

Convention on the Elimination of Racial Discrimination
Alternative Report Submission
Indigenous Rights Violations in Nepal

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I. Reporting Organization

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC since 2005. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the *Cultural Survival Quarterly*, and on its website: www.cs.org. Cultural Survival also produces and distributes quality radio programs that strengthen and sustain Indigenous languages, cultures, and civil participation.

II. Background Information: History, Population and Regions

Nepal has not been reviewed by CERD since 2004. According to the 2011 census, Indigenous nationalities (Adivasi Janajati), as they are known in Nepal, comprise 35.81% of the total national population of about 26.5 million, although Indigenous Peoples' organizations claim a larger figure of more than 50%. The 2011 census, like earlier census, came under strong criticisms from Indigenous Peoples for inaccurate reporting. The census reported decrease in Indigenous population from 37% to 35% while completely omitted a number of identified Indigenous groups and presented contradictory data, such as greater number of an Indigenous language speakers than respective Indigenous people. Further, while government agencies have begun disaggregation of data by ethnicity and gender since 1991 census, there is need for greater disaggregation of all relevant national data.

Currently, 59 groups are recognized as Indigenous nationalities but the official list is contested. The Committee on Economic, Social and Cultural Rights expressed concern in 2008 about the "lack of clarification about the criteria used by" National Foundation for Development of Indigenous Nationalities (NFDIN), the Indigenous development agency of the Government of Nepal, to recognize Indigenous Peoples and the implications of this recognition. The Government formed a taskforce, including Indigenous representatives, to re-examine the official list that submitted its report to the Prime Minister in 2011 with recommendations for inclusion of further groups. However, the Government is yet to take any action on the report.

Discrimination, based on historical oppression and exclusion, against Indigenous Peoples remains deeply rooted in Nepal. Land and forest-related practices and laws of Nepal have hindered the development of Indigenous communities leading to a litany of human rights issues, including in the name of 'development'. Even though they constitute a significant proportion of the population, throughout the history of Nepal Indigenous Peoples have been marginalized in terms of socio-economic conditions, including cultural and language rights and political participation. Demands for rights of Indigenous Peoples, particularly in relation to lands and resources and political participation, have been met with violence and criminal persecution.

In 2007, Nepal became the first country in Asia to ratify the Indigenous and Tribal Peoples Convention (C169) of International Labor Organization (ILO) but is yet to adopt a national action plan for implementation of the Convention despite consistent lobbying by Indigenous Peoples and human rights organizations. There are concerns that Nepal may denounce the Convention in 2017 as per its Article 39. The Interim Three-Year Plan (2013-16) of the Government of Nepal, like previous plans, included in the main programs to identify and amend legal and policy provisions that contradict with the Convention 169 and a number of targeted socio-economic development programs for Indigenous Peoples. However, any such legal and policy reform is yet to take place and there has been lack of effective monitoring of implementation of the targeted programs while specific local budgets allocated for those programs were often used for general development programs in the past.

Further, Nepal's government in 2007 voted in favor of the UN Declaration on the Rights of Indigenous

Peoples (UNDRIP). Despite the progressive nature of recent legislations, Nepalese law and custom continues to violate many of the Articles set forth in the Declaration.

III. Continuing Rights Violations of Indigenous Peoples

A. Violations of Indigenous People's Constitutional Rights (Articles 1, 2, 3, 4, 5 of CERD) *Participation in constitution writing and constitutional reform*

ICERD Article 5(c) guarantees the right, without discrimination of any kind to participate in election and to take part in government, and the conduct of public affairs, at any level. According to the Nepal Federation of Indigenous Nationalities (NEFIN) and Indigenous Peoples' National Movement of Nepal (IPNMN), Indigenous Peoples were ignored in the 2015 constitution writing pin Nepal. CERD Committee in its communications to the Government of Nepal in March and September 2009, had recommended establishing mechanisms to ensure Indigenous Peoples' free, prior and informed consent in relation to constitutional preparation process and setting up an Indigenous Peoples' thematic committee to guarantee representation and participation of Indigenous Peoples in political life through representatives freely chosen by the peoples concerned according to their own processes. The Special Rapporteur on the Rights of Indigenous Peoples has also made similar recommendations in relation to Indigenous Peoples' participation in constitution making in his 2009 report on Nepal and following communication to the Government in January 2010. In April 2013, Nepal's Supreme Court issued a directive order to the Government to amend the Constituent Assembly by incorporating those recommendations in the new constitution drafting process. However, the Government turned a deaf ear to the recommendation of the CERD and Special Rapporteur as well as the Supreme Court order.

The interim Constitution 2007, for the first time, proclaimed to end all forms of discrimination by restructuring the state and writing a new constitution through Constituent Assembly. The first Constituent Assembly (CA) elected in 2008 had a mandate to 'form a federal republic to eliminate the 'centralized and unitary form of the state' and end discrimination based on 'class, caste, language, sex, culture, religion and region. The first CA served from 2008 to May 2012, was one of the most inclusive ever seen in Nepal. Indigenous Peoples and other minority groups in Nepal were fairly represented in numerical terms in the CA.

Out of 601 members of the CA, 218 members were from Indigenous communities, a proportion almost equal to their population (37 % of the total 26 million population). The 218 Indigenous representatives were elected through electoral party system and therefore they were more accountable to their political parties rather than the communities they were from. However, one of the demands of Indigenous Peoples was their meaningful representation through their representatives freely chosen in accordance with own procedures as provisioned under Article 18 and 19 of UN Declaration on the Rights of on the Rights of Indigenous Peoples (UNDRIP), Article 6 and 7 of the ILO Convention No. 169 and the article 5(C) ICERD. Numerous agreements were concluded between the government of Nepal and Indigenous Peoples in the course of writing constitution. In agreements, the government agreed to ensure Indigenous Peoples right to self-determination, autonomy including rights over land, territories and natural resources, and meaningful participation in the constitution writing process. However, nothing occurred in practice. Finally, the CA ended in May 2012 without having been able to promulgate a new Constitution. The first CA however did debate intensely about the structure of new federal Nepal.

