

# Tikapur, Kailai Incident Human Rights Monitoring Report

Tikapur, Kailali, Nepal  
23-26 March 2016

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## Acronyms

CA	Constituent Assembly
CAT	Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment
CDO	Chief District Officer
CPN (UML)	Communist party of Nepal (Unified Marxist Leninist)
CRC	Convention on the Rights of the Child
DCC	District Coordination Committee
DCC	District Coordination Council
FIR	First Information Report
FM	Frequency Modulation
GoN	Government of Nepal
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
INSEC	Informal Sector Service Center
IPs	Indigenous Peoples
LAHURNIP	Lawyers' Association for Human Rights of Nepalese Indigenous Peoples
MPRF	Mashesi Peoples Rights Forum
NC	Nepali Congress
NEFIN	Nepal Federation of Indigenous Nationalities
NHRC	National Human Rights Commission
SC	Supreme Court
UCPN (Maoist)	Unified Communist Party of Nepal (Maoist)
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
VDC	Village Development Committee

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## Background

After the end of the 10 years-long armed conflict the first Constituent Assembly (CA) elections took place on 10 April 2008. As the first CA ended on 28 May 2013 without writing Constitution the second CA elections was conducted on 19 November 2013. Amidst of the political dilemma in May/June 2015 Nepali Congress (NC), Communist party of Nepal (Unified Marxist Leninist)-CPN(UML), Unified Communist Party of Nepal (Maoist)-UCPN(Maoist) and Madhesi Peoples Rights Forum (Democratic) Gachchhadar faction reach to a 16 points agreement on the matters of promulgation of the Constitution. The agreement became most controversial as the other sections condemn it. The opposition voices stood against the agreement urged that the agreement restrict the participatory constitution making process, agreement is regressive than the Interim Constitution of Nepal, 2007 and against the verdict of Supreme Court (SC).

The marginalised communities IPs, Tharu, Madhesi, Muslim, Dalits and other were in protest prior to be public the preliminary draft as there were no sign of accommodation of the rights of the historically marginalised communities. There were differed views on the decision of the CA regarding the draft and demarcation of the federal units.

Claiming for collecting of peoples opinion the CA public the preliminary draft Constitution on 8 July 2015. But the time bound allocated for collection of the suggestions and opinion were too limited (2 days), discussed only among the limited political cadres. Failed to reach to the people. Collection of suggestion limited to the district headquarters. The draft proposed 8 federal units based on geography and population as to solve the issues demarcation introducing federal commission.

The CA issues the draft without addressing the wants, concerns, issues and rights of the historically marginalized communities (Indigenous peoples, Madhesi, Dalits, Muslim etc), against the agreements and contract reached with them on different occasions and amidst of their dissatisfaction on the Constitution making process. Soon after that their dissatisfaction and movement arouse. At the mean time some of the Mahesh based political parties quite the CA. The second CA passed the resolution for taking ownership of the issues agreed during the first CA. In contrary the CA promulgated the Constitution undermined the agreed points.

The Constitution promulgated against the demands and wants of secularism, identity based federalism, proportional representation, end of ethnic and racial discrimination of the marginalised communities including IPs, Madhesi, Dalits, Muslims, and Women. Furthermore those communities claim the Constitution is regressive to the Interim Constitution of Nepal, 2007 and restricts the rights ensured by that Constitution. The Constitution promulgated undermining the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), International Labour Organisation (ILO) Convention 169 *inter alia* other international human rights instruments. The Constitution promulgated without ensuring the rights of IPs discarding the recommendation of Special Rapporteur on the Rights of Indigenous Peoples<sup>1</sup> & its follow-up letters and the early warning letters of CERD committee<sup>2</sup>

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<sup>1</sup> A/HRC/12/34/Add.3, paras. 11-16, A/HRC/15/37/Add.1 and follow-up letter issued on 15 October 2012

<sup>2</sup> Early warning letters to the Government of Nepal issued on 31 August 2012 and 30 August 2013

## **Brief notes on Tarai and Tharu**

Tarai is the plane land of southern Nepal. It comprises 23.1% of total area of 147,181 sq. km of Nepal. Out of total 75 districts in Nepal 20 lies in the Tarai. The total population of Tarai occupies 47.79% of the total national population.

