to resolve their cases in their own community, he said that indeed the community itself would like many minor cases resolve them. While the research team was still in Majhare, the team heard that a Santhal gentleman who had come to the police post to submit a complaint against a case was asked by the police in-charge to settle the dispute in his own community.

Testimony of the Chair and Deputy Chair of Jahada Rural Municipality

The research team also interviewed with the Chairperson and the Deputy Chairperson of Jahada Rural Municipality mainly focusing on indigenous peoples' customary justice systems and potential of such system's incorporation into the formal laws. The Chairperson expressed his concern over the increasing trend of taking even normal cases to the court and government offices for resolution. He viewed that sometimes even the Santhals take their cases to the court, possibly because of the political parties' intervention. That might happen also because there is no enough help to the Santhals, from the government. Or that could be because of the Santhals customary justice system not being recognized by the government.

The seven designations under the *majhi hadam* customary institution described above is a functional body mechanism in which every individual is interconnected and interrelated to each other. Having observed the integral roles played by the *majhi hadam* in functioning of the Santhal society, it may be concluded that *majhi hadam* is a sui generis institution among the Santhals. Because of the *majhi hadam* institution, Santhals may be considered an indigenous peoples (IPs) society maintaining its political autonomy both in terms of justice dispensation and maintaining social order in society.

Majhi hadam: An Institution for Customary Mediation, Mitigation and Reconciliation

Sorai Murmu (70), a *majhi hadam* for 35 years now, says that "in the course of resolving the disputes between different parties, the government and bureaucracy use force but communities, such as Santhals believe in mediation and re-conciliation." He said that a *majhi hadam* is a main person in the community; he has to operate the community and take care of his fellow members. During his tenure of *majhi hadam* for three and a half decades, he has seen numerous times, many Santhals going to the court and district offices with no avail, finally coming back to their own community seeking for justice. He also said that the cases that involved women were taken care of by the *majhi budi* (*gaga* =mother). When asked if Santhals' customary justice system should be formalized at local level, he said: "local disputes, and minor cases should be under the jurisdiction of *majhi hadam* whereas community development activities, infrastructure development like road, irrigation, electricity, communication etc should be the done by the municipality."

Chaitu Lal Mandal, a teacher and Gangai *adivasi*, views that "*majhi hadam* is an indigenous justice system. This system protects the society from individuals' deviation and other problems. *majhi hadam* is a useful social institution in promoting solidarity and harmony in society. The government should provide recognition to such institutions as *majhi hadam* as formal justice dispensation system for the local community."

Santhals inhabiting a certain territorial base are organized under the *majhi pargana* an institutionalized formal political organization based on indigenous political and cultural systems. Pargana is a larger socio-political body of the Santhals. Under a Pargana, there are multiple «*atu*. *Atu* is Santhals' basic political unit under which one or more than one settlement clusters are organized. *Atu* is under the Santhal headman called *Majhi hadam*. Hence, there are multiple *atus*, each *atu* led by its own *Majhi Hadam* system. The main function of *majhi pargana* is to contribute to the maintenance and continuity of the Santhal social system in harmony and peace (Rai, 2010). The *Majhi Pargana* has a number of formal officials,

including the *majhi hadam*, the headman of the *atu* (village and political unit), who acts as the spokesperson or the representative of the village. The Majhi is informed of all important events in the village, and all social, religious, political functions in the village are held in accordance with the instruction and participation of the headman. Another important role of the Majhi is also to maintain the customary justice system, which is done with the consent of all the members of the village. The *pranik* (de facto deputy of Majhi), the *jog majhi* (leader of village cultural festivities), the *naike* (similar to religious priest) and *gudit* also have essential institutionalised roles. The *gudit* is responsible for disseminating all necessary information among the villagers; he is also considered as the security officer working under the instructions of the *majhi hadam* and his deputies.