The second CA was then elected in November 2013. The second CA saw low representation of Indigenous Peoples. The number of Indigenous Peoples representatives fell from 218 to 183. Most members elected in CA had to make written commitments to their respective political parties prior to nomination as their party candidates to abstain from promoting Indigenous Peoples issues in CA. There was strong 'party whip' to Indigenous CA members and they had obligation to strictly follow their party line and not raise any issues of their own during the constitutional debate. The restrictions posed by political parties on CA members from Indigenous communities was raised in Supreme Court and through international mechanisms such as the CERD Committee and the UN Special Rapporteur on the Rights of Indigenous Peoples. The Supreme Court issued a 'Show Cause order' to the government of Nepal against the violation of international instruments namely ILO Convention No. 169, Article 6 (1) (a), 'government obligation to establish means by which Indigenous Peoples can freely participate at all levels of decision making' and UNDRIP's provision on the right to participate in the ongoing Constitution making process "through their own representatives, freely chosen by themselves in accordance with their own procedures." Similarly, the CERD Committee and the UN Special Rapporteur both issued official communications to the government of Nepal confirming that internationally recognized rights were violated, and that the government should take special measures to ensure meaningful participation of Indigenous Peoples in the constitutional process.

Indigenous Peoples' movement continued. But finally, the CA adopted a new Constitution on September 20, 2015 by deploying military to suppress the movement of Indigenous Tharu and Madhesi, many of whom who were protesting for the incorporation of their rights, issues and concerns in the Constitution. As a result, as many as 55 people were killed brutally using excessive force, and many Indigenous Tharus are still facing false criminal charges of breaching of law and order and have been languishing in jails for more than 3 years. The District Court, the court of first instances has denied holding final hearing of the cases. Many Tharu leaders have been displaced from their homes due to fear of attack and arrests. The New Constitution fails to incorporate the rights of Indigenous Peoples, in accordance to Indigenous and Tribal Peoples Convention (C169) of the International Labor Organization (ILO) UN Declaration on the Rights of Indigenous Peoples (UNDRIP), to which Nepal is party to. Based on the new Constitution, the government has devised a number of new laws which are discriminatory.

The demands of Indigenous Peoples are in line with the recommendations of the former Special Rapporteur on the Rights of Indigenous Peoples in his 2009 report. As per the Article 295(3) of the Constitution, 2015 a Commission to restructure local bodies was instituted with clear mandate of determination of numbers and boundaries of Village bodies, Municipalities and Special, Protected or Autonomous Regions determined numbers of local bodies and their names. The same commission formed 753 village and municipality councils, but did not form any special, protected and autonomous regions. Many Indigenous Peoples objected and submitted memorandums. But their voices were unheard.

In course of disagreements over the nature of the federal structure, incidents of violence and criminal persecution of Indigenous leaders have occurred. On 10 May 2012, members of the Tharu and other Indigenous groups were travelling to the city of Kawasoti in central Nepal to participate in a peaceful demonstration protesting the destruction of the Tharu National Museum, which was burned down the day before by a group of Brahmin-Chhetri people. The police intercepted Indigenous demonstrators and then

threw fifteen rounds of tear gas and opened five rounds of fire at them, leaving 11 Indigenous demonstrators and several police officers injured. Four Tharu Indigenous persons were shot, and one of them, Mr. Dhan Bahadur Thanet, subsequently died. Mr. Thanet, age 49, was the sole breadwinner of his family. The Government has provided 1 million Nepali Rupees for compensation of death of Mr. Thanet and around 650,000 Nepali Rupees for compensation to the Tharu National Museum; however, no action has been taken for legal actions against the perpetrators in the incidents of violence.

Another incident occurred on 11 May 2012 during a large assembly of Tharu Indigenous people that was organized in the city of Dhangadhi in western Nepal in order to rally support for the 14-state model proposed within the Constituent Assembly. Members of the Undivided Far West Struggle Committee intercepted the Tharus demonstrators. The group is composed of members of the Brahmin and Chhetri caste who opposed the identity-based federal structure proposed for the far western region of Nepal. It is alleged that the Tharu demonstrators were also blocked off by police officers who subsequently threw tear gas at them and allowed members of the Undivided Far West Struggle Committee to beat them with sticks, saws and stones. This attack left 35 people injured and seven people hospitalized in critical condition. Other Tharu people who were coming to join the meetings were also attacked and forced to turn back.

On the other hand, in course of their opposition to “ethnic” or “identity-based federalism” in 2012, members of Brahmin and Chhetri caste groups – not included in the proposed list of Indigenous groups of the taskforce formed to examine the official list of Indigenous Peoples – have actively sought recognition as Indigenous Peoples. In some cases, they have claimed that their presence in Nepal predates that of some groups that have been recognized as Indigenous Peoples. The efforts of these high-caste groups for recognition as Indigenous Peoples would undermines the legal and political demands of Indigenous groups who have been historically suppressed by these same high-caste groups for centuries.

Participation in public service sectors

Historical exclusion coupled with ongoing legal and practical weaknesses have continued to hinder full participation of Indigenous Peoples in public service sectors though noteworthy efforts have been made to increase representation of Indigenous Peoples and other under-represented groups in those sectors. In 2007, the Civil Service Act was amended to include a quota (reservation) system that provides that out of the 45 % of new recruitments reserved for various under-represented groups, 27 per cent are allocated to “ethnic groups”. Similar amendments were also made in 2007 to the Police Regulation and to the Armed Police Regulation, in order to make the police force more inclusive. The Ordinance on Inclusion in Public Service likewise demonstrates attention to the problem of under-representation by providing for a quota system that benefits Indigenous Peoples, but it has been criticized for not adequately differentiating among groups.