Tharus are densely populated in east to west stretched 500 mile length of Tarai range. According to the national census of 2011 Tharu population is 1737470 (6.5%). Between 1860 and 1951 for the development of Tarai the Government of Nepal made an effort for settlement of Pahadi people in the Tarai but because of hot weather and malaria very few responded to this.<sup>3</sup> But after eradication of Malaria the volume of migration from outside to the region increased rapidly. After the severe drought of 1966-67 big volume of migration took place in Kailali district from the Hills of Far-West region.<sup>4</sup> Because of pressure of external migration to the region the Tharus lose their lands and began series of discrimination against them. Peculiarly discrimination and unjust against Tharus have reached to its culmination. Landless Tharus compelled to be bonded labourers (Kamaiya, Kamhari). On 17 July 2000 Government of Nepal declared elimination of bonded labourers<sup>5</sup> but, because of lack of proper arrangement for rehabilitation they have been surviving under hardship.

## **Objectives**

- To monitor and collect facts on human rights violations during the Tikapur incident.
- Prepare a report based on the finding and make public
- Support for justice to the victims
- Draw the attention of the state for being sensitive in human rights violations
- Draw the attention of the national and international levels making the facts of the incident public.

## **Method**

This report was prepared based on field visits, interviews, group discussion and interactions during the human rights monitoring.

### *Interviews*

1. District Administration Office
2. Kailali district Police Office
3. Kailali District Jail
4. Integrated far west unity Society peoples Movement mobilization Committee Coordinator
5. Detainees
6. Local journalists
7. Former CA members and district level leaders
8. Family of the killed kid

### *Interaction*

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<sup>3</sup> Frederick H. Gaige (2009) Regionalism and National Unity in Nepal, Kathmandu: Himal Books, p.62

<sup>4</sup> Ibid, p.66.

<sup>5</sup> Tatsuro Fujikura (September 2011) Emancipation of Kamaiyas: Development, Social Movement, And Youth Activism in Post-Janaandolan Nepal in The Tarai; History, Society, Environment (Edited by Arjun Guneratne), P.54.

1. Tharuhat Tharuwan united Struggle Committee
2. National Human Rights Commission, Regional Office
3. Informal Sector Service Center (INSEC)

#### *Group discussions*

1. Representatives of different organizations
2. NEFIN DCC
3. Former CA members and district level leaders

#### *Field visits*

1. Place where the incident happened
2. Burned and vandalised houses, shops, furniture, hostel, FM etc

### **Limitations**

This report was produced based on the field monitoring conducted on 23-26 March 2016 by the team from Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP). This monitoring report intends to present the situation of human rights Kailali incident of 24 August 2015 and aftermath. The report has been prepared conducting field visits of Tikapur municipality, by considering the principality of collective rights.

### **Facts from the ground**

#### **Pre and post conflict situation**

Tharus have declared series of protest putting forth the demands of naming and demarcation of federal units based on 5 basis of identity and 4 criteria<sup>6</sup> of economic viability. "Our movement was for autonomy, self-determination, identity, equality, inclusion and rights," said, one of the struggle committee members. He further said, that the movement was democratic and peaceful. The movements were lodged under the leadership of Tharuhat Tharuwan unified struggle committee. The struggle committee announced the second phase of protest after completion of the first phase protest programmes.

Wall painting and fixing banner of Tharuhat autonomous region in the municipality office were the major activities under the second phase of protests. After completing in the VDCs they had planned for such protest activities in the Tikapur municipality on 24 August 2015. There were thousands of Tharu peoples in the protest as the struggle committee circulated for participation the programme. To participate the programme Tharu peoples from Kailali and other districts spontaneously planned to move hiring tractors. But, the integrated Far-west cadres obstructed them from being in the spot with the support and surveillance of the administration the Tharu leaders expressed. According to the opinion of Kailali regional coordinator of INSEC the Integrated Far-west faction held motorcycle rally to obstruct the programme of Tharuhat Tharuwan discarding the agreement a day before.<sup>7</sup> There were thousands of people from Chauraha to Bhainsa bazaar to participate the programme. The police tried to stop at Chilam bazaar but could not and reached to Bhaisa bazaar. As the mass reached to bhaisa bazaar police opened fire of plastic bullet. After that the clash began and the protesters disbursed. During the very same clash seven police were killed. Eye witnessed said the incident took place as the SSP ordered to open fire over the protestors and the angry protesters ran over the police. Former CA member Krishna Kumar Chaudhary said the incident happened as the police constantly

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<sup>6</sup> Those criteria were formulated by the first CA and major political parties agreed on them at that time.