Santhals' internal politics and society are organized and managed by the officials described above. Today, as and when the need arises, the Majhi Hadam settles all the disputes, debates and conflicts that arise in the village. If the disputes are internal to a family, the *majhi hadam* settles the cases before the family members. If the disputes are public and between two or more groups or villages, then the headman summons all the villagers to his house and settles the disputes in accordance with the villagers' suggestions and consent. The participants of the group discussion reported that if a *majhi hadam* of a particular *atu* cannot solve the local problems, the *former consults the majhis from other atus*. Similarly, if a common Santhal is not satisfied with the verdict given by his/her *atu's majhi* over any dispute or problem, or if a person feels that s/he was given justice by the *majhi*, that person always can go to other *majhis* and appeal against the verdict of the former. In discussions with individual figures in the community and within focus groups, Santhals present themselves as a peace-loving people. They say that they do not believe in the conflict and fighting with others in the first place. If an individual is found to have violated the Santhal rules and norms, he or she is immediately held to account and often punished based on local Santhal rules. Furthermore, if an individual is caught having conflict with non-Santhal people, the *baisi* (village assembly) is held to decide whether their Santhal kin has made any mistakes from their part.

Santhals Resisting the Maoist Insurgency

Santhals recount their experiences from the insurgency period that they were terrorized by both the Maoists and the state during a decade long insurgency, which started in 1996. Santhals seem to have both supported- as some youths from the Santhal *pargana* joined the Maoist party, as well as resisted- as the following case story tells- when the Santhals were threatened or beaten.

The Santhals of Majhare, Badhi Tola (Badhi= banyan, Tola=village cluster/hamlet) recounted how they resisted the Maoists and became able to stop the Maoist from entering the Santhal territory. According to them, their resistance to the Maoists started in reaction to an event when a Santhal youth, having protested the Maoists' activity in his village, Situng Tola was gagged and beaten, and kidnapped by the Maoist cadres. Right after beating of the youth by the Maoists, there was spontaneous reaction to this atrocity.

How they Held Baisi (assembly) to Protest the Maoists

The Santhals of the Situng Tola, and Badhi Tola enacted their culturally embodied practice to disseminate that a *gudit*, in this case *dharuwa* -a person walking around the village with a small green mango branch/twig with leaves - walked around the village to disseminate the emergency information to all the villagers. Whenever there is a *dharuwa* walking, every Santhal individual as well as family understands that the Santhals are in a collective crisis. *dharuwa*, as explained by the Santhals, is an institutionalized practice among them that it is not the *dharuwa* telling others about the crisis, but it is the mango twig with green leaves, which shall communicate to the people about unknown problem. Hence, everyone seeing the *dharuwa* with the green mango twig must understand that there is crisis in Santhal society and they must have a *baisi* (assembly) meeting very soon. In this way, by using culturally institutionalized practice, the Santhals held *baisi* (assembly) within the village under the leadership of all the *majhi* leaders from different Santhal *atu* (hamlets/villages) in the territory. Thousands of Santhals from dozens of different *atus* of Siswahani, Majhare and Bhatiganj villaves gathered in the assembly to make decision to resist the Maoists by not allowing them to hold any

programs and activities in the Santhal *atus*. They successfully stopped the Maoists from their political movement in Santhal area for a year during the Maoist insurgency.

In their resistance process, the youths used their musical instruments -*tamak* drum and *tumda* drum- sounding them to produce unique melody, which notifies the state of crisis in the village. A youth participant in the discussion reported that they guarded their *atus* by walking around the village beating *tamak* and *tumda* in the evenings. He also said that there are different ways of beating *tamak* and *tumda* drums in various occasions, such as festivals, ritual ceremonies, community crisis etc. Particular sounding of drums may symbolically communicate the similar message as aforementioned green mango twig does in Santhal society.

It is worth mentioning here that the elderly people (*majhi hadam* is elected from elderly group) fulfilled their responsibility for leading the *baisi* and making the decision collectively while the youths performed their role to guard their territory by walking around the village by beating drums. This shall demonstrate us that how indigenous institution involves both the young and old alike in protecting their society. A youth who was also responsible in guarding the village recounts: "We were ready to die, so was decided by our *majhi hadams* and *baisi*, to protect our Santhals from Maoists".

Multi-tier Justice Dispensation System

There are four levels to resolve disputes presented to the *majhi hadam*. In *Samjha-samjhi*, the leaders and respected persons go to the houses of the disputing parties and try to reconcile them. They hear the grievances and arguments from each side and try to forge an understanding. In this, the guilty party is not fined. If not solved by this process, it is taken to the *atumajhi baisi* (assembly or hearing at village level).

Atumajhi baisi is a meeting of all leaders and villagers along with the disputing parties at the *majhi than* (shrine). If the dispute is

between two different villages, meeting is conducted in the *atu majhi* in which the dispute first arose. The two sides present their cases and grievances one after another. Witnesses, if any, are also allowed to speak. Also, villagers can express their opinions.