Nonetheless, a number of limitations, in terms of legal weaknesses and practical deficiencies, has been reported with regards to the above laws. For example, sub-section 10 of Section 7 of Civil Service Act states that: “In the (reservation) positions categorized according to the Sub-section 7, if appropriate candidate cannot be available through an advertisement in the year of the advertisement, the position shall be included in the advertisement of the following year. If appropriate candidate cannot be available even

through such advertisement, the position shall be included for appointment through open competition the same year” [unofficial translation]. The provision is inconsistent with the Article 21 of the Interim Constitution of Nepal that provides for proportional representation in all state structure. That is also against the principle of inclusion and systematically marginalizes the Indigenous Peoples and other excluded groups.

At the same time, in practice, the examination system for civil service firstly publishes the results of reservation seats followed by the results of open seats. This prohibits the selection of Indigenous Peoples and other excluded groups under open seats that are mainly provided to candidates of dominant caste groups. At the same time, the appointments are firstly provided to those successful under the open seats thus providing them seniority than those successful under reservation seats. Additionally, the civil service examinations conducted only in official Nepali language benefits dominant Nepali native speaking groups over Indigenous communities that do not use Nepali as their first language. The curriculum for civil service examination also needs significant revisions from its age-old content to be more representative of knowledge of all Nepali communities.

The dominant groups (Khas Arya, who comprise only 28% of the total population) enjoy overwhelming representation in all state structure, in legislative parliament, executive and judiciary government, including in local and state government. Indigenous Peoples are currently under-represented in aforesaid state structure. At present, the highest positions of government, including President, Prime Minister, Speaker of the Lower House, Chair of the Upper House, Chief Justice, Army Chief, National Human Rights Commission, Commission on the Investigation of Abuse of Authority (CIAA), and Attorney General are all positions are occupied by Khas Arya only.

The dominant group, namely Bahun and Chhetris who are historically dominant are overwhelmingly represented all decision making level of state apparatus- in legislative, executive, judiciary and in bureaucracy, constitutional bodies and political appointments. Yet surprisingly, they have been allocated reservation quotas along with the marginalized communities in the new Constitution, 2015. The Constitution has given special and undue recognition to dominant groups (Chhetri, Bahun, Thakuri, Sanyasi Dasnami) as Khas Arya for the first time in the history of Constitution. The European Union Election Observation Mission to observe the elections of house of representation and provinces, therefore in its final report between 26 November and 7 December 2017, recommended to 'review quota system and its impact on ethnic composition in parliament and remove the reservation for Khas Arya secured for representation in the state structure. But the State and the major political parties do not accept the recommendation and asked the European Union to revise the report. But the Indigenous Peoples and other marginalized communities welcomed recommendations of the EU and asked the government to respect the norms and values of social justice.

Recent political appointments of members for National Human Rights Commission (NHRC), a constitutional body responsible for protecting the human rights of all Nepali citizens, provides a good case for practical deficiency in ensuring lack of full participation of Indigenous Peoples in such sectors. Of the five commissioners, four belong to dominant caste groups while none from an Indigenous community, despite the fact that the NHRC Act requires diversity while making appointment of its Commissioners. This also holds true for political appointments made to other constitutional bodies, including National Planning Commission and Public Service Commission, among others. NHRC, in its

strategic plan 2011-14, has also identified inclusiveness in its staff structure as one of the priorities while it has been working on the rights of Indigenous Peoples through its Collective Rights and Gender and Social Inclusion Divisions.

B. Freedom of religion (CERD Article 5)

The new 2015 Constitution defines Nepal as having 'multi-ethnic, multi-lingual, multi-religious, multi-cultural characteristics (Art. 3). However, Article 4 (1) of Constitution of Nepal promotes 'secularism' defined as the protection of 'Sanatan' (Hindu) religion and culture. Essentially reversing secularism, the constitution institutionalized a Hindu state, the one religious state, as of past, which has been a root cause of Indigenous Peoples' problems. The new Constitution provisions Hindu cultural symbols as national emblems, such as the cow (Hindu sacred animal), flag (Hindu symbol), Crimson (color of victory in Hindu Culture) and Sanskrit language in the coat of arms. The non-Hindus, including Indigenous Peoples, are compelled to follow those Hindu symbols that have adverse impacts to them legally.

Based on value and philosophies of Nepal's majority religion – Hinduism, slaughtering or intended slaughtering of cow, an animal considered holy as per Hindu beliefs and recognized as national animal, is punishable by law with up to 12 years in prison. This law has led to detention and prosecution of many Indigenous, mostly non-Hindus, individuals who have traditionally relied on cows for their subsistence or religious practices. Legal prohibition on cow slaughter has been used for consolidation of Nepal as Hindu Kingdom in the past and as a tool of forced cultural assimilation with discriminatory impacts on Indigenous Peoples. The law threatens secularity of Nepal guaranteed under its current constitution. Further, this violates article 1 of UNDRIP, under which Indigenous Peoples are due the full measure of human rights promised to all peoples under international human rights law—including the rights to freedom of religion, equality before the law and minority rights to cultural expression as protected respectively in Articles 18, 26 and 27 of ICCPR.

