

**Committee on the Elimination of Discrimination Against Women
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THE RIGHTS OF INDIGENOUS WOMEN IN NEPAL

**Shadow Report for the combined 4th and 5th
Periodic Reports of Nepal CEDAW/c/NPL/4-5**

Submitted by

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Abbreviations:

CEDAW	Committee on the Elimination of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
ICEDAW	International Convention on the Elimination of All Forms of Discrimination Against Women
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ILO 169	International Labour Organisation Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries
NFDIN	National Foundation for the Development of Indigenous Nationalities
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

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I. Executive Summary

1. This report is respectfully submitted to the Committee on the Elimination of Discrimination Against Women (hereafter “the Committee”) by two indigenous peoples’ organisations in Nepal and one international non-governmental organisation. It concerns multiple instances of discrimination against indigenous women in Nepal, discrimination which is intensified by its multi-layered nature. Indigenous women in Nepal, as will be shown, face discrimination that emerges from their status as indigenous persons, from their gender as women and in many cases from their poverty as well. Such discrimination violates their rights as proscribed under the International Convention on the Elimination of All Forms of Discrimination Against Women (“ICEDAW”), including Articles 1-8, 10, 11, 13 and 14.

2. Such discrimination must be addressed with simultaneous action, not as separate and unrelated phenomena. As ICEDAW emphasises in its preamble “the eradication of ... all forms of racism [and] racial discrimination ... is essential to the full enjoyment of the rights of men and women”.¹ In the emerging modern republic of Nepal, historical caste, and ethnic and gender-based discrimination continue to have lasting effects. Although the Interim Constitution of Nepal contains positive steps towards recognising these multiple forms of discrimination, efforts to address them have largely failed to effectively protect the rights of indigenous women.

3. Indigenous women in Nepal continue to face the appropriation of their customary and traditional lands, resulting in loss of customary occupations, livelihoods and roles in their societies. Mega-projects, such as the Arun III Hydro-power dam, are imposed on the lands of indigenous peoples, and women face threats from in-migration, military or security personnel and loss of control over their lives and their resources. Lands are lost to speculative buyers in Kathmandu, where male-headed households are coaxed into selling and women lose all the security they have for a cash payment they have no control over. Indigenous women continue to experience low entrance levels to, and accomplishments in, schooling due to lack of mastery over the only official language, Khas Nepali, and have difficulty communicating in local government offices due to previous bans on using their own languages, even in judicial proceedings.

4. In light of the above, we respectfully submit that the Committee should recommend that Nepal, as a party to ICEDAW, takes urgent steps to:

- 1) Provide recognition to the indigenous peoples of Nepal who are currently excluded from the government approved list (see Annex A), paying due regard to the principle of self-identification.
- 2) Undertake a thorough review of national laws, potentially through the establishment of a National Commission on Indigenous Peoples tasked with this, with a view to identifying and rectifying all provisions that directly or indirectly permit discrimination on the basis of caste and multiple forms of discrimination against women from certain groups. Such law reform, at a minimum, must include legislation denying indigenous land tenure and restricting traditional livelihoods (paragraphs 12 (land laws) and 47 (livelihoods)).

¹ Preamble, paragraph 10, ICEDAW.

- 3) Ensure that reforms on land access and land tenure are carefully designed to ensure that the rights of indigenous women to access and manage their resources and land are not denied, through inclusion of indigenous women in the law reform process. This includes, where appropriate, recognition of the collective right of indigenous peoples to maintain their cultural ties to their lands and own and manage their resources.
- 4) Include legislative measures to ensure land rights are recognised, beginning with land demarcation and titling procedures in areas of Nepal where land titling has not been completed, or where it has been completed without due regard for the rights of indigenous peoples, and provide a mechanism to provide redress to indigenous persons, male and female, as well as indigenous peoples as collectives, where land has been taken without their consent.
- 5) Ensure that mega-projects in indigenous lands are permitted only with the free, prior and informed consent of the peoples concerned. Where consent is obtained, government requirements for large-scale projects of public concern must contain specific guidance regarding appropriate and specific forms of compensation for indigenous men and women, including land for land, ensuring that caste and ethnicity do not result in unequal benefit-sharing arrangements.
- 6) Strengthen its efforts to make widely known the prohibition of such discrimination and to implement improved access to judicial and administrative remedies in cases of alleged violations, including through provision of translation services, legalizing the use of indigenous languages in judicial settings, and provision of transport assistance from remote communities.
- 7) Establish mechanisms, potentially under the oversight of a possible National Commission on Indigenous Peoples, to monitor the implementation of programmes to protect and promote the full enjoyment without discrimination of the economic, social and cultural rights by disadvantaged and marginalised groups, in particular the Dalit, the Madhesi and indigenous communities, and especially women within these groups.
- 8) Ensure that data collected in Nepal is disaggregated by categories of indigenous ethnicity or nationality, and referenced in relation to gender, taking into account the criterion of self-identification, in order to promote accurate understanding of indigenous peoples' situations and the development of appropriate, gender-sensitive programming.
- 9) Ensure that existing land reform initiatives include specific focus on means of protecting the rights of indigenous peoples to secure access, management and use of their traditional territories, for both individual and collective tenure systems.
- 10) Promote effective participation in the political and public spheres in Nepal to ensure respect for the rights of indigenous women as *indigenous* women. This must entail full respect for the rights of indigenous peoples to self-determination, by providing that indigenous peoples may participate in national politics through their own traditional or freely chosen institutional structures.

- 11) Provide for the participation of indigenous peoples, through their freely chosen male and female representatives, in the Constitution drafting process, including recognizing their right to self-selected collective representation.
- 12) Devise quotas or reservation systems to ensure proportional representation, where appropriate, and reflect the need for gender mainstreaming of participation within marginalised groups, thereby addressing both forms of discrimination.
- 13) Ensure that restrictions are placed on traditional or customary livelihoods only in exceptional circumstances, and where all other alternatives have been assessed. Where such restrictions are unavoidable, special measures must be put in place to ensure that those with such livelihoods are provided with opportunities for appropriate replacement occupations.
- 14) Ensure that indigenous languages are recognised as a medium of instruction in majority indigenous schools, and that bilingual education programmes are established to support the growth of literacy rates among indigenous girls and boys. Provision of bilingual education should be paired with specific support from the Ministry of Culture to work with indigenous peoples to design programmes to strengthen their cultures, including their distinct languages.
- 15) Provide for the legal equality of indigenous languages in the judicial system, in public health and education outreach and in all other areas of State communication with, and from, the peoples of Nepal.
- 16) Provide victims of forced and bonded labour, particularly Tharu women and children freed from bonded domestic and agricultural labour such as the Kamaiya and Kamlari systems, with specific, targeted and sustained training and skills assistance to ensure that they are able to access resources to re-establish their lives and livelihoods outside of bonded labour situations.
- 17) Establish stringent enforcement mechanisms in support of the positive legal framework that addresses trafficking of women and girls, including training of border guards and harsher penalties for convicted people smugglers. These enforcement mechanisms must be coupled with more effective and targeted preventative measures such as more effective economic development programmes in remote areas, addressing the causes of trafficking, with particular emphasis on vulnerable populations, including indigenous women and girls.

II. Introduction

Multi-fold discrimination: the nexus between gender and race and other forms of "otherness"

5. The rights of indigenous women are guaranteed in a range of international instruments applicable to Nepal. These include international human rights instruments protecting the rights of women, such as the International Convention on the Elimination of Discrimination Against Women (ICEDAW), as well as instruments and standards addressing other forms of discrimination and protecting the rights of indigenous peoples. As recognised by the United Nations' Secretary-General in his review of human rights on the occasion of the World Conference against Racism, Xenophobia and Intolerance, indigenous women face multiple forms of discrimination because of the "nexus between gender, race, colour or ethnicity and other axes of subordination".²

6. The Secretary-General explained that "[g]ender-based discrimination intersects with discriminations based on other forms of 'otherness', such as race, ethnicity, religion and economic status, thus forcing the majority of the world's women into situations of double or triple marginalisation. The combined effects of racism and gender discrimination on migrant, immigrant, indigenous, minority and marginalised women, in particular, around the world has had devastating consequences for their full enjoyment of equality and fundamental human rights in both the public and private spheres. Because discrimination based on ethnicity, race, religion, etc. is imbedded in State and social structures, such discrimination decreases the rights and remedies available to women and increases women's vulnerability to violence and abuse."³ In accord with this the Committee has also recognised on many occasions that indigenous women experience multiple forms of discrimination or inter-sectoral discrimination.⁴

7. Multi-fold discrimination has also been highlighted by various human rights bodies, which have adopted standards and have all referred to the need to ensure that gender-based discrimination is addressed in efforts to end forms of ethnically-based discrimination. The Committee on the Elimination of Racial Discrimination (CERD) adopted *General Recommendation No. XXV on Gender Related Dimensions of Racial Discrimination* explaining that "racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination

² Review of Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference, Note by the Secretary-General, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/PC.3/5 27 July 2001, at paragraph 8.

³ Review of Reports, Studies and Other Documentation for the Preparatory Committee and the World Conference, Note by the Secretary-General, World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, A/CONF.189/PC.3/5 27 July 2001, at paragraph 2.

⁴ See among others the Concluding Observations adopted by the Committee on: Guatemala **CEDAW/C/GUA/CO/7, 10 February 2009, paragraph 41**; Guatemala CEDAW/C/GUA/CO/6, 2 June 2006, par 35-36; Japan CEDAW/C/JPN/CO/6, 7 August 2009, paragraph 51; Mexico CEDAW/C/MEX/CO/6, 25 August 2006, paragraph 36; Nicaragua **CEDAW/C/NIC/CO/6, 2 February 2007, paragraphs 31–32**; Paraguay CEDAW/C/PAR/CC/3-5, 15 February 2005, paragraph 36; Peru **CEDAW/C/PER/CO/6, 2 February 2007, paragraph 36**; Australia CEDAW/C/AUL/CO/7, 30 July 2010, paragraph 36; **Belize CEDAW/C/BLZ/CO/4, 10 August 2007, paragraph 15.**

only or primarily affects women, or affects women in a different way, or to a different degree than men".⁵ The Committee on Economic, Social and Cultural Rights (CESCR) emphasised that: "[s]ome individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such *cumulative discrimination* has a unique and specific impact on individuals and merits particular consideration and remedying"⁶. Very recently also, Rashida Manjoo, the Special Rapporteur on Violence against Women, its Causes and Consequences, submitted a report addressing multiple discrimination faced by women and stated that "[t]he United Nations system and the United Nations human rights mechanisms should also strive to adopt a holistic approach to violence against women and multiple forms of discrimination".⁷

A holistic approach: women's rights and indigenous people's rights

8. A holistic approach to addressing discrimination and violence against indigenous women involves interpreting the Convention in conjunction with other key instruments and mechanisms protecting the rights of indigenous peoples. The International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (ILO 169) provides that its provisions "shall be applied without discrimination to male and female members of these peoples."⁸ The 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) – which was endorsed by Nepal when it was adopted by the General Assembly of the United Nations in 2007– similarly affirms that "All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals".⁹ The Committee on the Rights of the Child took this holistic approach when it adopted recommendations specific to indigenous children¹⁰ and made reference to UNDRIP and prompted state parties to develop legislation on indigenous peoples.¹¹

9. Ratification of instruments pertaining to indigenous peoples' rights commits the government to uphold the rights of the indigenous peoples, a commitment that is also affirmed in Nepali national law. Section 9 of the Nepali *1991 Treaty Act* states that international treaties ratified by Nepal are incorporated into Nepali law and, in the case of a conflict between national and international law, international law shall prevail.¹²

⁵ Committee on the Elimination of Racial Discrimination, General Recommendation No. 25: Gender related dimensions of racial discrimination: 1391st meeting, 20 March 2000, in document A/55/18, annex V, paragraph 1.