During the hearing, a person is employed to ask questions, to clarify what is said, and to control the meeting, for example by stopping cross-talking. After hearing the case and analyzing it, final decision is done by *majhi hadam*. For minor offences such as verbal abuse and familial disputes, the guilty person is not fined but should refund any damages. Two bottles of alcohol should be paid to the leaders. If not solved, the case is taken to *digor baisi* (regional level hearing or assembly).

In *digor baisi* or *pargana baisi*, both parties employ respected persons capable of solving disputes. Such hearing takes place outside the village. A reputed, learned, and neutral person called *ardali* (judge) is appointed to facilitate the problem solving and to manage the hearing. He is briefed on the extent to which the case has been carried out. He questions each side from time to time to clarify issues. Majhi leaders, representatives and common people from each village are allowed to express their views. After listening to all and analyzing the views, *ardali* gives his decision. If the opposing views are equally strong, equivocal, or there is suspicion of oppression from one group against another, the *ardali* forms a committee, called *maatkom bhuto*, with impartial representatives from each side. This committee analyzes the case and comes to a decision, which is declared through *ardali*. The decision is final. The victim gets one third of the fine paid by the guilty, and the rest is divided among the members of the committee.

Disputes, which could not be resolved by *digor baisi*, are referred to *la bir baisi*. The conflicting parties along with their leaders go to the jungle and hunt. In the afternoon, they meet at a place, and opposing parties present their arguments. A *daheri* (judge) is appointed to analyze the views and to give a decision. The conflicting parties and witnesses vow to speak the truth, because they believe that if someone lies, the jungle *bunga* (divinity) would

get angry and that person would be killed sooner or later in the jungle by wild animals. That's why they choose the jungle. However, due to loss of jungle, decrease in religious belief, and loss of hunting, *la bir baisi* is now extinct.

CHAPTER V

CONCLUSIONS AND RECOMMENDATIONS

Conclusions on the Limbu Customary Justice System

Traditional customary institution, a *sui generis* mechanism of justice system, was functioning and contributing to access to justice since the time immemorial among indigenous Limbu societies. Ancient judicial institution was known as Khasen-Khara Chumlung (Council of Judges), which comprised Tentumyang (leader of the land/country), Pantumyang (persons with expertise in different fields including law), Ngamuksam Ingmi (representatives of five potent powers for truth finding) and Sanglup Summiba/ma (community chiefs usually elders). They used to decide appropriate procedures of justice dispensation and provisions of punishments.

The ancient laws or Mundhum-based laws were known as Sawara Yetchham Thim (Code of primordial eight great leaders/rulers) and were extensive. They dealt with culture, religion, social affairs, land and natural resources, economic and political affairs and touched every aspects of life. Ancient laws were based on indigenous jurisprudence and guided by collective and communitarian spirit and ideals and pristine ethical values. Justice was secured for all and gods and people (*yethangdingsa*) together used to formulate laws and worked for the happiness of all in those days. This age is recalled today as "golden age (Mangtochho-Hangtochho)". The ancient laws differ in spirit and contents to a considerable extent, which reflect the social realities of different ages- hunting and gathering age to agricultural age. Ancient laws were gradually eroded with the passing of the time, but some of them are partially observed or practiced even today.

Ancient laws had gone through several modifications in the middle ages (6th century to 18th century) due to political changes, increased cross-cultural contacts, changes in the economy and population diffusion. Since the establishment of Limbuwan, a confederacy of ten republics of Limbus, in the later half of first millennium A.D.

Sawara Yetchham Thim (ancient laws) was modified into Thibong Yakthung Thakyudhim (Code of Ten Limbus). The Code was further revised when Limbu leaders began to serve at the courts of Sen kings of Makwanpur and Bijayapur as Ministers or top officials and accepted suzerainty under the condition of full autonomy of their republics. In 17th century most Limbu leaders (Hang) accepted the Hindu title of Raya and Muslim designation of Subba from the rulers of neighboring countries that also became the factor of revision in the then prevailing laws. However, the judicial institutions, though in reformed forms, were effective mechanisms of dispute resolution, conflict mediation and justice delivery. Participatory and localized procedures of justice dispensation removed the barriers of access to and realization of justice.