Muluki Ain (Civil Code) 1965 has provisioned that cow slaughter is a serious crime with 12 years of imprisonment. Following the promulgation of the 2015 Constitution, the code was amended to provisions for 3 years of imprisonment, but this is yet to come in implementation. Nepal was declared a secular state on May 18, 2008 ending over 250-century long cherished identity of world's only 'Hindu Kingdom'. Since, many people from Tamang, Rai, Limbu, Magar, Bhotia and other members from Indigenous communities have been arrested for alleged cow slaughter in many districts across Nepal. Dozens of cases have been documented across Nepal, after Nepal has been declared a federal democratic country. Some cases in point are-- Tara Bahadur Rai aka Sujan on May 17, 2014, was arrested by Ilam District Police Office and sentenced him into jail, alleging of eating a beef. Similarly, a year ago, June 10, 2013, Pachthar District Police had arrested as many as 4-people--Gajur Singh Tumbampo, 36, Jib Narayan Shrestha, 53, Raj Kumar Nembang, 52 and Santosh Iwa 20-- from Phidim VDC-6 and filed lawsuit against them. In many of these cases, the court sentenced from six to twelve years in prison. Often, the arrests were reportedly made based on complaints from local Hindu fundamentalists groups and accompanied by abuse and torture. In many occasion, the arrests is accompanied by physical and verbal abuse, as well as following the legal consequences suffered by Indigenous persons have instilled fear among broader Indigenous communities to freely practice their religious and cultural customs and traditions.

C. Land Rights (CERD Articles 2.2, 5i, 5v, 5vi, Gen. Rec. #23):

Articles 26, 27 and 28 of UNDRIP work together to ensure the rights of Indigenous Peoples to the lands, territories and resources that they have traditionally owned or used. States should give legal recognition and protection to those lands, territories and resources, including Indigenous Peoples' land tenure systems. Indigenous Peoples have the right to redress, which can include restitution, for their lands, territories and resources that have been confiscated, taken or used without their consent. If restitution is not possible, adequate compensation must be garnered. Those rights have been clearly violated as it pertains to the traditional lands and resources of Indigenous Peoples in Nepal.

i. Discriminatory Land Ownership Policies

As a result of numerous discriminatory laws including Nepal Lands Act and practices, Indigenous Peoples are historically deprived of land and natural resources. Communal land (called Kipat), a system of collective land tenure whereby the lasting rights over the land and resources were vested in many Indigenous communities in Nepal prior to 1964. At that time, the land and natural resource rights of Indigenous Peoples were recognized either by a specific treaty with the state or by other special arrangements such as Kipat system. This system encompassed all territorial rights, including rights to land, forest, minerals and waters. Over time, various policies and laws have been enacted that have abolished Indigenous Peoples collective land and natural resources, depriving Indigenous Peoples of their traditional rights to access, control and use the resources in their traditional territories. Discriminatory land tenure systems such as Jagir (taxable private land assigned to government employees in lieu of salaries; abolished 1952) and Birta (land grants made by the state to individuals usually on an inheritable and tax-exempt basis; abolished in 1959) allowed people of dominant caste groups – Bahun and Chhetri – to own and control lands of Indigenous Peoples.

Instead, the state introduced a land tenure system and established the concept that all land belong to the state. The most devastating events in this period was confiscation of traditional Kipat land tenure and re-distribution of land to state elites, i.e. Bahun, Chhetri, Rana and Thakuri, through different titles of land tenure such as Birta (revenue free land), Jagir (land given in lieu of salaries) and exploitation of Indigenous Peoples through forced free labor. According to the Land Evictions of the Country Code (1963), Kipat that lacks official documents is equivalent to Raikar lands on which taxes can be levied. This has led to the loss of Indigenous based communal ownership i.e. transforming Kipat land into Raikar that can be used, transferred, and disposed of by anyone. Indigenous nationalities such as the Limbus, Rai, Sunuwar etc have today lost their traditional Kipat land tenure.

The introduction of discriminatory policies has resulted in further displacement and loss of lands among Indigenous communities which still continues at present. In 1994, the High Level Land Reform Commission was formed to provide recommendations to the government for land reforms in Nepal. Similarly, in 2001, another land reform was announced intending to amend the Land Act 1964 that aimed at reducing the land ceilings. The Interim Constitution of 2007 further directs to pursue scientific land reform programs and provide land to economically and socially “backward” classes, including the landless, bonded laborers and so forth.

More recently, the Ministry of Land Reforms and Management has started preparing a comprehensive National Land Policy to clarify the State's policy on ownership, use, and overall management of land. The proposed policy is expected to provide a consolidated outlook of the Government on the varieties of land issues as land-related policies have so far been introduced in a piecemeal manner. However, there has not been any meaningful participation of Indigenous Peoples or their representatives in the process while even the information regarding the process is scarce.

ii. Expropriation of Indigenous Land in the Name of Conservation

Government-owned forests, national parks and conservation areas, leasehold and community forests, hydropower, and other development projects have continued to negatively impact Indigenous Peoples. Among them, the most highly marginalized groups such as Kusunda, Bankariya, Raute, Chepang, Sonaha and Majhi, have particularly been affected. Participation of Indigenous Peoples in decision-making processes remains low, particularly regarding the management of government-owned or community forests, national parks and neighboring buffer zones.

Government-owned forests, national parks and conservation areas, hydropower, and other development projects have continued to negatively impact Indigenous Peoples. The forest was nationalized in 1957. The National Parks and Wildlife Conservation Act, 1973 introduced protected areas, National Parks and Reserves (including strict nature reserves, wildlife reserves, and hunting reserves). National Parks, Wildlife Reserves, Conservation Areas, Hunting Reserves and buffer zones cover approx. 17 % of the total land area of Nepal. The government has a plan to increase the protected areas from 17 to 25 %. Most of the Protected Areas are established in Indigenous Peoples' territories. Approximately 65 % of ancestral land of Indigenous Peoples has now reportedly been occupied by national parks and reserves causing loss of their traditional livelihoods and forcing many to relocate elsewhere. Community forestry, and REDD+ (Reducing Emissions for Deforestation and Forest Degradation), the popular and highest priority programs of government, has further aggrieved forest dependent Indigenous communities by displacing and restricting them from collecting fodder. The participation of Indigenous Peoples in decision-making processes in the management of government-owned or community forests, national parks and neighboring buffer zones are in many cases nil.