⁶ Committee on Economic, Social and Cultural Rights, General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 10 June 2009, paragraph 17. See also paragraph 27.

⁷ Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/17/26, 2 May 2011, paragraph 108.

⁸ Article 3(1), International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

⁹ Article 44, UNDRIP.

¹⁰ Committee on the Rights of the Child, General Comment No 11 CRC/c/GC/11, 12 February 2009.

¹¹ Concluding Observations of the Committee on the Rights of the Child on Cameroon, CRC/C/CMR/2, 29 January 2010.

¹² In this regard, the Supreme Court of Nepal held in the case of *Rabindraprasad Dhakal et.al. Vs Home Ministry, GoN* that Nepal has no immunity from the obligations contained in international

However, as noted by Professor James Anaya, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (“UN Special Rapporteur on Indigenous Peoples”), when he visited Nepal in 2008, overt support by the State and its agencies is required if indigenous peoples’ rights are to be secured and protected in reality.¹³ While indigenous peoples’ organisations have commenced negotiations about implementation of ILO 169, that convention has yet to be implemented and there remains a lack of adequate attention to these rights in practice.¹⁴ Moreover, indigenous peoples in Nepal face interrelated problems of poverty, marginalisation, discrimination, and a lack of secure access to resources, basic health facilities and services, political representation and economic and education opportunities.¹⁵

10. The combination of a lack of implementation of measures to address discrimination against indigenous peoples, and similarly of measures required to address the inequality of women in Nepali society, places a heavy burden on individuals who face both of these forms of discrimination. As the Committee has noted, pervasive stereotypes of cultural practices and gender result in multiple simultaneous forms of discrimination being suffered by some women.¹⁶ This is the case for the indigenous women of Nepal and responses to such discrimination must be multifaceted also.

Historical background of ethnic and gender-based discrimination

11. Indigenous peoples in Nepal either belong within the 59 officially recognised peoples or form part of the peoples of whom there are over 25 who are still seeking formal State recognition.¹⁷ Their historic exclusion from authority and power within the country has led to them being referred to as one of the “backward” or “excluded” groups under current reforms, although economic status varies considerably between the different peoples.¹⁸ Indigenous peoples, *Adivasi Janajati* in the Nepali language, are distinct from other peoples in Nepal by virtue of their distinct languages and cultural traditions and by the fact that

treaties according to the Sec. 9 of the 1991 Treaty Act, which provides that the provisions of international treaties ratified by Nepal have an equivalent status to the national laws of Nepal.

¹³ See, *United Nations Press Release*, UN expert urges action on Nepal’s commitment to indigenous peoples, 2 December 2008. Available at: <http://www.un.org/apps/news/story.asp?NewsID=29152&Cr=>

¹⁴ More information can be found from the websites of Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and the Forest Peoples Programme (FPP), respectively at: <http://www.lahurnip.com> and <http://www.forestpeoples.com>.

¹⁵ Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office, including technical cooperation, in Nepal. UN Doc. A/HRC/4/97, 17 January 2007, at paragraph 62 (stating that “Discrimination on the basis of caste, ethnic, gender, geographic and other considerations has marginalized and excluded millions of Nepalese people from full participation in political processes and State institutions as well as equal access to housing, water, land and other such rights”).

¹⁶ CEDAW Concluding Observations on Guatemala, where in the Committee noted that it was “also concerned that certain groups of women, in addition to being affected by gender stereotypes, face multiple forms of discrimination on grounds such as their ethnicity or their sexuality” (CEDAW/C/GUA/CO/7, 10 February 2009) paragraph 19.

¹⁷ A list of the formally recognised peoples is provided in Annex A, as listed in the *National Foundation for the Development of Indigenous Nationalities Act 2002*.

¹⁸ For use of the term “backwards” see, among many others, the Civil Service Act of 1993, Article 7, Explanatory Note 2.

they are not formally included in the strict caste system imposed by the now-defunct monarchy.¹⁹ The political power that governed Nepal after the consolidation of power under the Gorkha royalty in the early 19th century overrode the systems of governance of the pre-existing indigenous peoples' lands, territories and resources, to a greater or lesser extent at different times.²⁰

12. The position of indigenous peoples under the monarchy was one of exclusion from power and of erosion of existing rights over lands and resources. The Office of the High Commissioner for Human Rights highlights this, explaining that indigenous peoples have been systematically excluded from participation in Nepal's political life for over 200 years and denied any formal role in building and defining the state in which they now find themselves.²¹ Treaties initially signed between the Hindu monarchy and some of the indigenous peoples being incorporated into the realm, such as that signed between the Limbu people and King Prithivi Narayan Saha²², were later disregarded. Land rights originally recognized when indigenous peoples were brought into the Kingdom were incorporated into Nepali law as the *kipat* system of tenure.²³ In the mid 20th century land reforms were introduced which had the effect of wholesale erasure of previously existing communal or customary tenure, including *kipat*, through both the 1964 *Land Reform Act*

¹⁹ Padma Rai, indigenous nationalities movement and women, women bulletin (contemporary publication of All Nepal Women Organization), page 51.

²⁰ James Anaya, Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Addendum: Report on the Situation of Indigenous Peoples in Nepal*, A/HRC/12/34/Add.3, 20 July 2009.

²¹ *Report of the United Nations High Commissioner for Human Rights on the human rights situation and the activities of her Office, including technical cooperation, in Nepal*. UN Doc. A/HRC/4/97, 17 January 2007 (hereinafter "OHCHR Report 2007"), at para. 68 (stating that "Discrimination on the basis of caste, ethnic, gender, geographic and other considerations has marginalized and excluded millions of Nepalese people from full participation in political processes and State institutions as well as equal access to housing, water, land and other such rights").

²² Iman Sing Chemjong, Kiratkalin Bijayapurko Samchipta Itihaas, Kirat Yakthum Chumlung, Central Office Lalitpur, pages 96-97, 2nd Ed. 2003. Further, according to the Royal Taxation Commission Records, *Royal Order to the Limbus of Pallo-kirat, Shrawan Sudi 12, 1831 (July 1774)* "Although we have conquered your country by dint of our valor, we have afforded you and your kinsmen protection. We hereby pardon all of your 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." Quoted by Mahesh Chandra Regmi (1978) *Land Tenure and Taxation in Nepal*. Kathmandu: Ratna Pustak Bhandar. Page 540 (Volume III was first published in 1965 by the Institute of International Studies at the University of California at Berkeley).

²³ Regmi (1977:87-88 and 1999:87-88) writes, "The general view is that racial groups of Caucasian origin, which are the most important numerically, socially, and politically in much of Nepal, immigrated from northern India. The newcomers acquired landownership rights under a statutory form of landownership, such as *Birta* or *Jagir*, whereas the Mongoloid or autochthonous communities retained their customary occupation of lands under a form of ownership that eventually came to be known as *Kipat*. Prominent among the *Kipat*-owning communities of Nepal were the Limbus of Pallokirant, a term traditionally used to denote the present districts of Ilam, Dhankuta, Panchthar, Terhathum, Taplejung, and Sankhuwa-Sabha. Other *Kipat*-owning communities, which included Rai, Majhiya, Bhote, Yakha, Tamang, Hayu, Chepang, Baramu, Danuwar, Sunuwar, Kumhal, Pahari, Thami, Sherpa, Majhi, and Lepcha, were scattered throughout the eastern and western midlands" (Regmi, Mahesh Chandra (1977) *Landownership in Nepal*, Berkeley: University of California Press; reprinted by Adroit Publishers, Delhi in 1999).

which abolished communal title and the later Land Survey Act 1977.²⁴ At the same time, the fact of the exclusion of indigenous societies had protected them from certain aspects of the dominant Hindu culture, including the strict patriarchy inherent in the caste system.²⁵

Lack of disaggregated data

13. According to Nepal's 2001 census, indigenous peoples (*adivasi/janajati* in the Khas Nepali language) comprise 37.19% of the total population of almost 29 million people.²⁶ However, these statistics are contested, and indigenous peoples' organisations assert that the true number is in excess of 50% of the population.²⁷ There is also very little clear statistical data regarding health, access to education, and other quality-of-life indicators specifically for indigenous peoples and more so for indigenous women. The UN Special Rapporteur on Indigenous Peoples has addressed this lack of disaggregated data, recommending that "National census data should include disaggregated information organized by categories of indigenous ethnicity or nationality, and referenced in relation to gender, taking into account the criterion of self-identification, in order to promote accurate understanding of indigenous peoples' situations and the development of appropriate, gender-sensitive programming."²⁸ The Committee has similarly expressed concerns on the lack of disaggregated data on indigenous women in other countries and stressed the importance of such data on many occasions.²⁹

²⁴ Land Reform Act 1964 (Bhumi Sambandhi Ain 2021) and Land Survey Act 2034 (1977) are specific Laws that comprise provisions relating to abolishment of the Kipat. Limbu, Shankar, *Comparative Study of Prevailing National Laws Concerning Indigenous Nationalities in Nepal and ILO Convention No. 169*, Jointly published by Nepal Federation of Indigenous Nationalities and International Labour Office (ILO) Nepal, P.62-63 (2005)

²⁵ Padma Rai, indigenous nationalities movement and women, women bulletin (contemporary publication of All Nepal Women Organization), page 51.

²⁶ Indigenous peoples (*Adivasi Janajati* in the Nepali language) are constitutionally and otherwise recognised as distinct peoples. Section 2 of the *Foundation for the Development of Indigenous Nationalities Act 2002* recognises the collective nature of indigenous peoples and defines them as groups with distinct mother tongues, traditions, customs, identities, social structures, and their own oral or written histories.

²⁷ According to Krishna B. Bhatattachan, "The 1991 Census has given a (fictitious) statistic of only 26 of the total 61 indigenous nationalities and puts their population at 6,572,265 or 35.5 per cent of the total population. The intellectuals and activists of the ethnic movement, however, claim the percentage to be around 70 per cent of the total population." Bhatattachan, Krishna B. *Peace and Good Governance in Nepal: The Socio-cultural Context*, pages. 73-88, in: SAP-Nepal (2001) *Quest For Peace*, Kathmandu: South Asia Partnership (SAP)-Nepal. It should be noted here that Nepal Government recognized 61 indigenous nationalities in 1996 which later amended to 59 indigenous nationalities in 1999. The Census of 2001 provided data of 44 of the 59 indigenous nationalities and the current census of 2011 is expected to provide data of all indigenous nationalities.