<sup>7</sup> on 23 August 2015 integrated far west and Tharus reached to an agreement not obstructing each other's peaceful programmes with the initiation of administration.

oppressed and used force in the earlier peaceful protests of Tharus. 2 hours after the incident a 2 years old boy Tek Bahadur Saud about a kilometer far from the spot was shot dead.

According to the regional coordinator of National Human Rights Commission Mohan Dev Joshi environment for the clash of 24 August 2015 were built-up long back prior to the day. For the social harmony there have been meetings on 12, 20 and 22 August 2015 reached to the agreement for not obstructing one another's programmes. But, not following of those agreements escalated social bitterness and caused the incident Joshi said. The meeting on 22 August 2015 also forged code of conduct but could not followed.

The monitoring found that the incident of 21 August 2015 was the immediate reason behind the incident of 24 August 2015. On that day the Integrated far west organised a motorcycle rally to celebrate the fulfillment of their demand of creating a new federal unit by the Government of Nepal. Despite the disagreement of Tharus the rally crossed the restricted areas. The Tharu leaders requested for not moving on that direction but the authority allowed them to reach Sukhad. The authority assured that the rally will not move forward to the Tharus but the rally went on with the surveillance of police. Uncontrolled rally tried to burn the houses of Tharus and burnt 32 motorcycles of Tharus entering their houses. Roofs of Tharus houses were vandalized. Books and copies of student were burnt. But on the same day the authority did not allow the Tharus to hold a mass meeting in Kailali. Angers on general public arouse out of all those incidents caused the incident of 24 August 2015 the Tharu leaders and general public opined. INSEC Kailali regional coordinator Khadka Raj Joshi said that the incident happened because of the acts of the anarchic group of integrated far west action.

The National Human Rights Commission (NHRC) representative involved in field monitoring after 2 day (26 August 2015) found that there were fear, threat and insecurity among the Tharus. The INSEC representative visited Tharu village for monitoring on 26 August 2015 also find fears, insecurity and houses dodge on fire.

### **Mistrust over the local authorities**

Aftermath of the incident the Chief District Officer (CDO) and head o security transferred to Kathmandu and deployed new CDO and security chief. Incumbent authority and security administration opined that there lesser possibility to get facts on the incident of burnt and loot of 24 and 25 August 2015 as it has been older matters. But Tharus are not ready to accept that. The administration is not sensitive on security and social harmony rather supporting to defy social harmony taking side of the Integrated Far-wets Tharus claimed.

It is apparent that disbelief to the local authority is increased. Because of insecurity and threat of arrest the Tharu youths and local leaders found heavily displaced. They are facing adverse situation for free movement. They opined that they do not have any trust to the local authority of providing security.

Tharus claimed the incident happened because of the atrocity of police. The hold of Pahadis in the security force, support of the police to the integrated Far-west and the threat of the Inspector of Bhajani (Trishakti municipality) to the Tharu youth, Badghar (traditional leaders) and women of using force entering house prior to 24 August 2015 are the major reasons behind igniting the dissatisfaction and ultimate incident, the Tharus claims. Even the authority's suppression to the Tharu protests escalated angers amongst the Tharus towards the authority. Integrated Far-west Unity Society people movement mobilization committee coordinator Gopal

Bohara also alleged that there has been wrong and misleads of the authority on happening the incident

### **Displacement**

After the Tikapur incident more than 100 Tharu youths and leaders have been displaced. They are displaced to neighboring districts, Kathmandu and many parts of India. Where they are surviving with hardships, relative of displaced said. Tharu elders and leaders opined that those displace from their traditional lands are because of threat of arrest of the police authority. The victims expressed that they are going through the mental torture after displacing from their abandoning and selling their traditional properties in cheaper price.