The case of Sonahas – one of the most marginalized Indigenous groups in Nepal – provides a good example of this. Sonahas lead semi-nomadic lifestyle and their livelihood mainly depends on fishing and gold panning. Since the establishment of Bardiya National Park in 1975, the livelihood of the Sonahas has significantly been weakened, as they do not have free and unhindered access, as they used to enjoy in the past, to fishing, gold panning, and forest resources. The stricter regulations and limited access to the park and river have drastically reduced their earning power. Most Sonaha women who were skilled at gold panning were forced to abandon their original occupation, without any alternative arrangement in place. While establishing the national park, no consultation was done with them. The restrictions imposed on the Sonahas and other communities living in and around forests and national parks in Nepal have negatively impacted these Indigenous communities' access to traditional foods and economic harvesting activities.

Another case in point is of semi-nomadic Chepang community mainly inhabiting the forest hills of central Nepal. Under the Private Forest Nationalization Act 1957, all the forests that had been used in the past under traditional rights were included under the government ownership. This put a restriction in the hunting and gathering activities, thereby negatively affecting the traditional livelihoods of the Chepangs. Chepangs have not only lost their land but they have been denied citizenship certificate by the government, as they have no land registered with the government. One cannot get citizenship certificate without producing land certificate. They, therefore, are deprived from getting privileges of the Nepalese citizens. They have been given no compensation for the loss of these lands.

Furthermore, under the first-ever pilot Forest Carbon Trust Fund in Nepal, representatives from three watersheds in Dolakha, Gorkha and Chitwan districts received a total of USD 95,000 on behalf of community forest user groups at a ceremony organized at the International Centre for Integrated Mountain Development (ICIMOD) in 2011. ICIMOD and its partners, the Federation of Community Forestry Users, Nepal (FECOFUN) and the Asia Network for Sustainable Agriculture and Bio resources (ANSAB), are implementing this initiative. Both FECOFUN and ANSAB are non-Indigenous organizations, and most of the beneficiaries were non-Indigenous Peoples. This indicates that, in general, there is still a long way to go to ensure full and effective participation of Indigenous Peoples in community forestry and REDD+ in Nepal.

iii .Violations to Free, Prior and Informed Consent on Development Projects

In 2007, by ratifying ILO 169, Nepal became the first country in Asia to do so. Nepal government also voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the same year. Yet, the legal and policy reform process to ensure consistency with these international legal instruments and newly adopted constitution has not taken place.

Nepalese Indigenous Peoples continue to face appropriation of their customary and traditional lands, including through mega-projects and other development aggressions imposed on their lands, territories and natural resources. This results in loss of customary occupation, livelihoods and roles in their societies. Similarly, the discriminatory laws of Nepal have hindered the development of Indigenous communities. Their demands for rights of Indigenous Peoples, particularly in relation to lands and natural resources as well as political participation at decision making level, have been met with violence and criminal persecution. Due to numerous of discriminatory laws, including Nepal Lands Act and practices, Indigenous Peoples in Nepal are historically deprived of land and natural resources.

In the course of implementation of ‘development’ projects – often funded by international agencies and donors – in different parts of Nepal, the rights of Indigenous Peoples, including to Free Prior and Informed Consent, have been violated. Indigenous communities’ opposition against such projects have been met with deployment of security forces that often use excessive forces leading in detentions, torture and serious injuries to the people.

The World Bank-funded Nepal Power Development Project is a recent case in point, wherein Indigenous rights in the Sindhuli district were violated during construction of the Khimti-Dhalkebar High-Voltage Transmission Lines. As per Article 32 of UNDRIP, States should obtain free and informed consent of

Indigenous Peoples prior to the approval of any project affecting their lands or territories and other resources; this was not carried out.

Nepal government further has introduced a host of ambitious projects to tap its vast hydropower potential. In February 2016, the government endorsed the National Energy Crisis Reduction and Electricity Development Decade Plan, which aims to produce 10,000 megawatts of energy. According to Nepal Electricity Authority, there are currently as many as 683 hydropower projects (37,000 Megawatt) are in operation at various stages of planning and execution.

In 2014, a Nepali private company unlawfully acquired Guthi (land endowment made for a religious or philanthropic purpose) lands of 76,000 sq. ft. area of Indigenous Pradhan Newar community of Kathmandu for construction of a mega business complex called Chhaya Center. The lands were converted into individually owned lands through a series of abuses of law and authority. As a result, religious and cultural customs and traditions of Pradhan Newars based on the lands, which in the past was a pond, have been devastated. Despite strong lobbying and ongoing challenge in the courts, the Government of Nepal has allowed continuation of construction of the complex.

The government's plans and programs to tap hydropower potential, along with those undertaken by multilateral development banks such as the World Bank and private sector investors, are creating suffering among Indigenous Peoples of Nepal. Frequently they are resulting in widespread human rights violations, including escalating conflicts, forced displacements, and irreversible loss of traditional livelihoods and massive environmental degradation. The areas destined for energy development are typically inhabited by Indigenous Peoples, who are often entirely dependent upon rivers for their livelihood. The implementation of such development projects on or near Indigenous Peoples' territories without their Free, Prior and Informed Consent (FPIC) has become the most pervasive source of human rights violations and one of the greatest challenges to exercising their full and internationally recognized human rights. Communities that stand against and obstruct the works are often detained, tortured, or seriously injured and left without justice. The World Bank funded Nepal Power Development Project in Sindhuli district for construction of the Khimti-Dhalkebar High-Voltage Transmission Lines, as many as 8 hydropower projects laid down in Likhu and Khimti River are some of the cases in point.

Likewise, Indigenous Peoples have been struggling against development aggression, their right to food, work clean environment, participation, consultation, benefits sharing and development. Furthermore they have been facing displacement, discrimination. Moreover, they have no say in the decision-making process since most of the work has been done either in Kathmandu, or even outside Nepal. They are compelled to accept the decisions made by others than them.

