

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

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- 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) \
आदिवासी जनजातिको पहिचान सहित सम्मानपूर्वक बाँच्न पाउने अधिकार सुनिश्चित गर्न अवसर तथा लाभकालागि विशेष व्यवस्था गर्दै यस समुदायसँग सरोकार राख्ने निर्णयहरूमा सहभागी गराउने तथा आदिवासी जनजाति स्थानीय समुदायको परम्परागत ज्ञान सीप संस्कृति सामाजिक परम्परा र अनुभवलाई संरक्षण र संवर्धन गर्ने (धारा ५१ जट)
- समानताको र अविभेदको हक (धारा १८)
- नेपाल पक्षा भएका अन्तराष्ट्रिय सन्धि सम्झौताहरूको 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/ Spritual 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


 नेपाल सरकार
 वन तथा वातावरण मन्त्रालय
 राष्ट्रिय निकुञ्ज तथा वन्यजन्तु संरक्षण विभाग
बर्दिया राष्ट्रिय निकुञ्ज कार्यालय
 ठाकुरगढ, बर्दिया

अनुसूची १०१
 म.सं.म.सं.नं. ११

रज. 6429
 मिति २०७६.११.०२

श्री निम्न तर्फका राष्ट्रिय निकुञ्ज तथा वन्यजन्तु संरक्षण विभागबाट जम्मा रु. २६२००० +
 बराबरी राख्ने रकम प्राप्त भएको छ।

क्र.सं.	शीर्षक नं.	विवरण	रकम		
			मूल	भौधर	जम्मा
२०७६-२०७७	३३९	आवक रुपमा निकुञ्जमा माछा मारेको।	२६२०००		२६२०००
		जम्मा	२६२०००		२६२०००

बुझाउनेको सही: _____
 सचिव _____

बुझाउनेको सही: Linglang
 दर्जा: _____

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

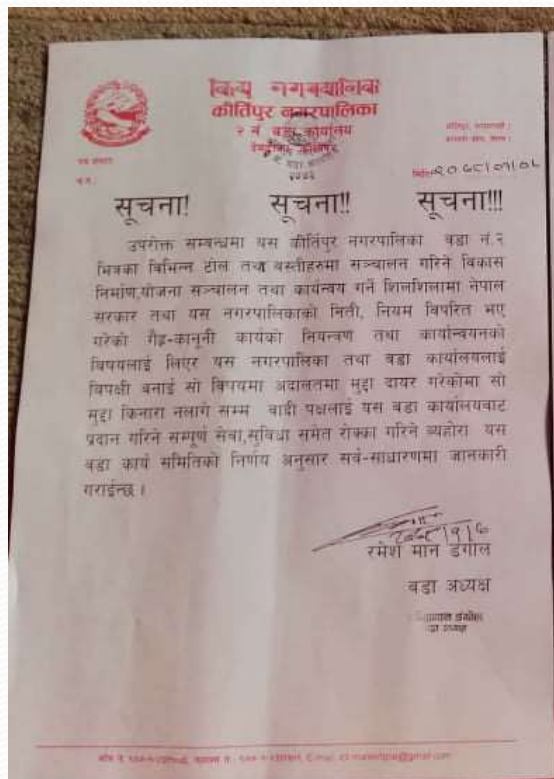
- Business causing HR violation is rampant in Nepal- Indigenous Peoples , vulnerable groups and local communities are primary victims;
- Unless the Implementing and Regulating entities are held accountable, the situation remains same;
- Remedial Mechanisms can play important role in the Implementation of UNGPs

UNGPs/BHR in Nepal
5th NAP on Human Right (GoN)
2020/2021-2024/025

**Outstanding
Issue**

- 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
- Regalian Doctrine
- Principle of Eminent Domain
- Wider Public Interest

Denial of Custodian Rights In Nature Conservation

- Prior to establishment of Rhino Protection Area number of Rhinoceros 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 Rhinoceros were protected by Indigenous Peoples ?

- Bote, Mahji , Tharus, worship Bhairu (Forest God), Jal Devi (Water Goddess), Gaidu (God of Rhinoceros) 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