### **Response of Human Rights institutions**

There has not seen prompt response on Kailali incident of Nepalese human rights institution. On the day of incident Lawyers' Association for Human Right of Nepalese Indigenous Peoples (LAHURNIP)<sup>8</sup> issued a press release urging impartial investigation of the incident and withdrawal of the security council of mobilization of army. Similarly, on 25 August 2015 LAURNIP submitted an urgent communication<sup>9</sup> to the Special Rapporteurs on the Rights of Indigenous People and Extra Judicial, Summary or Arbitrary Executions requesting for neutral observation of the international community of the incident.

On next day National Human Rights Commission<sup>10</sup> asking for impartial investigation and keeping calm and sensitive. On 10 September 2015 NHRC issued a press note saying not to repeat the Tikapur incident.<sup>11</sup>

## **Situation of Human Rights**

### **Discrimination based identity and Right to Self-determination**

Discrimination based on identity is social crime. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) mentions in its preamble that the discrimination based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous and there is no justification for racial discrimination, in theory on in practice, anywhere.<sup>12</sup> International Covenant on Civil and Political Rights (ICCPR), 1966<sup>13</sup> and International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966<sup>14</sup> ensure rights to self-determination to every person. Same provision, in the context of collective rights, is accommodated in United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>15</sup>

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<sup>8</sup> LAHURNIP press release issued on 24 August 2015.

<sup>9</sup> Communion to Special Rapporteur on the Rights of Indigenous Peoples and Special Rapporteur on extrajudicial, Summary or arbitrary ececutions

<sup>10</sup> National Human Rights Commission press release issued on 25 August 2015

<sup>11</sup> Ibid press note issued on. २४ भदौ २०७२

<sup>12</sup> ICERD, Preamble

<sup>13</sup> ICCPR, Art 1.

<sup>14</sup> ICESCR, Art. 1.

<sup>15</sup> UNDRIP, Art. 3



But against the demand of Tharuhat/Tharuwan in Kailali curfew were imposed targeting a community. This is against the international legal provisions. Furthermore, use of force targeting the demands of peoples of free determination of economic, social and political system and their peaceful protest for the same is against the provisions of aforementioned international documents.

### **Right to Free and Dignified Life**

It is apparent that the right to free and dignified life of Tharu community of Kailali in have violated after the Tikapur incident. During the monitoring it is found that the Tharu indigenous community members are reluctant to talk with the strangers and feeling difficult to get out of their village because of fear and insecurity. The Interim Constitution of Nepal, 2007<sup>16</sup> has ensure the right to life of every person. Same provision is enshrined in the Constitution of Nepal.<sup>17</sup> International Covenant on Civil and Political Rights (ICCPR), 1966<sup>18</sup>, to which Nepal is a party to, also provision for inherent rights to life of persons. United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)<sup>19</sup> mentions Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. The daily life they are going through apparently reflects the violation of the rights ensured by national and international legal provisions.

### **Right to Assemble Peacefully**

The Interim Constitution of Nepal, 2007<sup>20</sup> ensures freedom of movement without arms and peaceful assembly. The Constitution of Nepal<sup>21</sup> enshrined the same provision. Civil Rights Act, 2012<sup>22</sup> allows to hold assemblies peacefully and without arms. International Covenant on Civil and Political Rights (ICCPR), 1966<sup>23</sup> also ensure same rights of people. Thus every citizen has right to peaceful assembly and protests. But it is found that the people of Kailai were deprived of those rights. It is apparent that police have been mobilised to oppress social and political rights seeking people's peaceful assembly and protest. Imposed restrictions on such programmes.

Permission to hold same kind of programme to one ethnic group and restriction to others on same is clearly the act of ethnic discrimination. Former CA member Krishna Kumar Chaudhary opined that the police have obstructed peaceful protests of Tharu in various places. A day before the incident happened under the mediation of the district authority an agreement has been reach between Tharus and integrated far-west for not obstructing peaceful programmes but with the intention of obstructing the peaceful rally of Tharus the integrated far-west cadres organised a motorcycle rally, said INSEC regional coordinator Khadka Raj Joshi. On the, when incident happened, also the group stopped the Tharus riding tractors moving forward to the programme venue, Joshi said. In that situation the authority remains mere spectator, Tharu leaders said.