²⁸ Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on the situation of indigenous peoples in Nepal, (2009), A/HRC/12/34/Add.3, Page 22 *et seq.*, paragraph 84.

²⁹ See, among others, Concluding observations on: Panama CEDAW/C/PAN/CO/7, 5 February 2010, paragraphs 2 and 53; The Philippines CEDAW/C/PHI/CO/6, 25 August 2006, paragraph 30; Venezuela CEDAW/C/VEN/CO/6, 31 January 2006, paragraph 18; Australia CEDAW/C/AUL/CO/7, 30 July 2010, paragraph 2; Australia CEDAW/C/AUL/CO/5, 3 February

14. Despite this lack of data, it is clear that ethnic and gender-based forms of discrimination in Nepal impact on indigenous peoples in general, but more specifically and more heavily on women in indigenous communities. Indigenous women have been burdened by the imposition of the “one nation, one language and one religion” policy of the old monarchy and panchayat system. Such discriminatory practices cannot be eradicated in just a few years, and have lasting effects on the wellbeing of indigenous women in Nepal.³⁰ As Argentina noted during the Universal Periodic Review of Nepal in 2011, Nepal must: “[c]ontinue its efforts to overcome discrimination and social exclusion on the basis of gender, caste, class, ethnic group, disability or geographic situation, in order to ensure the respect of civil, political, economic, social and cultural rights”, not in isolation but in a manner that recognises the relationship between these different forms of discrimination.³¹

Recommendation

15. Provide recognition to the indigenous peoples of Nepal who are currently excluded from the government approved list (see Annex A), paying due regard to the principle of self-identification.

16. Undertake a thorough review of national laws, potentially through the establishment of a National Commission on Indigenous Peoples tasked with this, with a view to identifying and rectifying all provisions that directly or indirectly permit discrimination on the basis of caste and multiple forms of discrimination against women from certain groups. Such law reform, at a minimum, must include legislation denying indigenous land tenure and restricting traditional livelihoods (paragraphs 12 (land laws) and 47 (livelihoods)).

17. In addition, Nepal should ensure that data collected in Nepal is disaggregated by categories of indigenous ethnicity or nationality, and referenced in relation to gender, taking into account the criterion of self-identification, in order to promote accurate understanding of indigenous peoples’ situations and the development of appropriate, gender-sensitive programming.

2006, paragraph 31; Brazil **CEDAW/C/BRA/CO/6, 10 August 2007, paragraph 35 -36**; Brazil A/58/38, 7 July 2003, paragraph 134; Ecuador A/58/38, 11 July 2003, paragraph 329.

³⁰ Padma Rai, indigenous nationalities movement and women, women bulletin (contemporary publication of All Nepal Women Organization), page 51.

³¹ Universal Periodic Review of Nepal, Recommendation of Argentina Draft Report of the Working Group on the Universal Periodic Review, 10th Session, (2011) para 106.21: A/HR/WG.6/10/L.3 The final document (not yet available, as of 10 June 2011) will be issued under A/HRC/ 17/5.

III. The rights of indigenous women in CEDAW

Loss of access to, and ownership over, lands and resources (Articles 1-5, 14)

18. It is well accepted in international law that the relationship that indigenous peoples have with their lands and resources constitutes a central part of the way in which indigenous peoples define themselves and their place in the world.³² The UN Declaration on the Rights of Indigenous Peoples unequivocally affirms the territorial rights of indigenous peoples.³³ CESCR has also recognized the centrality of secure rights to traditionally owned lands, territories and resources, including the protection of traditional land tenure systems, to the maintenance of indigenous peoples' ways of life and culture.³⁴ As such, the loss or forced removal of such ties constitutes a direct threat to the continued viability of the people concerned as a distinct and cohesive cultural group. As the Inter-American Court of Human Rights explained in 2005, indigenous peoples' culture "directly relates to a specific way of being, seeing, and acting in the world, developed on the basis of their close relationship with their traditional territories and the resources therein, not only because they are their main means of subsistence, but also because they are part of their worldview, their religiosity, and therefore, of their cultural identity."³⁵ CERD also recognised the centrality of indigenous land rights to the survival of indigenous peoples by making encroachment on indigenous lands one of the triggers for use of its "Urgent Action/Early Warning procedures".³⁶

³² See among others: Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, *Mr. Rodolfo Stavenhagen, submitted pursuant to Commission resolution 2001/57*. UN Doc. E/CN.4/2002/97, para. 39-40; *Indigenous people and their relationship to land. Final working paper prepared by Mrs. Erica-Irene A. Daes, Special Rapporteur*. UN Doc. E/CN.4/Sub.2/2001/21. For a detailed treatment of indigenous peoples' rights to lands, territories and resources in international law, see, J. Gilbert *Indigenous Peoples' Land Rights under International Law. From Victims to Actors* (2006).

³³ The UN Declaration on the Rights of Indigenous Peoples, Article 32 provides that:

- (1) Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
- (2) States shall consult and cooperation in good faith with the indigenous peoples concerned through their won representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
- (3) States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

³⁴ See *inter alia* E/C.12/PRY/CO/3, 4 January 2008, para. 29 and 34; E/C.12/IND/CO/5, 10 May 2008, para. 44; E/C.12/BOL/CO/5, 08 August 2008, para. 23 and 36; and E/C.12/KEN/CO/1, 1 December 2008, para. 12 and 31.

³⁵ *Yakye Axa Indigenous Community v. Paraguay*, Judgment of the Inter-American Court of Human Rights of 17 June 2005. Series C No. 125, at paragraph 135.

³⁶ Prevention of racial discrimination, including early warning and urgent procedures: working paper adopted by the Committee on the Elimination of Racial Discrimination, UN Doc. A/48/18, Annex III, at paragraph 9. See, also, Manual on Human Rights Reporting. Geneva: United Nations 1997 (HR/PUB/91/1 (Rev.1)), at 302.

19. The Committee has recognised and emphasised, the importance of access to land as a tool for the economic empowerment of women.³⁷ The form that loss takes differs for men and women, as their relationships to their lands and resources differ according to their different roles in using and managing them. For women, the loss of access to forest products, farm lands, forest farms and all sources of their family sustenance can be devastating.³⁸ It would be an important step forward for the Committee to explain that this principle may work differently in the context of indigenous woman as opposed to non-indigenous women and, therefore, that close adherence to the indigenous peoples' rights framework, including the gender aspects thereof, is critically important in the case of indigenous women. Indeed, applying a general principle to indigenous women – such as individual land titling for women - could, ultimately, be counter-productive and counter to the wishes of indigenous women themselves.

20. Mega-projects and the associated construction, in-migration and social, economic and cultural impacts that accompany such projects, cause additional problems. Evidence from around the world resoundingly demonstrates that women are vulnerable to large influxes of construction workers and other people associated with large-scale project development.³⁹ The Committee has recognised, for example in the case of India, the serious nature of the specific impacts on women, and particularly "tribal and rural women", of such mega-projects, and urged that State to "institute safeguards against their displacement and violation of their human rights" as well as to provide appropriate cultivable lands.⁴⁰ For indigenous women, the "human rights" referred to include the right

³⁷ Concluding Observations on Guatemala **CEDAW/C/GUA/CO/7**, 10 February 2009, paragraph 34; on special measure to address indigenous women's right to land, see also Concluding Observations on Suriname **CEDAW/C/SUR/CO/3**, 2 February 2007, paragraph 32, wherein "The Committee recommends that the State party to ensure that economic and social policies and public investment take into specific account the situation of women and monitor the impact resulting from these programmes. The Committee urges the State party to strengthen initiatives aimed at encouraging women's economic sustainable empowerment, in particular promote women's access to land and to credits."

³⁸ Thukral, Enakshi Ganguly (ed.) (1992). *Big Dams Displaced People: Rivers of Sorrow, Rivers of Change*. New Delhi: Sage Publications, in association with Book Review Literary Trust, New Delhi.; SUARAM (1999). *Empty Promises, Damned Lives: Evidence from the Bakun Resettlement Scheme in Sarawak*. Final Report of the Fact Finding Mission of the Coalition of Concerned NGOs on Bakun, 7–14 May, Suara Rakyat Malaysia (SUARAM), Petaling Jaya; Yong Ooi Lin, Carol (2003) *Flowed Over: the Babagon Dam and the Resettlement of the Kadazandusuns in Sabah*. Centre for Orang Asli Concerns, Subang Jaya. Yong Ooi Lin, Carol (2008) "Autonomy Reconstituted: Social and Gender Implications of Resettlement on the Orang Asli of Peninsular Malaysia". In: Resurreccion, Bernadette P. and Elmhirst, Rebecca (eds.) *Gender and Natural Resource Management: Livelihoods, Mobility and Interventions*, Earthscan, London and Sterling, VA, pages 109–126.

³⁹ For example, in the Sungai Selangor dam in Peninsular Malaysia, there were many foreign as well as local male workers in the dam site and the village girls were at risk of "wooing" and sexual innuendoes from some of the workers, including even illicit sexual relationships resulting in several cases of the girls becoming pregnant, Yong Ooi Lin, Carol (2006) "Dam-based Development in Malaysia: the Temenggor and Sungai Selangor Dams and the Resettlement of the Orang Asli". Unpublished doctoral thesis submitted to the University of Sussex, Brighton.

⁴⁰ "The Committee urges the State party to study the impact of megaprojects on tribal and rural women and to institute safeguards against their displacement and violation of their human rights. It also urges the State party to ensure that surplus land given to displaced rural and tribal women is cultivable. Moreover, the Committee recommends that efforts be made to ensure that

to collectively enjoy their cultures and maintain their ties to the land and resources on which their cultures depend, and the right to consent – or withhold consent – to such use of their land as part of the collectively expressed will of their community or people.⁴¹

21. In Nepal, there are a range of ways in which indigenous women are, today, losing these important ties to their land and resources, and as a result suffering disproportionate harm from government-sponsored activities, including promotion of hydropower projects and expansion of protected and conservation areas. Dam construction and infrastructure projects such as the Melamchi Water Supply Project, the Arun hydropower project, Upper Tamakoshi hydropower project and Tamore hydropower project are more likely to be constructed in indigenous lands due to their relative remoteness from Kathmandu Valley. Similarly, conservation initiatives and declarations of national parks are again disproportionately declared in remote areas of Nepal where indigenous peoples reside. These parks presently include: the Rara, Shey-Phoksundo, Royal Bardiya, Royal Chitwan, Langtang, Sagarmatha, and Makalu-Barun National Parks; wildlife reserves such as Royal Shukla Phant Wildlife Reserve, Parsa Wildlife Reserve, Dhorpatan Hunting Reserve and Koshi Tappu Wildlife Reserve; and conservation areas such as Barun National Park and Conservation Area, Manasulu Conservation Area and Annapurna Conservation Area (ACAP) and the Makalu-Barun National Park and Conservation Area.⁴²

22. Furthermore, stereotypes about gender and about land tenure systems affect land and resource ownership due to historically gendered ideas about public land ownership being the preserve of men and formal land title usually being in the man's name, and a general bias towards individual over collective tenure – both stereotypes negatively impacting on indigenous women. Resettlement further heightens gender inequalities when formal institutional arrangements favour the men, assuming them to be the heads of the household.⁴³ In areas around Kathmandu the rapid spread of the city has driven up the price of land close to the city for housing development, and many male-headed households have been persuaded to sell land, often cheaply. In these cases the women in the households lose their control over their lands and their livelihoods, and are not joint recipients of the funds from the sale due to the overwhelming number of titles being in the names of the men in the households. Such a phenomenon has been noted in Jitpur Phedi, Nepaltar and Sitapaila.

tribal and rural women have individual rights to inherit and own land and property." Concluding Observation on India: **CEDAW/C/IND/CO/3, 2 February 2007**, paragraph 47.