D. Obstacles to Freedom of Expression: (CERD Articles 5a, 5(d)(vii), 5(d)(viii), 5(d)(ix))

The government of Nepal has taken steps to curtail advances in press freedom guaranteed by the 2015 constitution. On June 14, 2017, the government issued an Online Media Operation Directives, according to which, an online news portal can be shut down if they fail to register or renew the website annually. Similarly, the Directive also provisions that publication of any materials deemed to be illegal or immoral

or spread misinformation or reports lacking authoritative source. Invoking this clause, the government may attack any online media/news portal run by Indigenous communities. The provision of Online Media Directive is contradictory to Article 19 (3) of the Constitution of Nepal, 2015 that guarantees disruption-free media operation, except in accordance with the law. Of the 123 languages spoken in Nepal, 95% are spoken by Indigenous Peoples. Even though Indigenous Peoples make up a significant portion of Nepal's population, they have been marginalized in terms of freedom of expression. The Indigenous Media Foundation was founded in 2011 as an organization of Indigenous journalists supporting Nepalese Indigenous Peoples through media and communications.

Radio is the major medium for Indigenous Peoples to communicate in Nepal. It is an important source of information and is accessible to Indigenous Peoples because most people have a radio in their home. As of December 2017, the government granted licenses to 692 radios, and of these some 500 radio stations are in operation. As many as 315 claim to be community radios, which are members of the Association of Community Radio Broadcasters Nepal (ACORAB), the umbrella organization of community radios in Nepal. The rest are commercial radios owned by private companies. The community radio stations are owned and operated by non-governmental organizations (NGOs), cooperatives and local government bodies. An informal survey conducted among media institutions showed that radio is ranked as the preferred (98%) source of information in rural areas and the second preferred source of information (96%) after television (99.3%) in urban areas.

Community radio in Nepal has the potential to promote the voices and participation of Indigenous Peoples in public discourse at the national and local levels. On commercial radio, Indigenous Peoples' issues are inadequately covered and often politicized. Therefore, in order to serve the poor and marginalized Indigenous Peoples and amplify their voices, some Indigenous communities have made an effort to set up their own community radio stations. In 2016, the Indigenous Media Foundation (IMF) facilitated to unite radios that are founded, run, and managed by Indigenous Peoples themselves under the Indigenous Community Radio Network. IMF helped the network legally register as an umbrella organization of Indigenous community radio stations. Currently 21 radios have been united under the network. The Support Center for Indigenous Community Radio, a wing under IMF, produces radio programs in different local languages, coordinates with Indigenous radios, and periodically organizes training and workshops for Indigenous journalists.

E. Education (CERD Article 5(d)(v) and Article 7)

The government of Nepal is concerned about saving endangered tigers, but not endangered languages. The New Constitution of Nepal gives power to village and municipal councils to declare local mother tongues as official languages in their administrative areas. On the surface, it looks like a progressive constitutional provision. But it is not. The constitution envisions a commission to recommend which mother tongues can be used as official languages in which provinces. So the commission will have rights to sideline multiple mother tongues while picking up just one or two mother tongues. So there is not much hope about the new constitution preserving and promoting dying mother tongues. The new constitution also says ethnic communities will have rights to open schools to teach their children in mother tongues. But it again fails to ensure the state's role and involvement in mother tongue education. For example, the government's "Multilingual Education Implementation Guidelines" in 2009, which aimed to implement multilingual education in 7,500 schools by 2015, flopped due to a lack of resources. It is certain that

communities, without the support of the state, will fail to open schools. So it is felt that the new constitution has betrayed Indigenous people and is yet to ensure Indigenous Peoples' right to education provided in their mother tongue. The government is unwilling to introduce effective structures for the enjoyment of this right of Indigenous Peoples.

Further, the Government's Multilingual Education program also includes language education as Multilingual Education rather than education provided using native languages as medium of instruction. Further, Nepali language is still the only official medium of instruction and the language education a compulsory subject in higher education in public education system, which create obstacles for Indigenous Peoples in accessing education and disadvantages them and other communities that do not speak Nepali as their first language.

At the same time, highly marginalized Indigenous groups such as the Chepang, experience extreme educational discrimination contributing to low literacy levels. As the Nepal Chepang Association (NCA) has reported that less than 25% Chepangs are literate while the national adult literacy rate stands at 57%. In addition, only 1% of Chepang women know how to read and write, well below the national average of around 50%.

The Government provides annual grant to NFDIN to initiate and implement programs of protection, preservation and promotion of the cultures, languages, institutions, traditional knowledge and skills of Indigenous Peoples, among others. However, the annual grant provided to NFDIN has been significantly decreased lately.

F. Indigenous Women

Indigenous women in Nepal face multiple-layered discrimination on the grounds of gender, ethnicity and in many cases poverty, and are disproportionately subjected to various forms of violence. A case in point is the trafficking of Indigenous women.

The percentage of castes and ethnicities of girls rescued by various NGOs is anything to go by, 7 girls out of every 10 victims of trafficking in person are from Indigenous communities. Achute Nepal, Communication Officer at Maiti Nepal, an NGO fighting against women trafficking, says, "We have yet not produced a caste-wise figure of trafficking in person. But, we did an internal assessment of caste-wise survivors some two years back; and we found that 60 % of the rescued were from Indigenous communities while 20 % were Dalits. Only 20 % belonged to the high castes —Bahun and Chhetri." To draw this conclusion, Maiti Nepal had looked at castes/ethnicities of 336 traffic survivors rescued from 2008 to 2012.

The caste/ethnicity-wise figure produced by Shakti Samuha, the first and only organization run by the survivor of women trafficked in India, also shows that 76 % of women survivors of the total 821 women survivors who are either members and beneficiaries of its program are women from Indigenous communities. The rest 12 % are Dalits and another 12 % are from Bahun and Chhetri communities. One recent data released by National Human Rights Commission (NHRC) reveals that around 13,000 persons were trafficked out of Nepal in 2013. And, it is estimated that more than 17,000 women and girls end up becoming sex slaves abroad every year. They are promised with good jobs or prospect of higher study

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As per 2004 National Human Development Report of the United Nations Development Program, some 12,000 girls and women are trafficked annually, of whom a fifth are under the age of 16. As recognized in Nepal's State Report to Committee on Elimination of Discrimination Against Women, 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." The discrepancy here is stark; Indigenous women and girls make up almost 80% of the total of these trafficked individuals although Indigenous Peoples in Nepal only make up 35% of population. Thus, 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.