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<sup>16</sup> The Interim Constitution of Nepal, 2007, Art. 12(1).

<sup>17</sup> the Constitution of Nepal, Art. 16 (1).

<sup>18</sup> ICCPR, Art.6.

<sup>19</sup> UNDRIP, Art. 7(1).

<sup>20</sup> The Interim Constitution of Nepal, 2007, Art. 12 (2) (b).

<sup>21</sup> The Constitution of Nepal, Art. 17 (2) (b).

<sup>22</sup> Civil Rights Act, 1955, Art. 62.

<sup>23</sup> ICCPR, Art. 21.

International Convention on the Elimination of all forms of Racial Discrimination (ICERD)<sup>24</sup> mentions that the state party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions. But, the act of local authority during the Tikapur incident clearly breaches the aforementioned legal provisions.

### **Right Against Torture and other Cruel, Inhumane or Degrading Treatment**

The Interim Constitution of Nepal, 2007<sup>25</sup> mentioned person during detention for investigation, trail or any other reason shall not be tortured physically and mentally and not be treated in cruel inhumane and degrading manner. Similarly, the Constitution of Nepal<sup>26</sup> also provisioned same provision. International Covenant on Civil and Political Rights (ICCPR), 1966<sup>27</sup> and various articles of Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (CAT), 1984 prohibits torture and inhumane treatments.

After the Tikapur incident 24 were arrested and charged of murder case. Monitoring found that they were tortured and ill-treated in police custody. Sharing their conditions in the custody, detainees said that majority of them have been physically impaired and psychologically wrecked, due to the severe torture and inhumane treatment.

The detainees expressed that they were treated brutally in the police custody. Currently, there are 22 in the district jail. 2 were transferred to Kathmandu. Most of them have sustained injuries in back, nose and other parts of the body due to torture in the police custody. They are also feeling physical pain. This justifies that the jail administration has been receiving application for treatment of such injuries. The arrested were taken to Seti zonal hospital by police for check-up after the decision of Kailali district court. The hospital refused for treatment citing no facility of forensic test. The detainees also mentioned that they were ill-treated and misbehaved by the police and other detainees in the police custody. But the situation is good after transfer to the jail, they said.

According to the Assistant Sub-Inspector of district jail Kailali Nrip Raj Adhikari, the jail administration is ready to allow detainees for treatments and would support if they want to have treatment on their own. But the detainees have to put their demands in written form, he mentioned.

Tharus of Tikapur are feared and terrorised of being arrested by the police at any time. Because of that they have not been able to return to their usual life and free movements.

### **Right to Free Trial**

The Interim Constitution of Nepal, 2007<sup>28</sup> and the Constitution of Nepal<sup>29</sup> provisioned for the rights to fair trial. International Covenant on Civil and Political Rights (ICCPR), 1966<sup>30</sup> also

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<sup>24</sup> ICERD, Art. 2(1)(a).

<sup>25</sup> The Interim Constitution of Nepal, 2007, Art. 26 (1).

<sup>26</sup> The Constitution of Nepal, Art.22 (1).

<sup>27</sup> ICCPR, Art. 7.

<sup>28</sup> The Interim Constitution of Nepal, 2007, Art. 24.

<sup>29</sup> The Constitution of Nepal, Art. 20(9).

<sup>30</sup> ICCPR, Art. 9.

protects accordingly. But, the victims of Kailali opine that they are deprived of right to fair trial. 24 Tharus were charged of murdered case in the district court. But, the relatives of detainees are not ready to accept the allegations. Coordinator of integrated Far-west unity Society people movement committee Gopla Bohora opined there are some innocent in the jail they are waiting justice. According to the Superintendent of Police the incident of 25 August 2015 have been quite old so it is impossible to reach to its fact and also difficult to proceed legal process. According to the victims, as the police refused to accept the FIR in relation to the burning case of 25 August 2015 they had delivered it via postal address but got no success in any legal proceeding till now.

According to the report of the Seti Zonal Hospital Development Committee's report issued on 6 September 2015 mentions that there were bruises, bleeding, and injuries in the body of the detainees. It justifies that detainees were tortured in the custody. It is also apparent that they were deprived of fair trial.