After the annexation of Limbuwan into modern Nepal in 1774, Thibong Yakthung Thakkudhim (Code of Ten Limbus), customary laws of Limbus, began to face gradual erosion. Though autonomy of Limbuwan was guaranteed by the agreement of 1774 between Prithvi Narayan Shah and Limbu leaders, the customary laws had to revise to make consistent with the formal laws of the kingdom. Now, Hang became Subba (in 1782) integral to Kipat system (customary communal land tenure system) and Subba became powerful legal institution of the Nepali state. Subba was administrator, adjudicator (Amali), mediator of conflicts, tax collector (Talukdar), protector of the culture and religion, commander of his army and supervisor of the border, and negotiator of international trade and relations. He had a team of assistants called Rai, Karta, Karbari, Gaubudha, Budhyauli and Pagari that replaced old institution (Chumlung) of council of judges and eminent persons (Mundhum experts, community leaders, chiefs of clan groups).

The team of Subba together enforced the customary laws relating to land tenure and management, inheritance, land and other property division, property without heirs, financial transactions, natural resources, occupations, various types of conflicts, criminal and other offenses, ritual courtesies, cultural affairs and so on. Disputes and conflicts were resolved and mitigated or eliminated through mediation, conciliation, negotiation and compromise at best

possible and punishments, if necessary, were imposed on accused/ criminals to serve any or all of the purposes of rectification, correction, retribution, compensation and restitution. Legal proceedings were simple, speedy, culturally sensitive and compatible and participatory (so that observers can judge procedures and verdict) and justice was easily accessible, affordable, and realizable under this system. They employed legal pluralism, applying both Limbu customary laws and formal state laws while dispensing justice accommodating the provisions of each other adapting to the situations arising and without creating conflicts with formal judicial institutions and thus, Amal (judicial office of Subba) became an interface between formal and informal justice systems and between state administration and autonomous governance for almost two centuries. By 1960, about 300 cases of minor to severe nature were settled by Subbas in each village with approximately five thousand people in a year. Because of state policies of Kipat land grabbing and alienation, division of Subbangi (office/authority of Subba), revisions on traditional jurisdiction of Subba time and again, provisions of appeal on Subba's verdict by government appellate courts, impositions of complex formal procedures in justice dispensation, imposition of Hindu jurisprudence for adjudication, rigorous application of formal laws, customary institutions and laws including Amal (court of Subba) were made gradually redundant and people's access to justice, particularly of Limbus, was progressively narrowed. By the time of institution of Panchayat system and enforcement of Land Reform Act (in 1968) made access to justice of Limbus even more remote. Only some provisions of customary cultural and social code are still alive and rituals (*khadzo:k*) are serving as customary laws against the state laws today. Complicated, lengthy, expensive, culturally insensitive legal procedures, distant court, professionalization of court proceedings, lack of knowledge of the provisions of formal law, language barrier and negation of legal pluralism have made justice almost unrealizable these days to all people without power, wealth and social capital.

Improvement in the access to justice of marginalized people and swift judicial action have become a serious challenge to mitigate

conflicts, restore or maintain peace and rule of law and to deepen democracy in Nepal. Traditional justice mechanisms or instruments, though may be altered in form and substance due to impacts of various factors, have been found effective in reconciliation, dispute resolution, conflict mitigation and peace building in countries ravaged by violent conflicts¹⁵⁴. Several countries around the world have recognized customary law and traditional justice mechanism in their constitutions and statutes¹⁵⁵. In Nepal also, emphasis is already laid on mediation process. The section 33 of the Mediation Act, 2011 recognizes Community Mediation, where respected leaders and community-designated people can participate in mediation process. Present Constitution of Nepal has the provision of Judicial Committee (Article 217) under Local Executive to resolve disputes at the local level and it has powers of local court, mediation and arbitration (Schedule 8.12). It has been assumed that such arrangement will improve access to justice and make justice available at the local level. Past experiences, specially of experiences of Village Panchyats with judicial powers during Panchyat System (1960-1990) do not lend support for such an assumption. Basic reason behind this was formal laws and institutions were not adequate to ensure access to justice and it is especially true in the case of disempowered people. It is also evident that customary judicial institution without the recognition and application of customary laws will gradually disappear. History has demonstrated that encroachment on traditional institutions and customary laws is to disempower and marginalize people, once empowered and resourceful.

