

**Observations on the State of Indigenous Human Rights in Nepal in Light of the
UN Declaration on the Rights of Indigenous Peoples**

Nepal

Prepared for

United Nations Human Rights Council:

Universal Periodic Review

March 2015



Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. 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

Executive Summary

According to the 2011 census, the Indigenous nationalities (Adivasi Janajati) of Nepal comprise 35.81% of the total population of 26,494,504, although Indigenous peoples' organizations claim a larger figure of more than 50%. Discrimination against Indigenous peoples remains deeply rooted in Nepal. Even though they constitute a significant proportion of the population, throughout the history of Nepal Indigenous peoples have been marginalized in terms of language, culture, and political and economic opportunities. Indigenous Peoples have been placed at the bottom of the Nepalese caste system and as a result they have experienced extreme hardships and discrimination. As such, discriminatory land practices and citizenship regulations have hindered the development of Indigenous communities leading to a litany of human rights issues. In 2007, the Nepalese government voted in favor of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP).

Introduction and Background

According to the Nepal Federation of Indigenous Nationalities, Indigenous Peoples make up more than 37 percent of the population in Nepal. Ethnic, cultural and linguistic diversity is the most characteristic feature of Nepal as a nation. Currently, 59 groups are recognized as Indigenous nationalities (*Adivasi Janajati*).

There has been some progress for the rights of Indigenous Peoples in Nepal in recent years. For instance in 2002, Nepal formed an autonomous statutory body, known as the National Foundation for Development of Indigenous Nationalities (NFDIN) under the National Foundation for Development of Indigenous Nationalities Act with the main purpose of ensuring the overall welfare of the Indigenous nationalities. Various provisions in the Constitution have boosted up the NFDIN in empowering the Indigenous nationalities for protection and promotion of their religious, linguistic, cultural and political rights. In 2007, Nepal became the first country in South Asia to ratify the International Labor Organization's Indigenous and Tribal Peoples Convention 169, which deals specifically with the rights of Indigenous and tribal peoples. Despite the progressive nature of recent legislation, Nepalese law and custom continues to violate many of the Articles set forth in the United Nations Declaration on the Rights of Indigenous People (UNDRIP).

In 2011, during the first cycle of the UPR the following recommendations were made regarding Indigenous peoples:

Malaysia: *"Take more effective measures to increase the involvement of the Indigenous peoples, minorities and vulnerable groups in the civil service, law enforcement agencies and local authorities."*

Norway: *"Review and adopt relevant legislation and policies, including bills related to caste-based discrimination, the Women's Commission, the Dalit Commission, the rights of indigenous peoples and the rights of the child, to ensure full compliance with international human rights standards."*

Hungary: *"Improve food safety of vulnerable groups, particularly indigenous people, former bonded labourers, Dalits, Muslims, persons with disabilities and those who are infected with HIV/AIDS."*

These recommendations have not been fully implemented.

LAND AND RESOURCE RIGHTS (Article 2, 10 of UNDRIP)

Article 2, UNDRIP

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their Indigenous origin or identity.

A significant human right's issue facing Indigenous peoples in Nepal is in regards to the domineering caste system. This system is a social construct governing nearly every aspect of Nepalese life. This is important for our purposes because Indigenous groups often find themselves in the bottom layer of classes. The status of Indigenous peoples at the bottom of the class system directly leads to violations of Article 2 of UNDRIP which seeks to prevent the discrimination of Indigenous peoples. For examples, in the past, discriminatory land tenure systems such as the Birta and Jagir allowed the dominant caste, i.e. the Bahun-Chhetris, to own and control lands of Indigenous peoples. As a result of this and other discriminatory land practices, 65% of ancestral land of Indigenous people has now been occupied by national parks and reserves forcing majority of them migrate elsewhere. Among them, Kusunda, Bankariya, Raute, Surel, Hayu, Raji, Kisan, Lepcha, Meche and Kuswadiya, the most endangered groups, have particularly been negatively affected. Indigenous Peoples participation in decision-making processes remains low, particularly regarding the management of national parks and neighboring buffer zones.

Articles 26 and 27 of UNDRIP work together to ensure that traditionally owned lands are made available to Indigenous populations. If native use on these lands must be restricted, than under the provisions of UNDRIP adequate compensation must be garnered. These guidelines have clearly not been followed as it pertains to the traditional lands of the Chepang. The Private Forest Nationalization Act 1957 privatized many forest within Nepal and included all forest land that had previously been viewed as "government ownership". These lands included large tracts which had traditionally been used by the Chepang. The Chepang were given no compensation for the loss of these lands. Privatization of land is an especially troubling prospect of the Chepang because they lack the citizenship certificates required for land ownership.

One of the most endangered Indigenous groups in Nepal are the Sonahas. They lead semi-nomadic lifestyle and their livelihood mainly depends on fishing and gold panning. Since the establishment of Bardiyia National Park in 1975, the livelihood of these 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 the earning of these Sonahas. 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 Sonahas.

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) on 15 June 2011.¹¹ This initiative is being implemented by ICIMOD and its partners, the Federation of Community Forestry Users, Nepal (FECOFUN) and the Asia Network for Sustainable Agriculture and Bioresources (ANSAB). 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.