⁴¹ As recognised by the UN Special Rapporteur on Indigenous Peoples: "Appropriate measures should be adopted to ensure that Adivasi Janajati communities are consulted, through their own representative institutions, in the planning and undertaking of any development project, either private or public, that affects their traditional land use patterns or access to natural resources". Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on the situation of indigenous peoples in Nepal, (2009), A/HRC/12/34/Add.3, Page 22 *et seq.*, paragraph 90.

⁴² Bhattachan, Krishna B. (2005) "Tribals and Forest in Nepal: Whether Tribals or Animals and the Dominant Groups Have Right to Live?", Pp. 42-66, **Dhaulagiri Journal of Sociology and Anthropology**, Volume I, Tribhuvan University, Department of Sociology/Anthropology, Mahendra Multiple Campus, Baglung, Nepal

⁴³ Yong Ooi Lin (2006) *op. cit.*

23. The Committee has already raised the need for Nepal to specifically address discrimination against women with respect to access to land.⁴⁴ As demonstrated in the Nepal State report⁴⁵, some administrative actions have been taken to address legal inequalities between men and women in land ownership and inheritance laws. In accordance with Article 4 of the Convention, the State has introduced a policy to reduce land registration fees for women, setting them at 75% of the fee applied to men.⁴⁶ However this policy does not reach indigenous women in Nepal due to a lack of political willingness on behalf of the Nepal government to conduct the necessary outreach to indigenous women, and lack of knowledge and awareness among indigenous women themselves of such initiatives.

Recommendations

24. Nepal should ensure that current reforms of land access and land tenure are carefully designed to ensure that the rights of women to access and manage their resources and lands are not denied or restricted. This includes, where appropriate, recognition of the collective right of indigenous peoples to maintain their cultural ties to their lands and own and manage their own resources.⁴⁷

25. Nepal should further develop legislative measures to ensure land rights are recognised, beginning with land demarcation and titling procedures in areas of Nepal where land titling has not been completed, or where it has been completed without due regard for the rights of indigenous peoples. Furthermore, as recommended by the UN Special Rapporteur on Indigenous Peoples, a mechanism must be established to provide redress to indigenous persons, male and female, as well as indigenous peoples as collectives, where land has been taken without their consent, to ensure that compensation does not heighten gender inequalities.⁴⁸

⁴⁴ "The Committee requests the State party to take appropriate measures to eliminate all forms of discrimination against women with respect to access to land." Concluding observations on Nepal, CEDAW, A/59/38, 2004, paragraph 217.

⁴⁵ Combined Fourth and Fifth Periodic Report of Nepal, CEDAW /C/NPL/4-5 paragraphs 38–40, 65.

⁴⁶ "The government gives a 25% discount on land registration fees for women" , Combined Fourth and Fifth Periodic Report of Nepal, CEDAW /C/NPL/4-5, paragraph 39.

⁴⁷ This was also highlighted by the UN Special Rapporteur on Indigenous Peoples in his recommendation that land reforms should "incorporate a specific focus on the rights of the *Adivasi Janajati* over the lands, territories and natural resources they traditionally have inhabited or used, or otherwise possessed, either individually or collectively" Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on the situation of indigenous peoples in Nepal, (2009), A/HRC/12/34/Add.3, Page 22 *et seq.*, paragraph 90.

⁴⁸ "A mechanism should be developed to provide redress to Adivasi Janajati communities and their members for their loss of land or access to natural resources incurred without their free, prior and informed consent, including when that loss has occurred by the establishment of protected areas, development projects, concessions for the exploitation of natural resources, or conveyances to private parties. Redress should include, where possible, restoration of indigenous peoples' access to resources, or a return of their land, especially when the loss occurred by irregular conveyances". Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on the situation of indigenous peoples in Nepal, (2009), A/HRC/12/34/Add.3, page 22 *et seq.*, paragraph 90.

26. To address the problems stemming from mega-projects in indigenous lands, such projects must be permitted only with the free, prior and informed consent of the peoples concerned. Where consent is obtained, government requirements for resettlement and compensation in cases of extractive industry investments, hydropower or any other large-scale project of public concern must contain specific guidance regarding appropriate and specific forms of compensation for indigenous men and women, ensuring that caste and ethnicity do not result in unequal benefit-sharing arrangements.

Denial of the right to participate in political and public life (Article 7, 8)

27. ICEDAW specifically protects the right of women to participate not only in elections and to be elected, but also in the formulation and implementation of government policy, and further protects the right of women to participate in the public life of a country, including through non-government organisations.⁴⁹ The UN Declaration on the Rights of Indigenous Peoples also provides for the right to political participation, affirming that: “Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.”⁵⁰ As the Declaration requires implementation with full respect for the rights of women, it would follow that indigenous women as a group have a right to political participation, both with respect to internal and external affairs.

28. Government policies adopted in Nepal since the fall of the monarchy acknowledge the failures of past government structures in Nepal to adequately address the needs of the many peoples of Nepal, and specifically responds to the exclusion of not only indigenous peoples but also women, *dalits*, disabled persons and “backward groups”.⁵¹ The Interim Constitution goes on to acknowledge the need for proportional inclusion of the various groups in Nepali society previously excluded from exercising power by the centralising caste structure that existed under the monarchy.⁵²

⁴⁹ ICEDAW Article 7 states in full “States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country. ”

⁵⁰ Article 18, UN Declaration on the Rights of Indigenous Peoples.

⁵¹ The Interim Constitution provides that it is an obligation of the State: “To make an inclusive, democratic and progressive restructuring of the State, by ending the existing centralized and unitary structure of the State so as to address the problems including those of women, *Dalit*, indigenous people, *Madhesi*, oppressed, excluded and minority communities and backward regions”, Interim Constitution, Section 33 “Obligations of the State’, (d), January 2007.

⁵² Stating that it is the obligation of the State: “To have participation of *Madhesi*, *dalit*, indigenous peoples, women, labourers, farmers, disabled, backward classes and regions in all organs of the

29. To assist in enabling this, the Interim Constitution explicitly establishes a positive role for the State in addressing the root causes of the political disenfranchisement of women, including opportunities to access education, health services and employment.⁵³ Legislative efforts to encourage the participation of indigenous persons in governance structures have also addressed local systems, with the *Local Self-Governance Act 1998* stating that local governance structures must include women nominated from indigenous peoples or other politically marginalised groups, although this quota has restrictions addressed in paragraph 32.⁵⁴ These requirements build on the earlier establishment of the National Foundation for the Development of Indigenous Nationalities (NFDIN) in 2002, a national governmental body responsible for working to improve the quality of life of indigenous peoples in Nepal.⁵⁵ In an Amendment to the Civil Service Act passed in 2007, 45% of civil service positions were reserved for particular groups, in the following proportions: women (33%), indigenous peoples (27%), Madhesi (22%), Dalit (9%), disabled persons (5%) and persons from “backward areas” (4%). Explanatory notes to this section explain that these groups are assigned quotas because they are “backward economically and socially.”⁵⁶

30. We see, therefore, that today there is recognition of multiple layers of discrimination in Nepal and that these forms of discrimination have led to extremely low political participation both by indigenous peoples and by women.⁵⁷ We can also now see the impact of efforts to change this. The highest decision-making body in Nepal at present is the Constituent Assembly, a body tasked with establishing a new Constitution for the new secular republic of Nepal. The Constituent Assembly is composed of 601 members, of

State structure on the basis of proportional inclusion;”, Interim Constitution, Section 33 “Obligations of the State”, (dl), inserted as part of the First Amendment to the Interim Constitution, March 2007.

⁵³ “The State shall pursue a policy of making the women participate, to the maximum extent, in the task of national development, by making special provisions for their education, health and employment.”, Interim Constitution, Section 35 “Policies of the State”, (8), January 2007.

⁵⁴ In Part 2 (Provisions relating to village development), Chapter 2 (Provisions related to the Village Council), the Act specifies that every village council must include “one woman nominated by the Village Council from amongst those social workers, socially and economically backward tribes and ethnic communities, down-trodden and indigenous people living within the village development area”, a similar provision is also in place for Municipal Councils (Part 3, Chapter 2) where an additional requirement is set that 40% of Municipal Council members must be women, and for the District Council again one woman must be nominated from within the identified excluded groups. (Part 4, Chapter 2), Local Self-Government Act 1993, available at www.lawcommission.gov.np.

⁵⁵ Under the law of Nepal, Section 2 of the *National Foundation for the Development of Indigenous Nationalities Act 2002*, recognises the collective nature of indigenous peoples and defines them as groups with distinct mother tongues, traditions, customs, identities, social structures, and their own oral or written histories. A note on translation: the formal translation of this Act is *National Foundation for the Upliftment of Aadibasi/Janjati 2002*, available at the Nepal Law Commission www.lawcommission.gov.np, however, it is far more commonly referred to as the English *National Foundation for the Development of Indigenous Nationalities Act 2002* and this second term will be used throughout this submission.

⁵⁶ Article 7 “Fulfilment of Vacancies”, (7) defining quotas. See also Article 7, explanatory note 2, reading in full “women, *Adiwasi/Janajati*, *Madhesi*, and *Dalit* means *women, Adiwasi/Janajati, Madhesi, and Dalit* who are backward economically and socially.” Civil Service Act 1993.

⁵⁷ Statistics for the representation of women and of indigenous persons in Nepal in national political parties since the fall of the monarchy are provided in Annex B.

whom 197 are women, a proportion of just over 32%.⁵⁸ Seventy of these women are indigenous, reflecting an increase in the political participation allowed to indigenous women in the new republic of Nepal.