Customary laws and judicial institutions have a proven history of (i) efficiently managing disputes, conflicts and differences on the spots from where they were emerged and maintaining peace and order in community/society. They were (ii) instrumental in resolving family

¹⁵⁴. For analytical discussion on this subject, see Huyse, Luc and Mark Salter (eds.) 2008.

¹⁵⁵. For details, see Kuskelly 2011.

discords, issues relating to rights of women and third gender, neighborhood wrangling and social antagonisms and (iii) their verdicts had lasting positive impacts on society. The customary laws are (iv) flexible, easily comprehensible and adaptable to local conditions and (v) legal procedures are simple, understandable and can be made suitable to concerned parties. The customary institutions and laws can (vi) make justice available at the door of the people and (vii) fill the void created by formal justice system. Historical evidences have shown that they (viii) can better reconcile doctrinal contrasts of Hindu jurisprudence and indigenous jurisprudence (such as edible/inedible, touchable/untouchable, marriageability/non-marriageability, individual ownership or rights / collective ownership or right, so on) regarding just and unjust action and (ix) save concerned people from adverse consequences from the application of the incompatible laws.

The revival of customary laws and judicial institution would be of immense help in improving access to justice and realization of justice and promotion of democratic values. Some of the institutions like Subbangi cannot be revived but can be restructured in the new form of old institution- *khasen khara chumlung* (Council of Justice Providers) and suitable customary laws and legal procedures can be revitalized. Possibility of revitalization is almost certain, if made concerted effort, because of the intact culture, strong oral tradition, vital institutions of knowledge transmission and collective memory sharing, ceremonies for recitation of Mundhum, observation of rituals, oral ethno-histories, preservation of vital documents, retention of customary practices, etc. Such effort will be in line with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), ILO Convention No. 169 and the International Convention on Elimination of All forms of Racial Discrimination (ICERD), 1965 that recognize indigenous customary institutions and laws and will enhance the international prestige of Nepal. The revival and activation of customary laws and judicial institutions will also be helpful for the realization of fundamental and human rights enshrined in the constitution.

Conclusions on Santhal Customary Justice System

Santhal customary justice system is a living, dynamic and locally adapted and socially accepted justice system with strong customary judicial institution and customary laws customized to local conditions and customary practices of natural resource use. Their customary laws are oral laws and are elaborate ones. They are reflections of their customary worldviews, beliefs, values, norms, social orders and concepts of justice based on their own distinct indigenous jurisprudence. They are locally and unanimously recognized and continuously evolving and are enforced by their customary institution with the participation of all members of their village community. Santhals resolve all kinds of cases, from minor disputes, family/domestic disputes, illicit marriage, divorce, and even the most sensitive cases occurred in their community. If any party from the dispute settlement—either plaintiff or defendant—is not satisfied with the verdict given by the *atu majhi baisi* or the basic level effort to settle the dispute, then the unsatisfied party can approach to the upper level case hearing assembly called *digor baisi* for justice, in which the *majhi hadams* from many *atus* (hamlets/villages) sit together to resolve the case. In this, there are multiple *majhi hadams* hearing the cases. There is yet another tier for hearing the case if not resolved even by the *digor baisi*. The participants of the FGDs as well as key informant interviewees said that the highest-level justice dispensation tier is called *la bir baisi*, which takes place in forest—away from the villages and hamlets. Most serious cases like that of murder cases may not be resolved by the *atu majhi baisi*, and *digor baisi*. In such cases, as the respondents told that the *baisi* may take place in forest, which would include all the *majhi hadams* from all Santhal villages. It was also reported that *la bir baisi* is no longer in practice in Nepal. In these regards, Santhals' customary judicial system is fully functional in the margins of the state's formal laws.

The cases presented in Chapter IV also demonstrate that how indigenous peoples' cultural, social institutions are still functionally *sui generis* bindings the population in a single thread. The Santhals used their own cultural institution for disseminating the message of crisis among themselves. They used their own musical

instruments called *tamak* and *tumda* to fulfil the same purpose. They also relied on their traditional political organization called *majhi hadam* for the most important political decision to stop the Maoists from politically entering into the Santhal villages. Hence, cultural social institutions are the foundations of the Santhal politics, political decisions, and justice dispensation as well.

