

# An Account of Indigenous Peoples' Movement in Nepal

Compilation of articles published in  
The Indigenous World  
(2006-2020)



Lawyers' Association for Human Rights of  
Nepalese Indigenous Peoples (LAHURNIP)

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Pictures of the back cover page: Cover pages of The Indigenous World (2006-2020)



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Mr. Dinesh K. Ghale  
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# INTRODUCTION

by

SHANKAR LIMBU



This publication is a comprehensive documentation of Indigenous Peoples' experiences relating to incidents that directly or indirectly related or impacted to them. This book is a translation, from English to Khas Nepali, of articles on Nepal published by the International Working Group on Indigenous Affairs (IWGIA) in its annual editions of the "Indigenous World" covering the period from 2005 to 2019. Land mark incidents with historic importance that occurred during period of absolute monarchy, emergency, armed conflict, peace process, political and Indigenous Peoples' movements, constitution making process, inclusive democracy, republic and experience of Indigenous Peoples are reflected in the book. Thus, it is a succinct account of situation of Indigenous Peoples that will be helpful to those who want to better understand about the plight and prospects of Indigenous Peoples in Nepal.

Each Year, IWGIA publishes a book, "The Indigenous World" with focus on human rights situation and experience that they face in political, social, cultural and other areas every year as it had happened. This helps to monitor progress in upholding or violating of human rights and fundamental freedom of Indigenous Peoples in each State, including Nepal, around the world. This publication also shows status of comparative development relating to Indigenous Peoples.

There were many highs and lows in the Indigenous Peoples' movement during 2005 to 2020. On the auspicious occasion of Indigenous Day-2005, then Prime Minister Sher Bahadur Deuba addressed mass gathering and announced that Nepal is going to ratify the ILO Convention No. 169. It was reiterated during two day high-level dialogues on ILO Convention No. 169 on Indigenous Peoples and peace building in Nepal that was held on 19-20 January 2005 jointly organized by the National Foundation For Development of Indigenous Nationality (Semi Governmental Organization established by an act, mandated to overall development of Indigenous Peoples in particularly cultural, social, academic matters); International Labour Organization Country Office Nepal, Human Rights and Good Governance Advisory Unit (HUGOU/DANIDA and the Canadian Cooperation Nepal (CC))<sup>1</sup> and relevant Ministries from Nepal government including the Prime Minister attended the dialogue.

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<sup>1</sup> ILO Convention 169 and Peace Building in Nepal (Editors Sarah Webster and Om Gurung), Hisi Offset Printers Pvt.Ltd., 2005 p.i

The year of 2006 to 2007 was a remarkable turning point of Political change in Nepali history. This was the period of second people's movement that not only compelled the King to eschew his absolute power and forced him to reinstate the parliament which he dissolved during his active tenure. In 28 December 2008, the reinstated Parliament, through its fourth amendment of the Interim Constitution, declared Nepal is the republic country scrapped 250 years long Monarchical System of Nepal.

It is important to take into account that Maoist initiated "People's War", an armed conflict, in 1996. On the contrary to their expectation, People's War did not get any momentum for two years. Hence, they changed their strategy by raising the issues of Indigenous Peoples, Dalits, women, Madhesi and others, who have been facing historical injustices and structural violence, and in the case of Indigenous Peoples, dispossession from their ancestral lands, and denial of right to self-determination and collective way of life. Maoist's political campaign for emancipation of IPs and others attracted many Indigenous Peoples, specially the Magar, Tharu, Gurung, Tamang, Rai and Yakthung (Limbu), and other excluded groups to join in the "Peoples' War". As a result, Maoist were able to control about 80 percent of territories of the country, enticing Indigenous Peoples and others through the agendas of establishment of the Limbuwan, Khumbuwan, Tamsaling, Tharuwan/Tharuhat, Magrant, Tamuwan, Newa etc. The people's movement compelled the King to give up his power, Republic and Constituent Assembly for new constitution were agenda put forwarded by Maoist on the table of dialogues with the political parties<sup>2</sup>, but millions of people demanding more than establishing democracy, they demanded inclusion of Dalits, Indigenous Peoples,<sup>3</sup> Madhesis, women and marginalized section of the society.<sup>4</sup>

The fifth amendment of the Interim Constitution recognizes 'Will of Indigenous Peoples' and autonomy for marginalized groups.<sup>5</sup> Autonomy was identified as a means of emancipation from historical injustices,

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<sup>2</sup> Interim Constitution of Nepal,

2007, UNDP Nepal, Creative Press P. Ltd., 2007 P. 7

<sup>3</sup> Constitution uses the term Adivasi Janajati instead of the term Janajati.