31. Despite these numerical gains, however, there are significant problems with the quota systems and other policy responses of the government to date for indigenous women. Some of the continuing problems stem from the lack of respect for indigenous women's right to political participation as part of an indigenous collective, a failing already pointed out by numerous human rights bodies.⁵⁹ Article 18 of UNDRIP provides that indigenous peoples must have access to political processes *through representatives chosen by themselves in accordance with their own procedures*. The process of drafting the future Constitution has not granted indigenous peoples the right to choose their own representatives. Instead, all participants in the process are drawn from political parties and thus bound, by law, by the manifesto of the party to whom they owe their membership. On 12 February 2009, indigenous peoples and their organisations filed a writ petition with Nepal's Supreme Court challenging their exclusion from the constitution reform process, alleging that the exclusion of indigenous peoples contravenes constitutional norms and Nepal's international treaty obligations, obligations that are incorporated into national law pursuant to Nepal's 2007 Interim Constitution and the 1991 *Nepal Treaty Act*.⁶⁰ The Supreme Court has continually delayed hearing this case, despite its manifest urgency.

32. In such a situation, because the political manifestos do not promote indigenous peoples or indigenous women's rights, it is difficult to achieve effective collective representation. For instance, despite representation of indigenous women in the Women's Caucus of the Constituent Assembly, concept papers developed by the Thematic Committees⁶¹ established by the Assembly have not incorporated indigenous women's

⁵⁸ These statistics are drawn from *Women's Rights and Agenda To Be Incorporated In The New Constitution* (translated from the original Nepali), Women's Caucus, Nepal 2011 (advanced draft): page 1,

⁵⁹ See for example, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people who recommended that "In addition to existing means of representation in the Constituent Assembly, special mechanisms should be developed for consultations with the Adivasi Janajati, through their own representative institutions, in relation to proposals for new constitutional provisions that affect them." Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on the situation of indigenous peoples in Nepal, (2009), A/HRC/12/34/Add.3, Page 22 *et seq.* paragraphs 86 –87 and 89. See also the Report of the Expert Mechanism on the Rights of Indigenous Peoples, Third Session, submitted to the Human Rights Council, which stated: "76. Where special measures, such as reserved positions, are taken, there is a risk that they might be rendered ineffective. In Nepal, for example, despite the significant number of indigenous representatives in the Constituent Assembly currently drafting the country's new Constitution, the formal representatives were chosen by political parties and are expected to act in strict conformity with the manifestos of those parties." (A/HRC/EMRIP/2010/2: 18).

⁶⁰ Article 33(m) of the Interim Constitution and Treaty Act 1991. In *Rabindra Prasad Dhakal v Government of Nepal* (Nepal Kanoon Patrika 2064), the Nepal Supreme Court held that this also applies in the case of international human rights treaties.

⁶¹ The draft and concept papers of the Thematic Committees of the Constituent Assembly are available at : <http://www.can.gov.np/en/dncps/index>.

concerns, issues and rights.⁶² The Women's Caucus has recommended that "a constitutional provision be inserted that guarantees special provisions and protection for certain groups of people using clear criterion and indication by the law."⁶³ However, there is little attention to the concerns of indigenous women elsewhere in their proposed drafts where there is an almost absolute focus on women's equality without regard to the specific circumstances of particular women.⁶⁴ It also remains true that, as noted by the UN Special Rapporteur on Indigenous Peoples, active political and public participation of representative indigenous women's organisations is needed if the serious challenges facing them are to be addressed.⁶⁵

33. CESCR has supported this, pointing out that participation by women and indigenous peoples in political and public life in Nepal must occur at all levels, and that there is a need to facilitate the involvement of indigenous peoples and women in all levels of decision-making, including specifically the Constitution drafting process.⁶⁶ In Nepal, although quotas exist for local government institutions like the village council, district council and municipal council, the quota is undifferentiated – it is "one woman nominated ... from amongst those social workers, socially and economically backward tribes and ethnic communities, downtrodden and indigenous people" among a total of six nominated members below the position of vice-chair.⁶⁷ There is no specific quota for indigenous peoples, nor indeed for Dalits, and therefore no clear assurance that proportional representation will be secured.

⁶² For a full treatment of the lack of effective representation or inclusion of indigenous concerns and issues please see *Ongoing Exclusion of Indigenous Peoples' Representatives from the Making of Nepal's New Constitution: A Request for Consideration under the United Nations Committee on the Elimination of Racial Discrimination's Urgent Action and Early Warning Procedures*, Seventy-Fifth Session, (3 - 28 August 2009), submitted by Lawyers' Association for the Human Rights of Nepalese Indigenous Peoples (among others) at paragraphs 5–8.

⁶³ The Women's Caucus went on to note: "Understanding that in society there is vast inequality and many differences among citizens within target groups including women, the legislature should guarantee that special protection and facilities be provided to citizens in vulnerable conditions by law by the State", *A Proposed Draft of the Provisions to be Embodied in New Constitution*, Prepared on the Basis of Women's Rights Charter, 2065: page 6.

⁶⁴ See *Women's Rights and Agenda To Be Incorporated In The New Constitution (draft)*, Women's Caucus in the Constituent Assembly of Nepal (translated from the original Nepali) for complete details.

⁶⁵ Recommending, among others, that: "Renewed efforts to promote the rights of indigenous women should be urgently put in place, including measures to improve their representation and to eliminate all forms of discrimination and violence against them, with the active involvement of indigenous women and their organizations." Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on the situation of indigenous peoples in Nepal, (2009), A/HRC/12/34/Add.3, page 22 *et seq.*, paragraph 95.

⁶⁶ "The Committee urges the State party to ensure that, in the Constitutional process currently underway, all sectors of society, including disadvantaged and marginalized groups, in particular the Dalit, the Madhesi and indigenous communities, and especially women within these groups, are represented in decision-making bodies at all levels. It recommends that concrete and active efforts be made to promote the participation of these groups in the Constituent Assembly, which, following the election of its members in 2007, will embark on the drafting of a new Constitution." Concluding observations on Nepal, Committee on Economic, Social and Cultural Rights, E/C.12/NPL/CO/2, (2008), paragraph 30.

⁶⁷ See footnote 46.

Recommendations

34. Nepal must provide for the representation of indigenous women in the Constitution drafting process as freely chosen representatives of their peoples, recognizing the right of indigenous peoples to self-determination.

35. Promote effective participation in the political and public spheres in Nepal to ensure respect for the rights of indigenous women as *indigenous* women. This must entail full respect for the rights of indigenous peoples to self-determination, by providing that indigenous peoples may participate in national politics through their own traditional or freely chosen institutional structures.⁶⁸

36. The use of quota or reservation systems must be clearly designed to ensure proportional representation, where appropriate, and reflect the need for gender mainstreaming of participation within marginalised groups. Therefore quotas or reservations need to address both forms of discrimination simultaneously.

Discrimination through denial of right to use traditional language and practice cultural traditions (Articles 2, 10)

37. As mentioned previously, indigenous peoples are not considered to be part of the strict caste system imposed by the Hindu monarchy. This has meant many indigenous women enjoy a greater degree of cultural freedom from the patriarchy inherent in the caste system. Indigenous women, comparatively speaking, can move about more freely as per their liking, freely participate in culture, festivals and processions, sing and dance, and choose a life partner of their liking. In a similar fashion they are less affected by the dowry system. After the death of their husbands, they are not required to live a life of a widow like women in other communities. Nor is there any practice of restrictions during menstruation and *chaupadi* within their communities.⁶⁹ However, these additional cultural freedoms emerge from a form of benign neglect, and when conflict arises between the cultural norms of Nepal's indigenous peoples and the majority population, harsh discrimination against the perceived inferiority of indigenous cultures occurs, whether in law or in practice.

⁶⁸ See, for instance, the recommendation by UN Special Rapporteur on Indigenous Peoples that "Proposals for the design of a new federal structure should advance the self-determination of the Adivasi Janajati, which means advancing their exercise of the right to autonomy or self-government in relation to their own affairs, including the right to maintain their own customary laws and justice systems with due respect for universal human rights; the right to participate in decision-making at all levels of authority in relation to all matters affecting them; rights over territory and natural resources in accordance with customary patterns; and the right to maintain and develop the various aspects of their distinctive cultures." Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on the situation of indigenous peoples in Nepal, (2009), A/HRC/12/34/Add.3, paragraph 89.

⁶⁹ Padma Rai, indigenous nationalities movement and women, women bulletin (contemporary publication of All Nepal Women Organization), page 51.

Language and education

38. The Interim Constitution of Nepal recognises that the previous enforcement of Khas Nepali as the state language was unjust and affirms that “all languages spoken as a mother tongue in Nepal are languages of the nation” further affording the protection that “nothing shall be deemed to prevent the using of any language spoken as the mother tongue in a local body and office.”⁷⁰ This is a positive development; however, two serious concerns remain: the first is the need to address the result of long-term and deep-rooted marginalisation of indigenous languages through positive promotion, and the second is the concern that the Interim Constitution will not effectively overturn the existing laws on language use, particularly decisions of the Supreme Court in relation to language use. Indeed, Khas Nepali is the official language of the Constituent Assembly itself, a measure that greatly limits the participation of indigenous peoples and women in its proceedings, including the crucially important task of drafting the new Constitution.

39. *Khas Nepali* has been the official language since the establishment of Nepal. In a Supreme Court decision in 2008 the government actively quashed attempts by local administrative bodies to expand the number of languages that were permitted in government offices, an act intended as a pragmatic response to the low levels of Khas Nepali spoken in remote areas, particularly among women.⁷¹ The Supreme Court based its decision on the definition in the Constitution then in force of Khas Nepali as the national language, stating that: “No language will be equal in status with the Nepali language thus the decision to use local language is invalid and no longer prevails.”⁷² The Interim Constitution retains the definition of Khas Nepali as the national language and thus concerns exist that any attempt to use indigenous languages in government business will be outlawed again despite the protection offered in the new Interim Constitution.

40. Such a denial of the right to use indigenous languages in education and public offices denies indigenous women’s right to have access to education without discrimination as provided by Article 10 of the Convention. Furthermore, it is a denial of the right of indigenous peoples to continue to enjoy and enhance their cultures, a right that has been recognised many times by international human rights bodies.⁷³ The UN Declaration on the Rights of Indigenous Peoples provides extensive protections for cultural heritage.⁷⁴ To this

⁷⁰ Interim Constitution of the Federal Republic of Nepal, Article 5 (1) and (3).

⁷¹ Lal Bahadur Thapa et. al. Vs. HMG Ministry of Local Development et. al. 2065/5/19 BS (9 September 2008).

⁷² Informal translation, Lal Bahadur Thapa et. al. Vs. HMG Ministry of Local Development et. al.