The aforementioned details show why the Santhals utilized their own cultural apparatuses; drum beating and *baisi* when they decided to resist the Maoists' domination. Why did they not go to the state's administrative functionaries, such as the then VDC, Police, district administration office etc to seek for justice? This should tell us at least two things: i) indigenous people still have fully functional cultural institutional mechanism that helps find resolutions to various problems including political conflict. Hence, indigenous peoples like the Santhals need not go to contact the state apparatus. ii) There is an obvious explanation for the dramatized use of the cultural apparatus. It is also likely that their experiences do not lend support of their definite accessibility to justice and security along with respect of their cultural integrity and ethnic identity from the formal institutions.

Santhals claim themselves to be a peace-loving people. They say that they do not believe in the conflict and fighting with others in the first place. If an individual is found to have violated the Santhal rules and norms, s/he is immediately held to punish based on local Santhal rules. Furthermore, if someone is caught having conflict with the other non-Santhal people, the *atu baisi* (village assembly) is held to decide whether their Santhal agnate had made any mistakes on his behalf.

Above anecdotes and examples describing the cases and defending the Santhal society from the outsiders demonstrate that the Santhals are well organized to defend their society. Similarly, their multi-tier case hearing system also speaks about the fact that their justice dispensation system is no less systematic than that of the formal laws of the state. These days, government institutions (local police posts, etc.) have begun to use informally

Santhal's customary judicial institution to resolve local disputes among Santhals and between Santhals and their neighbours and prevent conflicts or avoid expensive lawsuits beyond Santhals' knowledge and economic capability. Provisions of mediation and reconciliation of the formal laws and courts could be effective if the procedures of dispute settlement of Santhals through mediation, reconciliation and social/community pressures are adopted. Justice will be more accessible to Santhals and their human rights would be better protected if judicial committee under local level elected body could work together with Santhals' customary judicial institution- *atu manjhi baisi*. Their customary institutions could be instrumental in conflict prevention and mitigation if state institutions recognize, cooperate and utilize them.

Recommendations

Laws and policy reform in relation to indigenous religion and culture

- Ensure the right of indigenous peoples, including Limbus and Santhals, to practice their own indigenous religion, whatever they name it, and their sacred scriptures along with its indigenous ways of sharing, diffusion and inter-generational transmission.
- Ensure the rights of indigenous peoples to adhere to their own customary values, norms, practices and philosophical doctrines and lead their lives accordingly.
- Ensure the rights of indigenous peoples to retain and nurture their customary spiritual relationships with their ancestral lands and territories.
- Safeguard the rights of indigenous peoples to protect, preserve, promote and develop sacred sites, historical places, natural and cultural heritages and indigenous traditional knowledge and skills and obtain resources for such virtuous endeavors.
- Safeguard the rights of indigenous peoples to protect, preserve, promote and practice their cultures, customs, way of lives, traditional institutions, and justice systems.
- Recognize the collective rights of Limbus and Santhals on their traditional indigenous knowledge and technologies and ensure their collective intellectual property rights on such knowledge and technologies.

Laws and policy reform in relation to customary laws and judicial institutions

- Recognize the customary laws and judicial institutions of Limbus and Santhals as part of their (intangible) heritage and artifact of their ancient civilization for the realization of their cultural rights and protection and promotion of their traditional knowledge, cultures and customs (customs having force of law, i.e. customary laws), which do not conflict with the spirit and intentions of international human/ peoples' rights laws, respecting the provisions of present Constitution (Art. 32.3 and Article 51.J.8).

- Revive indigenous judicial institutions like Limbus' *khassen khara chumlung* (Council of Justice Dispensation) and the Santhals' *majhi hadam/baisi* as such indigenous institutions' roles in the society are not limited to judicial jurisdiction but also have the holistic roles of maintaining social order, harmony and peace in the society and are characterized by inclusive features too. Revival of such institutions should be done at the grassroots level with the FPIC (free, prior and informed consent) through appropriate mechanisms for ensuring accessible, affordable, and swift justice to all sections of the society. Such justice system-which is culturally meaningful and socially compatible-is non-discriminatory, and recognizes the collective identity. Amend concerned laws and rules to recognize such institutions and accommodate them within the judicial and semi-judicial systems as complementary mechanisms for improving access to justice and enjoyment of human rights and fundamental freedoms of marginalized peoples.
- Invigorate customary laws and judicial institutions through legal interventions and support as a supplementing device of formal justice system for minimizing the adverse consequences of formal judgments due to doctrinal contrasts in the understanding of justice between judges and parties affected by judgment.
- Promote customary practices and procedures of mediation, arbitration, negotiation, re-conciliation and compromise to settle conflicts, resolve disputes and build lasting peace and social harmony through the activation of customary institutions and laws and to expedite the processes for the realization of state policies of justice and penal system as stipulated in the present Constitution (Article 51.k.1&2.)
- Adopt customary practices of appointing impartial, wise, tested in justice delivery, immaculate and non-partisan judges with gender parity selected or elected by the concerned community/ communities.
- Amend laws and rules/regulations relating to lands and natural resource governance for the recognition of indigenous peoples' customary ownership of traditionally occupied and used lands and sustainable use and management of natural/ biological