Almost all the detainee interviewed in jail were severely beaten and tortured with blindfolding. One of them is still facing difficulties to rest room. Because of beaten on foot one still cannot walk properly. Another one detainee is feeling difficulties in hearing as he was beaten on his ears. According to the detainees they were forced to singe the papers by police without having chance to read them. The arrestees were also tortured and beaten in police custody for accepting the charges in the court. A patient of kidney was also beaten in the custody. Police also used a 12 year old kid, who was also arrested, for giving false information during the interrogation and forced him to talk as per police want.

Hari Narayan Chaudhary was arrested while he was taken to hospital by Red Cross. Some of the detainees were arrested in the mid nights while they were asleep and beaten inside the police van and tortured in police custody, explained the detainees.

Nurul Jaggar, a detainee was busy at his home for his domestic works but as of his background of being an assistant to the Bhalmansa arrested on 24 August 2015 and charged of murdered case and is in district jail now.

58 were charge of murder, dacoits and filed cases in the district. Out of them 24 were arrested and 34 are in search warrant. Most of them are not involved in the protest. According to the local there has been burnings, vandalism and lootings of houses and shops of Tharus on 24 August 2015 in Tikapur and continued the following day as well. According them those acts were stopped after the arrival of army.

### **Human Rights Defenders Rights**

In 1998 the United Nations issued Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The NHRC also issued Guidelines for human rights defenders in 2011. But in the Tikapu incident LAHURNIP affiliated human rights defender and lawyer Sarju Prasad Chaudhari also thrashed and could not entered the place where the incident took place for monitoring and his properties (house) were also burned. Even the access o the impartial national and local Medias were impossible.

## **Child Right and Right to Education**

The Interim Constitution of Nepal, 2007<sup>31</sup> provisions for right to education and culture of Nepali citizens. The Constitution of Nepal<sup>32</sup> also accommodates rights to education as fundamental rights. International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966<sup>33</sup> also mentions of right to education of every person. Convention on the Rights of the Child (CRC), 1989<sup>34</sup> also addressed the issue.

After the Tikapu incident the Tharu children are deprived of attending schools. There is no actual data of such child. But 10 kids of imprisoned are out of schools. Because of fear and threat they cannot go to schools. Due to fear and uncertainty most of the Tharu in the area are not ready to send their kids to schools. Similarly, the child displaced with their parents from their home are also deprived of right to education.

On 24 August 2015 after 2 hours of the incident a 2 years old kid Tek Bahadur Sau shot dead. Some media and human rights organizations blindly alleged Tharus involvement on killing of the boy on their reports. Tharuhat movement discarded the allegation. But the incident happened about a kilo meter distance from the spot and happened amidst of mobilization of police after the incident. And also the authority yet to prove of holding arms by the Tharus. It is also not claimed in the charge sheet file by the government site. It is surprising that such inhumane attack to a child has not been investigated.

## **Right to Health**

The Interim Constitution of Nepal, 2007<sup>35</sup> provisioned of right to health. The Constitution of Nepal<sup>36</sup> mentions that every citizen is entitled to receive free basic health care and emergency health care. International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966<sup>37</sup> ensure the rights of physical and mental care in high priority. Tharus claimed that there were not congenial environment to them for treatment in the health posts and hospitals after the Tikapur incident. They said that Tharu persons were arrested while admitted for treatment for any kind of diseases. In the day of incident Raj Kumar Chaudhary and Dil Bahadur Chaudhary were arrested as they visited hospital to deliver clothes to their relatives. They are in district jail now. Person running own medical was also arrested. This are also deprived Tharu of access to health care.

Detainees said that they are not receiving timely treatment in the jail. The jail administration opined that it is not capable for serious and complex health problem due to financial and technological constraints. The detainees are also not being for treatment on their own because of unawareness of the process of the jail.

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<sup>31</sup> The Interim Constitution of Nepal, 2007, Art. 17.

<sup>32</sup> The Constitution of Nepal, Art. 31.

<sup>33</sup> ICESCR, Art. 13.

<sup>34</sup> CRC, Art. 28.

<sup>35</sup> The Interim Constitution of Nepal, 2007, Art. 16.

<sup>36</sup> The Constitution of Nepal, Art. 35.