⁷³ For example: “The State party should recognize and respect indigenous culture, history, language and way of life as an enrichment of the State’s cultural identity and provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics.” Concluding Observations of CERD to Indonesia, **CERD/C/IDN/CO/3**, 15 August 2007, paragraph 16

⁷⁴ See: Article 13(1) “Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.”; Article 11(1) “Indigenous peoples have the right to practice and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.”; and specifically addressing bilingual education provision: Article 14(1) “Indigenous peoples have the right to establish and control their educational systems and institutions providing education in

end, and specific to Nepal, the UN Special Rapporteur on Indigenous Peoples has recommended that NFDIN “should develop a national programme aimed at promoting the conservation and development of the cultural heritage of the Adivasi Janajati, including indigenous languages, traditional medicines and healing practices, religious or spiritual sites and practices, and cultural traditions and festivities, with the involvement of all Government ministries or agencies concerned and with the participation of Adivasi Janajati representatives.” The Special Rapporteur on Indigenous Peoples also addressed the need to establish equal protection of languages: “Existing plans for bilingual education should be enforced as a matter of priority in order to promote the revitalization and development of Adivasi Janajati languages, including by allocating the required human and financial resources to allow for effective implementation of such programmes.”⁷⁵

41. Involvement of women generally in the education system in Nepal is low, although rising. The last Census figures, from 2001, show a wide disparity between males and females with 54% of males reporting literacy and only 24% of females.⁷⁶ This difference appears to be lessening slowly, with an official survey conducted in 2004 finding an improvement in this gender gap with a total literacy rate of 57.6%, divided into 70% male and 44.9% female.⁷⁷ However, for women of indigenous backgrounds, access to and long-term participation in education is made far more difficult by an insistence on Khas Nepali as the language of instruction at all levels. CEDAW has also noted that the multilingual nature of a population must be taken into account when developing public communication strategies, particularly communication that is reaching out to women – who are less likely than men in indigenous communities to speak the national language.⁷⁸

Recommendations

42. Ensure that indigenous languages are recognised as a medium of instruction in majority indigenous schools, and that bilingual education programmes are established to support the growth of literacy rates among indigenous girls and boys. Provision of bilingual education should be paired with specific support from the Ministry of Culture to work with indigenous peoples to design programmes to strengthen their cultures, including their distinct languages.

their own languages, in a manner appropriate to their cultural methods of teaching and learning.”, UN Declaration on the Rights of Indigenous Peoples, Adopted by the General Assembly of the United Nations, 2007.

⁷⁵ Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on the situation of indigenous peoples in Nepal, (2009), A/HRC/12/34/Add.3, Page 22 *et seq.* paragraphs 91–92.

⁷⁶ These statistics are taken from persons aged 6 and older, Central Bureau of Statistics, Federal Republic of Nepal, available at http://www.cbs.gov.np/Surveys/NLSS/literacy_and_education.htm.

⁷⁷ Chapter 3 ‘Education’, *Report on the Situation of Women, Children and Households Between Census Household Information, Monitoring and Evaluation System (BCHIMES)*, HMG/N, Central Bureau of Statistics in collaboration with UNICEF Nepal, September 2001

⁷⁸ CEDAW Concluding Observations on Guatemala, (CEDAW/C/GUA/CO/7) reading in part: “further urges the State party to take proactive measures, including comprehensive legal literacy programmes to enhance women’s awareness of their rights. These measures should be adapted and take into account the illiteracy and the multilingual character of the population, and should also target all vulnerable groups of women, so that they may know and be able to exercise their rights.”

43. It should also be recommended that Nepal's legislation provide explicitly for the equality of indigenous languages in the judicial system, in public health and education outreach and in all other areas of State communication with, and from, the peoples of Nepal.

Outlawing indigenous cultural practices

44. The Hindu religion contains a number of structures and rules – as do other religions – that dictate what believers may or may not do. In Nepal, the long history of Hinduism as the State religion has meant that many of these structures and rules have become national law – effectively imposing on the national population the beliefs of a single religion. An example of this, which has resulted in indigenous men and women facing incarceration, is the legal prohibition on the slaughter or consumption of cattle and buffalos. The cow is, in Nepal, protected both in Constitutional law⁷⁹ and national law.⁸⁰ Many of the indigenous cultures in Nepal have no prohibition on killing or consuming cattle and beef is an important part of their traditional diet. Moreover, for some indigenous peoples – the Limbu, Tamang and Rai – beef is required for traditional rituals. These legal provisions attached to Hinduism are discriminatory against indigenous peoples and particularly affect indigenous women who prepare the meat, resulting in their being criminalised and, in some cases imprisoned, for a practice which has been linked to their cultures since time immemorial.

45. The continued protection granted to the cow following the declaration of Nepal as a secular country has been challenged before the Supreme Court, however, the Court retained the discriminatory provision of the Civil Code in its recent decision in favour of retaining the law against cattle slaughter.⁸¹ The Supreme Court's verdict reads "The cow is not only the symbol of Hindu Religion, but is given the status of the National Animal by the Interim Constitution, which encapsulates the provision of the Secular State, and any crime against this animal is made an offence; thus the provision of the Civil Code relating to this animal does not violate the fundamental rights *inter alia* the provision is not against the notion of secular state. Cow and Ox Slaughter shall not be valued by any religion and group in the Secular State. The State shall have power of sanction when it declares the slaughter of cows and oxen to be a crime".⁸²

46. Such a position only reaffirms the inferiority of indigenous customs and rituals to the Hindu religion. Furthermore, such a position specifically impacts on women in indigenous communities as they have the traditional roles of butchering and preparing food, therefore ensuring that they will break the law if they follow their custom. The Human Rights Council in its recent periodic review of Nepal specifically recommended that the State: "[d]o all the necessary to accelerate the drawing up of the various legal texts to reaffirm and reinforce the equality between all ethnic, cultural and linguistic components of Nepali

⁷⁹ Art. of the Interim Constitution.

⁸⁰ Civil Code (Chapter of Quadruped), Sec. 4,10,11,12,13,14.

⁸¹ Unofficial translation: Advocate Om Prakash Vs, GON, Certiorari Mandamus, NKP, 2065, Dec. No. 7999. P, Najeer Sangraha, page 390.

⁸² *Ibid.*

society”.⁸³ Without affirming equality of religions before the law, including by removing statutes that deny or offend the religious beliefs of peoples in Nepal, inequality of cultural practice will remain in Nepali society. We therefore reiterate the recommendation of CESCR where the Committee specifically noted the multiple impacts on women of such discriminatory laws and recommended that “a thorough review of national laws be undertaken with a view to identifying and rectifying all provisions that directly or indirectly permit discrimination on the basis of caste and *multiple discrimination of women from certain groups.*” (emphasis added).⁸⁴

Recommendations

47. The criminalisation of cow and ox consumption infringes the right to be free from discrimination based on religious beliefs, and disproportionately impacts on indigenous women as they are predominately responsible for food production in their communities and it is only the indigenous peoples of Nepal who eat cattle. We urge the Committee to recommend that Nepal repeals the criminalisation of this practice and reforms its legislation so that it respects the rights of indigenous women to be free from discrimination.

Discrimination in employment (Article 11)

Loss of traditional occupations and livelihoods:

48. Many of the indigenous peoples of Nepal have traditional occupations and livelihoods that are culturally specific and form the majority of the employment among their people. For instance the Bote, Majhi, and Danuwar depend on fishery, boating, and liquor-making respectively, all occupations that are customary to their people, and for the former and latter, occupations that are predominately carried out by women. Disregarding important cultural practices, the Government has passed legislative measures outlawing local liquor making, and has disallowed fishing and boating on rivers without specific permits being obtained.⁸⁵ Such measures have direct, immediate and severe impacts on the peoples

⁸³ Universal periodic Review of Nepal, Recommendation of Algeria Draft Report of the Working Group on the Universal Periodic Review, 10th Session, (2011) para 107.4: A/HR/WG.6/10/L.3 The final document (not yet available, as of 10 June 2011) will be issued under A/HRC/ 17/5 .

⁸⁴ The Committee went on to further urge “the State party to strengthen its efforts to make widely known the prohibition of such discrimination and to improve effectively access to judicial and administrative remedies in cases of alleged violations. The Committee further recommends that special units be established to monitor the implementation of programmes to protect and promote the full enjoyment without discrimination of their economic, social and cultural rights by disadvantaged and marginalized groups, in particular the Dalit, the Madhesi and indigenous communities, and especially women within these groups” Concluding observations on Nepal, Committee on Economic, Social and Cultural Rights, Nepal, E/C.12/NPL/CO/2, 2008, paragraph 32.

⁸⁵ For restriction on liquor-making Sections (2), (3), (4), (5), (7), (12) and (13) of the Madira Ain 2031 (Liquor Act, 1974); for fishing restrictions, see Jalchhar Sarchan Ain 2017 (Aquatic Animal Preservation Act, 1960); and for restrictions on boating without permits, National Park Regulations.

concerned, and specifically on the women in these communities, as their traditional roles are undermined or outlawed.

49. Such action undermines the potential for economic empowerment and further economically marginalises the women in these communities. CESCR has also made specific notice of these concerns for the women in indigenous communities specifically in their Concluding Observations to Nepal in 2010, stating that, in addition to general efforts to increase job availability, they: “also recommend that special programmes for ex-Kamaiyas and ex-Haliyas, Dalits, indigenous persons and groups, and particularly women belonging to these groups, be expanded in the rural areas as a matter of priority.”⁸⁶

50. As ICEDAW recognises in Article 11, the right to work is an inalienable right of human beings.⁸⁷ Where traditional occupations are severely restricted or criminalised for women in indigenous communities, there is a need for special measures to address the violation of this right. Such specific attention towards indigenous peoples and particularly towards women within indigenous communities is warranted because traditional livelihoods and occupations have come under threat from national government policies, and where traditional livelihoods are threatened, women bear the brunt of the impact. The Committee has noted such a need for specific attention in its Concluding Observations to Costa Rica in 2003.⁸⁸

Recommendation

51. Where traditional or customary livelihoods are placed under threat by changing national legislation, thereby placing increased burdens on women in indigenous communities to find replacement occupations, there is a need for such restrictions on traditional or customary livelihoods to be implemented only under exceptional circumstances. Where such restrictions are unavoidable, special measures must be put into place to ensure that those following such livelihoods are provided with opportunities for appropriate replacement occupations.

⁸⁶ Concluding observations on Nepal, Committee on Economic, Social and Cultural Rights Nepal, E/C.12/NPL/CO/2, 2008, paragraph 37.

⁸⁷ Article 11, 1(a), International Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979 (ICEDAW).

⁸⁸ Where: “The Committee notes with concern that although the Constitution guarantees the right to work and the principle of non-discrimination in the employment sphere, norms and practices still exist that discriminate against working women, and that there is a wage gap, to the disadvantage of women, which has greater impact in the private sector than in the civil service; it also notes with concern the precarious working and living conditions of women domestic workers, including migrant workers, as well as of salaried women workers, rural women, women in the informal sector and indigenous women” Concluding Observations on Costa Rica: CEDAW, A/58/38, 9 July 2003, paragraph 63.

