Indigenous Peoples’ Rights Concept-Institutionalization and Implementation (National and Global) Perspective

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A Glimpse on Indigenous Peoples

- 476.6 million in the world and 6.2% of world population (ILO, 2020)
- 90 countries living in all regions
- 54 million in Latin America (8.5% of total population) and 7 million in North America (2% of population)
- 77 million in Africa (6% of population)
- 335 million in Asia and Pacific (75% of population)
- Nepal 35.2% in Government data but IPs claim they are in majority
Core Ground Value on Indigenous Peoples

- Indigenous peoples represent a major part of the world’s cultural diversity, and take care of much of the world’s lands, biodiversity and fragile eco-systems (UNESCO);
- Peoples with Distinct Identity and Entitlement accepted nationally and globally (Colonization-Assimilation-Decolonisation/ acceptance as distinct peoples);
- Individual and collective rights are entitle to Indigenous Peoples
- Custodian of Lands, territories and natural resources
Indigenous peoples, despite the diversity of their situations and cultures, face common problems and share common goals internationally (Prof. Jullian Burger)
Global Commonality on Indigenous Peoples Situation

- Common problems: the legacy of colonialism
  - Loss of all or a significant part of indigenous peoples’ lands and resource
  - Forced displacement of indigenous peoples;
  - Dismantling of spiritual, economic, social, political and legal institutions
  - Denigration of indigenous peoples’ cultures and identity
In our context

• Indigenous Peoples are recognized Constitutionally and Legally as well as in the Policies to some extent;
• Constitutional Acceptance of discrimination based on class, caste/race, language, religion and commitment of elimination to ensure economic equality, prosperity and social justice on the ground of “Principle of Proportional Inclusion and Participation” (Preamble of Constitution 4)
• Internalization of People’s sovereignty; right of self-rule and autonomy (Preamble of Constitution 1)
• Social Justice and Inclusion (Directive Principle) \ 社会正义和包容（指导原则）
  आदिवासी जनजातिको पहिचान सहित सम्मानपूर्वक बाँचन पाउने अधिकार सुनिश्चित गर्न अवसर तथा लाभकालागि
  विशेष व्यवस्था गर्दै यस समुदायसँग सरोकार राख्रे निर्णयहरुमा सहभागी गराउने तथा आदिवासी जनजाति स्थानीय समुदायको
  परम्परागत ज्ञान सीप संस्कृति सामाजिक परम्परा र अनुभवलाई संरक्षण र संवर्धन गर्न (धारा ५१ ज८)
• समानताको र अभिभेदको हक (धारा १८)
• नेपाल पक्षा भएका अन्तर्राष्ट्रिय सल्लै सम्प्रभुताहरुको
  कार्यान्वयन (धारा ५१ ख ३)
Existing Laws  (NFDIN Act, 2002)

- **Recognized with distinct “Identity” and Distinct Social Structure:** Sec. 2 (a) ”Aadibasi/Janjati” means a tribe or community as mentioned in the Schedule having its own mother language and traditional rites and customs, distinct cultural identity, distinct social structure and written or unwritten history.

- 1(b) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.
Collective Rights of Indigenous Peoples

- Right to Live with Dignity along with identity;
- Right to Self-Determination, Autonomy and Self-rule/self governance;
- Free, Prior and Informed Consent;
- Right to Meaningful Representation/ Participation;
- Rights over lands, territories and Natural Resources;
- Cultural/ Spiritual Rights and Right against genocide
- Indigenous Legal and Justice System
- Treaty Rights
- Cross-boarders Contact
How responsive is government?
Situation of Collective rights Violation
Criminalization of Indigenous Cultures and way of Life / Means of subsistence

Cow Slaughter

Agression on cultural and Burial Sites

Bardia National Park and Plight of Tharus Fine in false cases
Land Grabbing and Development
Aggression is everywhere

Khokana Mission in Action

Life in Threat
Indigenous Peoples and UNGP

- Business causing HR violation is rampant in Nepal- Indigenous Peoples, vulnerable groups and local communities are primary victims;
- Unless the Implementing and Regulating entities are held accountable, the situation remains same;
- Remedial Mechanisms can play important role in the Implementation of UNGPs
Motivate to Pursue the principles, value and norm of the UNGPS/BHR (Objectives);

Business entities should conduct programs in its activities to implement the BHR’s principles, values and norms

NAP adoption (Programs)

Social welfare and Security Ministry, Ministry of Industry, Labour Ministry (Responsibility)

Business related institutions, Trade Union and Civil Society (Cooperation)
Access to Justice ??

ILO Representation and Compulsion to Withdraw case Reprisal
Legacy of Assimilation/Colonization

- Principle of Terra Nullius / Discovery of Doctrine
- Regalean Doctrine
- Principle of Eminent Domain
- Wider Public Interest
Denial of Custodian Rights In Nature Conservation

- Prior to establishment of Rhino Protection Area number of Rhinocers were 1000 (1950 Census)
- It came down to 95 in 1960 and rose up in 1978 to 310.
- In 2020 the number is 694 (Zero-poaching year)

Why Rhinocers were protected by Indigenous Peoples?

- Bote, Mahji, Tharus, worship Bhairu (Forest God), Jal Devi (Water Goddess), Gaidu (God of Rhinocer) Bagheysari (tiger god)
- Story and belief about Dolphin (Culture)
Way Forward

• Address the Structural Violence and Systemic Discrimination
  • Constitutional and Legal rectification
• Establishment of Autonomous and Protected Areas
• Lands Rights Investigation
• Study and Investigation to hold accountable to UNGPs
• Further Enhancement of Monitoring Mechanisms
• Collective effort on promotion, protection and defend collective rights