<sup>37</sup> ICESCR, Art. 12.

## **Cultural Rights**

The Interim Constitution of Nepal, 2007<sup>38</sup> provides right to profess, practice and preserve own religion handed down from ancient time paying due regard to social and cultural traditions to everyone. The Constitution of Nepal<sup>39</sup> ensures fundamental rights to participate in cultural life of every community and individuals. International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966<sup>40</sup> protects to enter into the cultural life for every person.

From the victims account it is found that the cultural rights were violated after the incident. The authority did not lift the curfew; even Tharus submitted application, during their cultures such as Aaitabari and others. But, the curfew was lifted for the whole day during the festivals of Pahadi communities such as Teej and Gaura. So, imposition of curfew targeting a specific community is clearly cultural discrimination against Tharus. It proves that the racial supremacy exists in Nepali state.

Traditional leaders, Badghar/Bhalmansa of Tharu community were arrested and tortured in the charge of mobilising movements and protest. Similarly, due to the threat to arrest to Badghar/Bhalmansa and their families no one is ready to take the leadership that through the tradition institution of Tharus in extinction. Extinction of such traditional institution of Tharu community extremely hampers in their social, economic, cultural, religious, justice development and continuation. This shows the policy of state of assimilation of indigenous peoples', including Tharus, traditional institutions and promote unitary caste based hegemony.

## **Right to Property**

The Interim Constitution of Nepal, 2007<sup>41</sup> provisioned that every person right to property. The Constitution of Nepal<sup>42</sup> includes the same provisions.

On 24 August 2015, after the Kailai incident, local authority imposed curfew in the Tikapur area. Cabinet decided for mobilization of army. During the curfew and its following day the houses and shops of Tharus were targetfully burned and vandalized. Property worth of millions was destroyed. It is suspicious that such burnings houses and shops targeting Tharus amidst the state of curfew. It clarifies that the state is not serious and sensitive protecting properties of people.

On 24 August 2015, Niru traders' building (owned by Tharu businessman, the largest supplier in Far-west) was completely burned down.. According to the proprietor about 10 millions of loss occurred in the burning. But the local authority denied accepting the FIR and no investigation went on the loss and burning of the shop and houses. But the authority claims that it has not received any complaint and it is difficult to find the fact of the loss at the moment as it has happened long back. The fire brigade office is just 100 meter distance from the Niru trader but did not respond. The monitoring found that there were family members and pregnant women in the upper stair of the house at the time of torch fire.

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<sup>38</sup> The Interim Constitution of Nepal, 2007, Art. 23.

<sup>39</sup> The Constitution of Nepal, Art. 32 (2).

<sup>40</sup> ICESCR, Art. 15.

<sup>41</sup> The Interim Constitution of Nepal, 2007, Art. 19(1).

<sup>42</sup> The Constitution of Nepal, Art. 25(1).

Tharu cultural and art training centre (hostel) run by Tharu Kalyankari Sabha Kailai constituency 1 was also vandalised and burned on 25 August 2015. According to the Tharu Kalyankari Sabha constituency coordinator Gopal Prasad Tharu about 1.6 million losses bearded due to burning and vandalism. During the burning sewing machines and close were destroyed.

According to the Tharu leaders during the vandalism and burning AGS traders and Fulbari FM have borne of loss about 5 million and 2 million respectively.

Tharus suspects that the burnings and vandalisms happened midst of curfew by the cadres of integrated far-west but coordinator of integrated far west unity society people movement mobilisation committee Gopal Bohora is not ready to accept this. According to him such kind of acts in the movement are obvious and have to raise voices on the same nature of incident with the non-Tharus. Complaint on this has also submitted to NHRC, he said. He did not want to share how many losses occurred of the non-Tharus.

SN	Description of burnt properties	Loss	Remarks
1.	Niru Traders	Approx. 10 million	
2.	Tikapur Municipality Shopping Complex Room No. 16,17 and 22	Not identified	
3.	AGS Traders	Approx. 5 million	
4.	Tharu art and cultural training centre, Tikapur, Kailali (Hostel)	1,648,000.	
5.	Fulbari FM	2 million	
6.	Mina Furniture Industry	Not identified	
Source: Field Monitoring, 2016			
Note: The data is based on the interviews with the victims. This does not cover all the loss. There has not been any study on the loss of property from the government side and local authority denying accepting FIR from the victims.			