Bonded labour

52. Kamaiya (male and female agricultural workers) and Kamlari (young female domestic servants) are forms of bonded labour in which servants are bound to specific individuals or families to work off a debt incurred by them or by preceding generations.⁸⁹ Both of these systems of servitude and bonded labour were (and continue to be in places) prevalent within the Tharu people – an indigenous people in the southwest of Nepal. The systems appear to have emerged when a sudden influx of peoples aligned with the centralised power of the monarch came into the Tharu lands and dispossessed them in the 1950s. The Tharu then, over time, became first indebted to and then enslaved to the more powerful newcomers to their lands.⁹⁰

53. In 2000 the Government of Nepal, in response to considerable pressure from Kamaiya families and support organisations, cancelled and declared illegal the *saunki* or inherited debt that bound the workers and abolished the Kamaiya system.⁹¹ The Nepal State has also instituted policies intended to assist the individuals and families involved in the Kamaiya system, as noted in the Nepal State Report.⁹²

54. However, the continued existence of coerced labour among these families has revealed the persistence of the root causes of families entering into debt bondage – a lack of skills, education and training to obtain other forms of employment in the labour market and an almost complete lack of land or assets of any form.⁹³ Socio-economic coercion has proved almost as strong as the prior system of legally enforceable debt obligation. The UN Special Rapporteur on Indigenous Peoples addressed the conditions facing the Tharu people specifically in his assessment of the situation of indigenous peoples in Nepal: “A plan of urgency should be developed in order to confront the social and economic conditions of Adivasi Janajati communities listed as endangered or highly marginalised indigenous groups, including the former bonded labourers such as the Kamaiyas. With regard to the former bonded labourers in particular, the Government should at a

⁸⁹ World Organization Against Torture (2006). “The Kamaiya System of Bonded Labour in Nepal”. A study prepared by the World Organization Against Torture for the International Conference *Poverty, Inequality and Violence: is there a human rights response?* Geneva, 4–6 October 2005. http://www.omct.org/pdf/ESCR/2006/intl_conference2005/II_B_3_Nepal_Case_Study.pdf.

⁹⁰ *Ibid.*

⁹¹ Professor Hari Bansh Jha, Janajatis in Nepal, International Labour Organization, 15 November 2004, page 12.

⁹² ‘Land Reform and Rehabilitation programme for freed bonded labours (*Kamaiyas*) of the Ministry of Land Reform and Management (MoLRM)’, Combined 4th and 5th Periodic State Reports, Nepal **CEDAW/C/NPL/4-5**, paragraph 86

⁹³ As described forcefully by the ILO in 2004 : Kamaiya (bonded labour) system is rampant among the Tharus, the main Madheshi indigenous nationality particularly in five districts of Dang, Banke, Bardiya, Kailali and Kanchanpur in the far and mid western districts of Nepal. Of the 20,000 Kamaiya households in these five districts, there are 57,000 children between the age group of five and eighteen years (Sharma & *et al*, 2001). Each of these households surrenders one or more than one children to work for their employers. The great majority of the families (72.5 per cent) surrendering children for child labour are landless and paupers and they are not in a position to support themselves on account of low pay structure, excessive hours of work and lack of opportunities for alternative income (Sharma, 2001). The minor children are still used as collateral for loans taken by their parents under the existing farming arrangement. Professor Hari Bansh Jha, Janajatis in Nepal, International Labour Organization, 15 November 2004, page 12.

minimum move swiftly to fulfil and strengthen existing commitments to them for their rehabilitation.”⁹⁴

Recommendation

55. We recommend that Nepal provide victims of forced and bonded labour, particularly Tharu women and children freed from bonded domestic and agricultural labour such as the Kamaiya and Kamlari systems, with specific, targeted and sustained training and skills assistance to ensure that they are able to access resources to re-establish their lives and livelihoods outside of bonded labour situations.

Violence Against Women: Trafficking and sexual exploitation of indigenous women (Article 6 and General Recommendation XIX)

56. The absolute numbers of women and girls – and in some cases boys – in Nepal who are lured or trapped into human trafficking rings or sexually exploited are very difficult to pin down. Different sources provide widely varying statistics. The United Nations Development Programme provides a generally accepted figure of some 12,000 girls and women annually, of whom a fifth are under the age of 16.⁹⁵ Whatever the statistics that are accepted, it is clear and widely acknowledged that human trafficking is a serious and growing concern for Nepal, an acknowledgement that is also found in the Nepal State Report before the Committee in this session.⁹⁶ The seriousness of this violation of basic human rights is recognised in Article 6 of ICEDAW and in more detail in General Recommendation XIX.⁹⁷

57. Furthermore, as also recognised by the Nepal State Report, indigenous women and girls are disproportionately involved in trafficking: “During 2006-07, of the 233 children rescued, 217 were girls. Of this total number, 78.55% are from ethnic groups and 12.5% from the *Dalit* community.”⁹⁸ The discrepancy here is stark; indigenous women and girls make up almost 80% of the total of these trafficked individuals although the proportion of

⁹⁴ Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Report on the situation of indigenous peoples in Nepal, (2009), A/HRC/12/34/Add.3, Page 22 *et seq.*, paragraph 94.

⁹⁵ United Nations Development Programme (UNDP), National Human Development Report, Nepal, 2004, page 54.

⁹⁶ Nepal, Fourth and Fifth Periodic Report to the Convention on the Elimination of Discrimination Against Women, Government of Nepal, Ministry of Women, Children and Social Welfare, CEDAW/C/NPL/4-5: paragraphs 77.

⁹⁷ In full, that “States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women”, Article 6, *International Convention on the Elimination of All Forms of Discrimination Against Women* 18 December 1979 (ICEDAW) and *General Recommendation XIX: Violence Against Women*, 11th Session of CEDAW, 1992

⁹⁸ Nepal, Fourth and Fifth Periodic Report to the Convention on the Elimination of Discrimination Against Women, Government of Nepal, Ministry of Women, Children and Social Welfare, CEDAW/C/NPL/4-5: paragraph 89.

indigenous peoples in Nepal is only officially placed at 37%. Given these statistics, it is necessary for measures introduced to combat the sexual exploitation of women and girls to specifically address the causal factors that disproportionately impact on indigenous women and girls.

58. The Committee has addressed this problem before, urging the State “to intensify its efforts to address trafficking in women and girls. It recommends that its anti-trafficking strategy should include measures of prevention, the prosecution and punishment of perpetrators and increased international, regional and bilateral cooperation.” The Committee also requested “the State party to provide in its next report information about the legal and actual situation with respect to trafficking in women and girls.”⁹⁹ While this recommendation goes some way to addressing the complex issues in Nepal that lead to, and may be used to address, the problem of human trafficking, the ethnicity of the overwhelming majority of victims goes unaddressed.

Recommendations

59. We support the recommendation of Indonesia during the Universal Periodic Review of Nepal that the State must “[i]ntroduce comprehensive legislation and more stringent enforcement of existing laws in the areas of domestic violence towards women and human trafficking”¹⁰⁰ and respectfully submit that the Committee should make the same recommendation to Nepal.

60. It is further recommended that the Committee urges Nepal to couple such enforcement measures with the prevention measures recommended by CEDAW and that such measures be specifically targeted to the most at-risk populations, including the indigenous women and girls of Nepal, addressing root causes such as poverty, economic marginalization, land loss and economic migration.

⁹⁹ Concluding observations on Nepal, CEDAW, A/59/38, 2004, paragraph 211.

¹⁰⁰ Universal Periodic Review of Nepal, Recommendation of Indonesia, Draft Report of the Working Group on the Universal Periodic Review, 10th Session, (2011), paragraph 106.4: A/HR/WG.6/10/L.3) The final document (not yet available, as of 10 June 2011) will be issued under A/HRC/17/5.

IV. Conclusion and request

61. In light of the above, the submitting organisations respectfully request that the Committee considers the situation of indigenous women and recommends that Nepal:

- 1) Provide recognition to the indigenous peoples of Nepal who are currently excluded from the government approved list (see Annex A), paying due regard to the principle of self-identification.
- 2) Undertake a thorough review of national laws, potentially through the establishment of a National Commission on Indigenous Peoples tasked with this, with a view to identifying and rectifying all provisions that directly or indirectly permit discrimination on the basis of caste and multiple forms of discrimination against women from certain groups. Such law reform, at a minimum, must include legislation denying indigenous land tenure and restricting traditional livelihoods (paragraphs 12 (land laws) and 47 (livelihoods)).
- 3) Ensure that reforms on land access and land tenure are carefully designed to ensure that the rights of indigenous women to access and manage their resources and land are not denied, through inclusion of indigenous women in the law reform process. This includes, where appropriate, recognition of the collective right of indigenous peoples to maintain their cultural ties to their lands and own and manage their resources.
- 4) Include legislative measures to ensure land rights are recognised, beginning with land demarcation and titling procedures in areas of Nepal where land titling has not been completed, or where it has been completed without due regard for the rights of indigenous peoples, and provide a mechanism to provide redress to indigenous persons, male and female, as well as indigenous peoples as collectives, where land has been taken without their consent.
- 5) Ensure that mega-projects in indigenous lands are permitted only with the free, prior and informed consent of the peoples concerned. Where consent is obtained, government requirements for large-scale projects of public concern must contain specific guidance regarding appropriate and specific forms of compensation for indigenous men and women, including land for land, ensuring that caste and ethnicity do not result in unequal benefit-sharing arrangements.
- 6) Strengthen its efforts to make widely known the prohibition of such discrimination and to implement improved access to judicial and administrative remedies in cases of alleged violations, including through provision of translation services, legalizing the use of indigenous languages in judicial settings, and provision of transport assistance from remote communities.
- 7) Establish mechanisms, potentially under the oversight of a possible National Commission on Indigenous Peoples, to monitor the implementation of programmes to protect and promote the full enjoyment without discrimination of the economic, social and cultural rights by disadvantaged and marginalised groups, in particular the Dalit, the Madhesi and indigenous communities, and especially women within these groups.
- 8) Ensure that data collected in Nepal is disaggregated by categories of indigenous ethnicity or nationality, and referenced in relation to gender, taking into account the criterion of self-identification, in order to promote accurate understanding of indigenous peoples' situations and the development of appropriate, gender-sensitive programming.

- 9) Ensure that existing land reform initiatives include specific focus on means of protecting the rights of indigenous peoples to secure access, management and use of their traditional territories, for both individual and collective tenure systems.
- 10) Promote effective participation in the political and public spheres in Nepal to ensure respect for the rights of indigenous women as *indigenous* women. This must entail full respect for the rights of indigenous peoples to self-determination, by providing that indigenous peoples may participate in national politics through their own traditional or freely chosen institutional structures.
- 11) Provide for the participation of indigenous peoples, through their freely chosen male and female representatives, in the Constitution drafting process, including recognizing their right to self-selected collective representation.
- 12) Devise quotas or reservation systems to ensure proportional representation, where appropriate, and reflect the need for gender mainstreaming of participation within marginalised groups, thereby addressing both forms of discrimination.
- 13) Ensure that restrictions are placed on traditional or customary livelihoods only in exceptional circumstances, and where all other alternatives have been assessed. Where such restrictions are unavoidable, special measures must be put in place to ensure that those with such livelihoods are provided with opportunities for appropriate replacement occupations.
- 14) Ensure that indigenous languages are recognised as a medium of instruction in majority indigenous schools, and that bilingual education programmes are established to support the growth of literacy rates among indigenous girls and boys. Provision of bilingual education should be paired with specific support from the Ministry of Culture to work with indigenous peoples to design programmes to strengthen their cultures, including their distinct languages.
- 15) Provide for the legal equality of indigenous languages in the judicial system, in public health and education outreach and in all other areas of State communication with, and from, the peoples of Nepal.
- 16) Provide victims of forced and bonded labour, particularly Tharu women and children freed from bonded domestic and agricultural labour such as the Kamaiya and Kamlari systems, with specific, targeted and sustained training and skills assistance to ensure that they are able to access resources to re-establish their lives and livelihoods outside of bonded labour situations.
- 17) Establish stringent enforcement mechanisms in support of the positive legal framework that addresses trafficking of women and girls, including training of border guards and harsher penalties for convicted people smugglers. These enforcement mechanisms must be coupled with more effective and targeted preventative measures such as more effective economic development programmes in remote areas, addressing the causes of trafficking, with particular emphasis on vulnerable populations, including indigenous women and girls.