CEDAW has urged Nepal "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." 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.

Further, women from Indigenous groups that suffered extreme abuses in the past continue to face vivid severe legacy of those abuses. For example, it is often reported that extremely limited life chances and Hardsh Indigenous Peoples have led Indigenous Tharus, who in the past were exacted as bonded agricultural laborers (Kamaiyas), to recourse to some moderate form of bonded labour while their daughter continue to serve as Kamalaris (bonded housemaids) though in less coerced form. Both Kamaiya and Kamalari system are now illegal and the Government had reportedly increased vigilance against Kamalari system in 2008-9 as some cases were reported from mid-west and far-west Tarai and inner-Tarai districts and drawn attention of the concerned agencies to intensify targeted and affirmative action programmes in the areas where such incidents are frequently reported. However, there have been recent reports of Kamalari system existing in Tarai as well as Kathmandu.

G. Health

Indigenous Peoples under Article 24 are also afforded the right to the "enjoyment of the highest attainable standard of physical and mental health" however that is not the reality for many Indigenous communities in Nepal. In fact, malnutrition rates in Nepal are some of the highest in the world, and Indigenous Peoples disproportionately experience extreme hunger and malnutrition. Meanwhile, despite high levels of malnutrition, Indigenous Peoples who have a culture of beef eating, are prohibited from eating beef, despite that the restaurants of star hotels in Kathmandu are allowed to import beef to cater to Western tourism.

The gap in life expectancy between Indigenous and non-indigenous people in Nepal is 20 years. The Chorang, for example, face chronic and widespread food insecurity for half the calendar year and undernutrition in women and children. This is largely due to reduced access to traditional lands used for food sources.

Causes of hunger are firmly rooted in historical exclusion of and discrimination against Indigenous communities who are denied equal access to land, resources and income-generating opportunities. To address the root causes of indigenous peoples' health problems, there must be full recognition and exercise of indigenous peoples' collective rights to communal assets and self-determination.

IV. State report:

Nepal promulgated a new Constitution on September 20, 2015 and devised number of new laws in order to consistent to new constitutions, which fail to incorporate the rights of Indigenous Peoples, in accordance to Indigenous and Tribal Peoples Convention (C169) of the International Labor Organization (ILO) UN Declaration on the Rights of Indigenous Peoples (UNDRIP), to which Nepal is party to. Three elections were held--local, state legislative and legislative parliament level. Though, in Article 82 (2) of the Constitution accepts the principle of inclusion and proportional representation in the state structure including on election constituency. In practice, there was not meaning proportional representation of Indigenous Peoples in all recently held elections. The dominant groups (Khas Arya, who comprise only 28% of the total population) enjoy overwhelming representation in all state structure, in legislative parliament, executive and judiciary government, including in local and state government. Indigenous Peoples which comprise 35.8 % of the total population has under-representation in aforesaid state structure.

Though Constitution defines Nepal having 'multi-ethnic, multi-lingual, multi-religious, multi-cultural characteristics (Art. 3) but in contrast, interpretation provision of Article 4 (1) of Constitution of Nepal, by defining 'secularism' as protection of 'Sanatan' (Hindu) religion and culture. Therefore by reversing secularism, constitution institutionalizes Hindu state, the one religious state, as of past, which is the root causes of Indigenous Peoples problems. More surprising is, the Constitution gives special recognition to dominant group (Chhetri, Bahun, Thakuri, Sanyasi, Dashnami, as Khas Arya), not for other ethnic groups. European Union Election Observation Mission to observe the elections of house of representation and provinces, in its final report between 26 November to 7 December 2017, also recommended to 'review quota system and its impact on ethnic composition in parliament and remove the reservation for Khas Arya secured for representation in the state structure. But the State and the major political parties do not accept the recommendation and ask the European Union to revise the report. But the Indigenous Peoples and other marginalized communities welcomed recommendations of the EU and asked the government to respect the norms and values of social justice.

The land, territories and natural resources of Indigenous Peoples are under threat due to aggressive development initiatives undertaken without maintaining Free Prior and Informed Consent (FPIC). The development project such as hydropower generation, road expansion, and declaration of protected areas, and infrastructure development projects such as road expansion are another threat to the lands and territories of Indigenous Peoples. Most of such project are constructed and planned to construct in the lands and territories of Indigenous Peoples without FPIC and their meaningful participation in the decision making process. This is against the principles of the self-determined development of Indigenous Peoples. According to Nepal Electricity Authority, there are currently as many as 683 hydropower projects (37,000 Megawatt) are in operation at various stages of planning and execution. Cultural Survival

has been working to bring the voices of Koïts (Sunuwar), the victims of as many as 8 hydropower project laid down in Likhu and Khimti River. Indigenous Koïts (Sunuwar) communities who have been demanding for their rights in relation to ancestral lands, territories and natural resources, have often been met with violence and criminal prosecution.

V. CERD Recommendations from last review in 2004:

13. *“The Committee regrets the general paucity of information regarding the implementation of the Convention in relation to the enjoyment of all human rights by the Indigenous Peoples of Nepal. The Committee is also concerned over allegations of forced relocation and violations of the right of the Indigenous Peoples to own, develop, control and use their traditional homelands and resources in the name of wildlife preservation.*

“The Committee recommends that the State party take stricter measures to combat discrimination against Indigenous Peoples, in line with its general recommendation XXIII on the right of Indigenous Peoples. It requests the State party to include in its next report information on actions taken, especially on its efforts to reconcile Indigenous Peoples’ land rights with the preservation of wildlife. It further invites the State party to consider acceding to ILO Convention No. 169.