resources as their 'common pool resources' and equitable benefits sharing from the utilization of these resources in accordance with their cultural practices and customary laws to make them consistent with the provisions of relevant international agreements/ conventions (laws) such as ICCPR (Art. 47), ICESCR (Article 1.2), ILO C. 169 (Article 14, Art. 15), UNDRIP (Art. 26, Art. 27), CBD (Art. 10. c.), The Earth Charter 2000 (Principle 12.b.), The Nagoya Protocol on Access and Benefit Sharing, Article 9 (Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, 29 October 2010: Tenth Meeting of the Conference of the Parties of the Conference on Biological Diversity) of which Nepal is a party for the fulfilment of its obligation.

- Incorporate customary legal provisions relating to marriage and divorce, inheritance, property division, land claims and boundary disputes, gender discriminations, sexual offences, verbal abuse and defamation, cheating, deceptions, neighborhood clash or quarrelling, family squabble/ dispute, minor physical violence, petty crimes, feuds, offence against community norms and mores, disruption on community practices based on egalitarian values and social solidarity, dispute on culture and heritage sites and issues relating to access to forest, pasture, hunting, gathering, fishing and water resources in Civil(General) Code and other relevant laws to make justice administration swift, affordable, accessible, effective, accountable and culturally sensitive and justice really realizable.
- Amend laws and rules relating to local level institutions (executive, legislative and judiciary), particularly in relation to judicial committee of the local level, for the accommodation of local customary judicial institutions of indigenous peoples, including Limbus and Santhals, and recognition of their customary laws and justice dispensation procedures, including customary practices of dispute resolution for the smooth and fair delivery of justice to all. Jurisdictions of formal and customary judicial institutions should be made compatible to

each other through the harmonization of human rights principles and traditional norms and values and internalization of legal and social pluralism.

- Establish functional linkages between customary judicial institutions and National Human Rights Commission (NHRC) and LAHURNIP and other organizations devoted to human rights protection to train justice dispensers of customary judicial institutions on national and international human and peoples' rights instruments and remedies available for rights violations and influence them to adapt or modify customary laws through their own customary processes to make them consistent with the spirit of such instruments. Customary judicial institutions, in fact, are protectors of human rights and fundamental freedoms of marginalized or powerless people guaranteeing realization of justice at their door- steps.
- Promote legal pluralism strengthening customary laws and traditional judicial institutions for the de facto realization of justice, making justice accessible to all and available in their vicinity, fill the void left by formal justice system and countervail the abuse of power and authority of formal judicial institution.
- Reform laws relating to lands and land management to redress land injustices perpetrated against indigenous peoples including Limbu and Santhal, women and other marginalized or powerless people and adopt speedy measures to restore justice to them with the cooperation of customary judicial institutions.
- Reform laws and policies relating to forest, conservation areas and forest produce; medicinal herbs, wild life and game hunting; animal resources; ponds, lakes, rivers, wet-lands, and other water resource exploitation/utilization, mineral extraction and benefits sharing to make them consistent with the provisions/ spirit of the customary laws and international human/peoples' rights instruments.

Amendment/ formulation of laws and rules and policies

- Adopt participatory processes for the incorporation of customary legal provisions in course of formulation or amendment of formal laws and rules. Free, prior, and informed

consent (FPIC) of the concerned indigenous peoples, including Limbus and Santhals, should be made mandatory while making decisions in this process.

- Consult the concerned IPs while formulating and implementing federal, provincial and local level laws that will have impact on the customs, cultures and development of IPs.
- Amend the individual rights based laws, which are negatively affecting the collective customary rights of the IPs.
- Formulate the policies to rectify the historical injustices and wrongs inflicted upon IPs including Limbu and Santhal as the state promulgated various laws and policies in the past thereby causing irreparable loss of IPs' cultures, customs, lands-peoples relationships.

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