According to INSEC Kailali coordinator Khadka Raj Joshi incidents burning and vandalism took place in 16 spots on 25 August 2015. They also found houses burnings on 26 August 2015 during their monitoring visit. Joshi mentioned clearly that it's the weakness of the state that it failed to bring the perpetrators to the book.

## Conclusion and Recommendations

The monitoring found of cases of human rights violations during the Tikapur incident. Even though it was exploded as Tikapur incident, the foundation for the incident built-up long back. It can be said that the incident was the result of long discrimination oppression against the demands of Tarus of on-Tharus and authorities. To organise peaceful protest and demonstration are the democratic and fundamental rights of people. Provisions of the international human rights documents also ensure such rights. But it is found that such rights were violated during the Kailali incident. It is also found that there has been abuse of state power targeting a specific community. It is found that discrimination occurred based on identity and right to self determination and violations of Right to Free and Dignified Life, Right to Assemble Peacefully, Right Against Torture and other Cruel, Inhumane or Degrading Treatment, Right to Free Trial, Human Rights Defenders Rights, Child Right and Right to Education, Right to Health, Cultural Rights, Right to Property.

Local authority failed to protect the life and property of people. During the monitoring the local authority constantly argued about various criminal and anti social activities but never talked about the activities of the integrate far-west's activities. So, it has to be taken in account seriously of the allegation of Tharus on mistrust and impartiality of the local authority. State is expected of treatment without biased and prejudices but it seemed lack. The anarchic faction has been taking benefit of the weak presence of the state. Because of security strategy security personnel have lost their lives.

Because of inefficiency of the state for social harmony and just for the oppressed communities the dissatisfaction still found covered up. If such disagreements and dissatisfaction are not solved as soon as possible that could turn to severe for in future.

It is surprising that the state remains silence in the burnings and vandalisms of houses in the village even n the curfew imposed broad day light.

**Based on monitoring following recommendations are made:**

**For the Government of Nepal**

1. Need to ensure justice and compensation to the victims and hold independent investigation on burnings, looting, human right violations and bring the perpetrator to book. Create environment for peaceful, secured, fearless life, free movement, and continuo business and profession.
2. Withdraw the cases against the innocents arrested. Create congenial environment solving the political issues politically.
3. Provide independent and free treatment to the protesters.
4. End identity based racial discrimination, use of forces and hatred against Tharus. Ensure to practice rights and identity.
5. Create environment to practice traditional institution and culture of Tharu community. Stop arrests and torture based on involvement in the traditional institutions.
6. Ensure and respect the rights to assemble and run of organisatons
7. Implement ILO C 169 and UNDRIP, to which Nepal is party to and has endorsed, for peace and conflict transformation.
8. Ensure proportional representation in local authorities and institution for justifiable access and free trial

**For the movements**

1. Respect and pursue the norms and values of democracy and show solidarity towards human in any circumstances.
2. Be sensitive in acts of being biased towards and social and ethnic groups.
3. Respect the justifiable demands and human rights enshrined in national and international documents.

**For civil society and media**

1. Play coordinating role by the civil society for ethnic harmony and eradicating ethnic and racial discrimination
2. Cover the factual news
3. Stop protracting the voices of the socially oppressed communities as wrong and crime and being sensitive facilitate for not promoting social uprising and bitterness.

**For national and international human rights institutions**

1. Considering the fact that the roles of international human rights institution are vital for disclosing the situation of human right under free and credible manner of burning and lootings of 24 and 25 August of 2015, monitor and support promotion and protection of human rights
2. Support to make public the cases of serious human rights violations at national and international level.
3. Contribute to promotion and protection of human rights of historically marginalized communities

**For Special Rapporteur on the Rights of Indigenous Peoples**

1. Hold study visit to assess the situation of human right during and after the constitution making process in the land of indigenous peoples, including Tharus and support to promote IPs rights.
2. Communicate to the Government of Nepal and National Human Rights Commission for reliable investigation of the Kailali incident for taking the perpetrators to book and ensure free and fearless life of indigenous Tharu community.