14. *“The Committee regrets the lack of information on prosecutions launched and penalties imposed in cases of offences which relate to racial discrimination, and the role of the National Human Rights Commission and the National Dalit Commission in dealing with such cases. The Committee stresses the need for a determined enforcement of the criminal justice system, and reminds the State party that the absence of complaints and legal action by victims of racial discrimination may be the result of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute.*

The Committee requests that the State party include in its next periodic report statistical information on complaints lodged, prosecutions launched and penalties imposed in cases of offences which relate to racial or ethnic discrimination. In particular, the Committee would welcome further information on cases invoking article 88 and article 11, paragraph 4, of the Constitution and the Miscellaneous Chapter of the Country Code. The Committee also requests information on legal measures that prohibit activities and organizations which promote or incite discrimination, or participation in them.”

21. *“The Committee notes that the Government broadcasts in several national languages. The Committee is concerned, however, with the lack of representation of disadvantaged groups in the State-owned media, and that issues such as racial discrimination and human rights receive little coverage by the media in general.*

The Committee invites the State party to consider introducing special measures to ensure due representation in the mass media of members of disadvantaged groups, including Dalits.”

VI. Other UN Body Recommendations

Universal Periodic Review (2nd cycle)

Mexico: *“Strengthen the legislative and institutional framework for the promotion and protection of rights of Indigenous Peoples, in particular to ensure their full participation in society.”*

Uganda: “Put in place an effective mechanism for addressing the reported multiple forms of discrimination against Indigenous women in Nepal.”

Singapore: “Continue to pursue policies that will increase enrolment in schools of school-going aged children, in particular girls, and children from Indigenous communities and minorities.”

VII. Recommendations

General Recommendations

1. Respect, protect and fulfill Indigenous people’s rights to participate fully, in the political, economic, social and cultural life of the State and secure their right to Free, Prior and Informed Consent.
2. A comprehensive legal and policy reform program should be undertaken to advance implementation of Nepal’s commitments under UNDRIP and ILO Convention 169, including immediate adoption of a national action plan drafted for implementation of the Convention.
3. Full and effective participation of Indigenous Peoples should be ensured in census processes and national census data should be disaggregated by Indigenous ethnicity or nationality, and gender, taking into account the criterion of self-identification.
4. NFDIN Act should be amended to ensure that its criteria for identification of Indigenous Peoples is consistent with international human rights as well as the official list of Indigenous Peoples elaborated to ensure inclusion of all the groups conforming to such criteria.
5. Monitoring and evaluation should be undertaken of implementation of targeted program and budget allocation for Indigenous Peoples with their full and effective participation.
6. Implement the World Conference on Indigenous Peoples Outcome Document, beginning with drafting a National Plan of Action to achieve the ends of UNDRIP.
7. Invite the Special Rapporteur on the Rights of Indigenous Peoples to make an official visit to Nepal.
8. Support Indigenous community media and community media as a form of freedom of expression.

Lands, territories and resources

9. Existing initiatives of land reforms and management should incorporate a specific focus on the rights of the Indigenous Peoples over the lands, territories and natural resources they have traditionally owned or used, either individually or collectively. Ensure state respecting Indigenous Peoples’ ancestral land and territories.
10. Legislative and administrative measures should be enacted to ensure these rights, including measures entailing a land demarcation and titling procedure.
11. Appropriate measures should be adopted and a procedure in laws, policies and programs of local, state and federal government, should be established to ensure that free, prior and informed consent of Indigenous communities, through their own representative institutions, is obtained in the planning and undertaking of any development project, either private or public, which affects their traditional land or natural resources.
12. A mechanism should be developed to provide redress to Indigenous 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,

government-owned or community forests and development projects, among others. 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.

13. The National Parks and Wildlife Conservation Act should be amended to include enhanced participation of Indigenous Peoples in the management of the parks and guarantee their access to natural resources on which they traditionally have depended for their subsistence, as well as provide them the opportunity to share justly in the financial and other benefits of the parks.
14. Food security for Indigenous Peoples should be improved, particularly for those impacted by national parks and development projects.

Education, Health and Culture

15. All Indigenous children should have equal access to quality education in their mother tongue as provided under Article 14 of UNDRIP.
16. 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 programs.

Constitution

17. In order to provide the highest safeguards for the collective and individual rights of the Indigenous Peoples, amend the constitution and explicitly incorporate those rights into the constitution in accordance with the international standards to which Nepal has committed.
18. Special mechanisms should be developed for consultations with the Indigenous Peoples, through their own representative institutions, in relation to proposals for new constitutional provisions that affect them.
19. The federal structure should advance the right to self-determination of the Indigenous Peoples. Specific measures should be devised to ensure that local and state Government bodies include effective participation by Indigenous Peoples.
20. The Government should take measures to investigate and sanction those responsible for the alleged incidents of violence against Indigenous Peoples during the May 2012 events and provide redress to the victims.

Public Service

21. Review and remove quotas or reservation reserved for the Khas Arya. Ensure that quota or reservation system be strengthened or consolidated to ensure access by members of marginalized Indigenous communities to employment in civil service and public institutions.
22. The National Human Rights Commission should in its structure ensure the inclusive representation and full participation of Indigenous Peoples' representatives and be given an explicit mandate to monitor Indigenous Peoples' individual and collective rights.

Indigenous women

23. Renewed efforts to promote the rights of Indigenous women should be urgently put in place, including measures to eliminate all forms of discrimination and violence against them, with the active involvement of Indigenous women and their organizations. Such measures should be specifically targeted to the most at risk populations addressing root causes such as poverty, economic marginalization, land loss and economic migration.

24. 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 marginalized Indigenous groups, including the former bonded labourers such as the Kamaiyas and Kamalaris.