Annex A Schedule of recognised indigenous peoples in Nepal

Schedule (Relating to Clause (a) of Section 2),
National Foundation for the Upliftment of Aadibasi/Janjati 2002 /
National Foundation for the Development of Indigenous Nationalities Act 2002

- | | |
|-----------------------|-----------------------|
| 1. Kisan | 31. Baramo |
| 2. Kumal | 32. Bahra Gaunle |
| 3. Kushwadiya | 33. Bote |
| 4. Kushunda | 34. Bhujel |
| 5. Gangai | 35. Bhote |
| 6. Gurung | 36. Magar |
| 7. Chepang | 37. Majhi |
| 8. Chhantyal | 38. Marphali Thakali |
| 9. Chhairotan | 39. Mugali |
| 10. Jirel | 40. Meche (bodo) |
| 11. Jhangad | 41. Yakkha |
| 12. Dolpo | 42. Rai |
| 13. Tangbe | 43. Raute |
| 14. Tajpuriya | 44. Rajbansi (Koch) |
| 15. Tamang | 45. Rajhi |
| 16. TinGaunleThakali | 46. Larke |
| 17. Topkegola | 47. Limbu |
| 18. Thakali | 48. Lepcha |
| 19. Thami | 49. Lhopa |
| 20. Tharu | 50. Lhomi (Shingsawa) |
| 21. Thudam | 51. Walung |
| 22. Danuwar | 52. Byasi |
| 23. Darai | 53. Sherpa |
| 24. Dura | 54. Satar (Santhal) |
| 25. Dhanuk (Rajbansi) | 55. Siyar |
| 26. Dhimal | 56. Sunuwar |
| 27. Newar | 57. Surel |
| 28. Pahari | 58. Hayu |
| 29. Free | 59. Hyolmo |
| 30. Bankariya | |

Annex B Statistics of women's participation in political parties in Nepal since 2007, disaggregated where possible for indigenous women

The Interim Constitution was promulgated on 15 January 2007 AD on the basis of political consensus reached over the draft presented by the Interim Constitution Drafting Committee. Consistent with the same constitution, upon including members of the CPN-Maoist in the reinstated parliament, the Legislative-parliament was constituted on 15 January 2007 AD. Of the 330 members in that Legislative-parliament, 57 were women.

Women's participation in the parliament which was reinstated in 2007 AD

Name of party	Total members	Women	Women %
Nepali Congress	133	10	7.5
CPN (UML)]	83	12	14.5
CPN (Maoist)	83	31	36.1
Others	31	4	13.1
Total	330	57	17.3
Source: Statistics segregated on the basis of gender, National Women's Commission, 2008, page 31			

Initially there were 25 political parties in the CA, and only 19 had women members. Later, Janamorcha Nepal merged with CPN-Maoist and a few of the other parties fragmented resulting in 29 different political parties. Of these, only 21 have women representatives.

Nepal has adopted a mixed system of voting, with First Past The Post and Proportional Representation with its "list system". Only 29 women were elected through FPTP, whereas 161 women made their way to the CA through the PR system.

The 21 parties and number of women members from each of them have been presented in the table below:

Table: Women members of the 21 Political Parties

S. No	Political Party	PR	FPTP	Nominations	Total	Percent
1	UCPN-Maoist	52	23	3	78	39.8
2	Nepali Congress	36	2	1	39	20
3	CPN-UML	35	1	2	38	19.5
4	Madhesi Janadhikar Forum Loktantrik	6	1	0	7	3.6
5	Madhesi Janadhikar Forum Nepal	5	1	0	6	3.1
6	Terai Madhes Loktantrik Party	2	0	0	2	1.0
7	Terai Madhes Loktantrik Party Nepal	4	0	0	4	2.0
8	Rastriya Prajatantra Party	4	0	0	4	2.0
9	CPN-ML	3	0	0	3	1.5
10	CPN-Unified	2	0	0	2	1.0
11	Sadbhavana Party	2	0	0	2	1.0
12	Rastriya Prajatantra Party Nepal	2	0	0	2	1.0
13	CPN-United	1	0	0	1	0.5
14	Rastriya Janashakti Party	1	0	0	1	0.5
15	Rastriya Janamorcha	1	0	0	1	0.5
16	Nepal Majdoor Kisan Party	1	0	0	1	0.5
17	Nepali Janata Dal	1	0	0	1	0.5
18	Sanghiya Loktantrik Rastriya Manch	1	0	0	1	0.5
19	Nepal Sadbhavana Party (Anandidevi)	1	0	0	1	0.5
20	CPN-ML Socialist	1	0	0	1	0.5
21	Rastriya Janamukti Party	1	0	0	1	0.5
	Total	161	29	6	196	100.0

The number of women members elected from marginalised communities through FPTP has been presented in the table below:

Table: Women elected from marginalised communities through FPTP

Party	Madhesi	Janajati/Indigenous	Dalit	Muslim
UCPN-M	0	9	2	0
Nepali Congress	0	0	0	0
CPN-UML	0	0	0	0
MJF Nepal	1	0	0	0
MJF Loktantrik	0	0	0	1

Similarly, the table below presents the number of women members elected from marginalised communities through the PR System:

Table: Women elected from marginalised communities through PR

Party	Madhesi	Janajati/ Indigenous	Dalit	Muslim
UCPN-M	7	21	6	1
NC	4	11	5	1
UML	6	13	4	1
MJF Nepal	4	0	0	1
MJF Loktantrik	3	1	1	1
TMLP	2	0	1	0
RPP	0	2	1	0
CPN-ML	0	1	0	0
RPP Nepal	0	1	0	0
Rastriya Janashakti Party	0	1	0	0
Rastriya Janamorcha	0	1	0	0
Nepal Majdoor Kisan Party	0	1	0	0
CPN-Unified	1	0	0	0
Nepali Janata Dal	1	0	0	0
Sanghiya Loktantrik Rastriya Manch	0	1	0	0
Sadbhavana Party	1	0	0	0
Rastriya Janamukti Party	0	1	0	0
CPN-ML Socialist	0	0	1	0

Annex C Twenty-Point Agreement between the Nepal Government, NFDIN and NIWF

The 20-point agreement between the Government and Indigenous Peoples (Janajatis) of Nepal before the CA election in 2007

(7 August 2007/ 22 Saun 2064)

Unofficial translation from the original Nepali, by the United Nations Mission in Nepal (UNMIN)

1. While nominating candidates for the first-past-the-post electoral system arranged for the constituent assembly election in the present constitution, candidacy will be determined so as to ensure proportional representation of all castes and janajatis.
2. While preparing a proportional list, all political parties participating in the election will make arrangements to ensure representation of each of the listed indigenous janajati communities.
3. In case a listed indigenous janajati group is unable to secure its representation through both electoral systems, the Government of Nepal and the eight parties will reach a mutually acceptable conclusion in order to ensure that there is at least one representative of such a group and that the representation is legal and constitutional.
4. A state restructuring commission will soon be formed to present recommendations to the constituent assembly regarding a federal state structure based on ethnicity, language, geographic region, economic indicators and cultural distinctiveness while keeping national unity, integrity and sovereignty of Nepal at the forefront. The commission will include indigenous janajatis, Madhesis, dalits, women and eminent experts from various groups, regions and communities.
5. A commission for indigenous janajatis will be formed.
6. While so far only Nepali has been recognised as the government's official language, the constituent assembly will also make arrangements to give recognition to locally spoken mother tongues along with Nepali. The government will remain committed towards ensuring linguistic rights of its citizens.
7. Arrangements will be made for the general public to seek and receive information on matters of public importance, including the constituent assembly, in their respective mother tongues.
8. The Government of Nepal has agreed in principle that all groups, genders, communities, castes and ethnicities should be represented in political parties at all levels. A fully representative task-force will be formed immediately to conduct a study in order to ensure inclusive participation and proportional representation of all castes, ethnicities, groups, communities, genders and regions in all bodies and levels of the state.
9. All sectors will take initiatives to practically implement their legal and policy-level commitments to ensuring inclusive and proportional representation of all genders, classes, regions and communities, including indigenous janajatis in all bodies and levels of state.

10. A system will gradually be developed to receive advice and consultation from concerned groups and bodies while making important decisions regarding various groups, regions, genders and communities, including indigenous janajatis.

11. Arrangements will be made to immediately pass the proposal to ratify and adopt Convention 169 of the International Labour Organisation.

12. Appropriate steps will be immediately taken to complete the necessary legal process for adopting the United Nations Declaration on the Rights of Indigenous Peoples.

13. A District Coordination Committee for indigenous janajatis will be formed in a democratic and transparent manner. Also, high importance will be given to the involvement of the Nepal Federation of Indigenous Nationalities and the National Federation of Indigenous Women in this process.

14. In keeping with the spirit and sentiment of gender mainstreaming in development plans and programmes, including interim planning, and paying attention to women and diversity in programme implementation and profit sharing, emphasis will be laid upon participation of women from indigenous janajati, dalit and Madhesi groups.

15. As party to the Convention on Biodiversity, the country will ensure that the traditional knowledge, skills, practices and technology of indigenous janajatis are harnessed and preserved.

16. The country will honour the renowned geographer Dr. Harka Gurung.

17. Arrangements will be made to provide Rs. 1 million each as relief and compensation to the families of all the Nepalis who died in the helicopter crash in Ghunsa, Taplejung.

18. The process started by the government to find a permanent solution to the problems faced by freed kamaiyas (bonded labourers) will be taken forward in an effective manner as per the agreement.

19. The government will make a serious effort to reach an agreement for addressing the demands of various groups and communities, including Madhesi, women and dalits through talks and discussions with the respective groups.

20. Nepal Federation of Indigenous Nationalities, Indigenous Nationalities Joint Struggle Committee and National Indigenous Women Federation request all indigenous communities in the country to unite for the success of the upcoming constituent assembly election.

- Ram Chandra Poudel, Coordinator, Government Talks Team
- Dr. Om Gurung, Coordinator, Nepal Federation of Indigenous Nationalities
- KB Gurung, Coordinator, Indigenous Nationalities Joint Struggle Committee