Right to Health; Right to Traditional Subsistence (Article 20 & 24 of UNDRIP)

Under Article 20 “Indigenous peoples have the right to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.” The strict regulations imposed on the Sonahas and other communities living in and around the Nepalese national parks have negatively impacted these Indigenous communities access to traditional foods and economic harvesting activities. 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. Causes of hunger are firmly rooted in historical exclusion of and discrimination against Indigenous communities who are denied equal access to resources and income-generating opportunities. Sadly, Indigenous peoples, who have a culture of beef eating, are prohibited from eating beef, although the restaurants of star hotels in Kathmandu are allowed to import beef to cater to Western tourism. Additionally, environmental pollution of rivers by non-Indigenous users resulting in large fish kills, further exacerbates the impending food crisis of Indigenous communities. Moreover, the Government of Nepal’s failure to recognize many Indigenous communities deprives them of many state legal mechanisms and services dedicated to endangered Indigenous groups.

Free, Prior and Informed Consent: The case of Chhaya Center (Article 8, 10, 20 of UNDRIP)

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior, and informed consent of the Indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return. In 2015, a Nepali private company has unlawfully acquired the communal trust lands of Indigenous Pradhan Newar community of Kathmandu to construct a mega business complex known as the Chhaya Center. As a result, the religious and cultural customs and

traditions of Pradhan Newars based on the pond and its embankment lands have been devastated and thus their cultural rights and rights to cultural rights and rights to lands and resources violated. The land on which the complex is being built is communal trust land of the local Pradhan Indigenous community. The traditional lands of the Pradhan were illegally taken by developer Chhaya Devi Complex Pvt. Ltd. and the company intends to build the largest business complex in the history of Nepal.

Despite the ongoing challenge in the courts, the Government of Nepal has allowed the continuation of the Chhaya Center project. To date, no compensation has been offered to the Pradhan Newar people even though the construction of the business complex has resulted in loss of their ancestral and holy lands. Article 28 of UNDRIP states that Indigenous people need to be appropriately compensated for lands and resources that have been taken without their free, prior and informed consent yet, no restitution has been provided thus far.

Right to Education (Articles 14 & 22 of UNDRIP)

Article 14(2), UNDRIP

Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

The Chepang tribe of central Nepal has experienced many hardships and human rights violations directly in conflict with the guidelines set out in the UNDRIP. Perhaps the most prevalent violation of UNDRIP experienced by the Chepang people is the educational discrimination of many tribal members contributing to low literacy levels. Article 14 of UNDRIP states in part that “States shall, in conjunction with Indigenous peoples, take effective measures, in order for Indigenous individuals, particularly children,....to have access, when possible, to an education in their own culture and provided in their own language.” This has not been the case in regards to the Chepang as the Nepal Chepang Association (NCA) has reported that more than 75% of all Chepangs are illiterate. In addition, only 1% of Chepang women know how to read and write, well-below the national average of around 50%. This seems to show a violation of not only Article 14 of UNDRIP but also Article 22 which states that particular attention shall be paid to the rights and special needs of certain specialized groups, including woman.

Right to Self-Determination and Political Participation (Article 2, 3, 5 & 18 of UNDRIP)

Under Article 2 of UNDRIP Indigenous peoples have right to live free from discrimination and under Article 3, “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” The International Convention on the Elimination of all forms of Racial Discrimination (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. Further, UNDRIP provides for the right of Indigenous peoples to participate

in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures as well as to maintain and develop their own Indigenous decision-making institutions. According to the Nepal Federation of Indigenous Nationalities (NEFIN) and Indigenous Nationalities Movement of Nepal (INMN), Indigenous peoples' rights to identity are being ignored in the constitution promulgation process currently underway in Nepal. Indigenous Peoples are protesting for the inclusion of ethnic identity in the Federal Constitution for the protection of Indigenous rights. In accordance with Article 18 of UNDRIP, which states "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves..." the Government of Nepal should adopt a constitution that supports identity-based federalism.

Recommendations

We respectfully request that the UPR Working Group and the Human Rights Council urge the Government of Nepal to:

1. Take operational steps to implement the United Nations Declaration on the Rights of Indigenous Peoples, including the recognition of the right to land and natural resources of all Indigenous peoples in Nepal
2. Evaluate and align all legislation and government programs with the UN Declaration on the Rights of Indigenous Peoples
3. Publicly recognize the Indigenous peoples of Nepal as their own distinct groups and cultures.
4. Provide compensation to the Chepang and other Indigenous groups who had their traditional lands privatized under the Private Forest Nationalization Act 1957.
5. Repeal any and all laws which provide unfair economic/social advantages to the ruling caste at the expense of Indigenous groups.

In addition, we request that the following specific recommendations be made:

1. A **moratorium on land alienation** should be imposed and proper legislation put in place for the full participation of Indigenous peoples in management of forests and natural resources.
2. The Government of Nepal should **adopt a national action plan** on its implementation to ensure Indigenous peoples' effective and politically meaningful participation in the decision-making process and equal representation in the governance of the country as provided under UNDRIP and ILO Convention 169.
3. Implement the World Conference on Indigenous Peoples Outcome Document, beginning with drafting an National Plan of Action to achieve the ends of the Declaration
4. Invite the Special Rapporteur on the Rights of Indigenous Peoples to make an official visit to Nepal

5. Review and adopt relevant legislation and policies, including bills related that **prevent caste-based discrimination** of Indigenous Peoples. Ensure that the policy is fully implemented also by the local authorities in rural and remote areas.
6. Ensure that all Indigenous children have **equal access to quality education** as provided under Article 14 of UNDRIP.
7. Improve **food security** for Indigenous Peoples.
8. Provide **full political incorporation** and participation of the National Dalit Commission and the National Foundation for Development of Indigenous Nationalities.