<sup>4</sup> Interim Constitution of Nepal, 2007, UNDP Nepal, Creative Press P. Ltd., 2007 P. 7

<sup>5</sup> Interim Constitution of Nepal, 2007, UNDP Nepal, Creative Press P. Ltd., 2007 P. 7

subjugation, marginalization, discrimination, exclusion that they have been facing since the formation of the State. For Indigenous Peoples, the Committee of State Restructuring and Sharing of State Power recommended 14 provinces and 23 autonomous areas on the basis of identity and viability.<sup>6</sup>

It was said that the Second Constituent Assembly would incorporate those subjects that were agreed upon in the First Constituent Assembly. In contrast, the Second Constituent Assembly promulgated the Constitution that is racist, discriminatory and exclusionary. The Constitution comprises 11 provisions that are against to Indigenous peoples, 23 provisions that are discriminatory, 49 provisions that are exclusionary to Indigenous Peoples and 5 provisions that institutionalize racial supremacy of the Khas Arya (Chetri, Bahun, Thakuri, Dasnami, Sanyasi are dominant groups in Nepal). A member of the Constituent Assembly, Honorable Pradeep Giri, disagreeing with the Constitution that failed to give justice to Indigenous Peoples, Madhesis and Dalit, boycotted voting to the New Constitution in the Constituent Assembly. Indigenous peoples raised serious objection and branded this Constitution as racist and Draconian; hence, burnt its copies to express their protest against it.

This book provides answers to many questions. How and what kind of conspiracies were hatched to dismiss the rights, demands, agendas and issues of Indigenous Peoples that were agreed as the main national agendas by the elected first Constituent Assembly? In what ways they were turned into second class citizens? How the issue of emancipation of Indigenous Peoples, that was earned through blood and sweat of the movement, was sabotaged by hatching conspiracy in a fraudulent and systematic ways to deprive them from exercise their rights? What kinds of foul play and ploy were planned by the main political parties in the Singha Durbar (the central secretariat of the government) and outside? How peaceful movements and voices of IPs were suppressed by trapping them in fake cases, including organized crime, treason, dacoit, and homicide? What were the mistakes on strategy pursued by the Indigenous Peoples' movement? How the main political parties had co-opted leaders

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<sup>6</sup> Concept paper and preliminary report of the State Restructure and Power Sharing Committee, Singh Durbar, Kathmandu, 2066 p. xsvi and P. xciv

of the Indigenous Peoples' movement, and weakened the movement? What lessons can we learn, and take away from the Indigenous Peoples movement of Nepal? This book contains important incidents, events and experiences of Indigenous Peoples during 2005 to 2019; thus, it is an account of the facts and history in the making that helps us to understand the present by looking back in order to move forward with a clear roadmap.

### **For Indigenous Peoples and Movement**

Indigenous Peoples' history is written rarely in Nepal by Indigenous peoples themselves. "Mainstream" or colonizer historians glorify King Prithvi Narayan Shah's victory over Kritipur, one of the four powerful states of the Newar Indigenous Peoples in the Nepal Mandala ("the Kathmandu Valley). Foreign scholars or historians have written about the King's brutalities, including chopping off of noses and ears of Newa Indigenous Peoples, block sources of drinking water and economic blockade during the aggressions. Khas Nepali historians either ignore or antagonize Indigenous Peoples' history.

We all know that the Head of the governments from Canada, Australia and Taiwan officially announced public apology for the historical wrongdoing done and injustice committed against Indigenous Peoples in their respective countries, but government of Nepal deploys police to stop Newa Indigenous Peoples who have a custom of expressing their grievances by spitting on a stone, named Chyaka Hlhon, at Kritipur, where they believe that the King had slipped off. The IWGIA, through the compiled articles, has given an opportunity to write Indigenous peoples' own history by themselves. This book should be taken as its initiation as it is an account of painful experiences of the immediate past that needs to be seriously reviewed at present in order to draw a future roadmap to fight for securing the rights of Indigenous Peoples. We believe that this book will help to review Indigenous Peoples' movement and guides Indigenous activists, cadres and leaders to identify their strengths and weaknesses as well as the rights and the wrongs. This book is like a glass that helps for self-reflection by the Indigenous peoples' movement and its leaders.

### **For Government, Government Agencies and Political Parties**

It is one of the serious problems of a nation when more than half of its population live with rising frustration and dissatisfaction. These are another serious challenges for the sustainable peace and development of the

Country, when Indigenous Peoples' are invisible in the Constitution, laws, government's policies, plans and programs.

It is not sufficient only to mention diversity of the country in the pages of the Constitution. These laws and policies need to be in place for practical realization and enjoyment. In contrast, we Indigenous Peoples have never been in the position to decide our own faith and destiny in the policy and law making processes in Nepal. The outcome and experience of this situation are reflected in this book and the information provided in the book would be helpful to the government and its agencies, and political parties to correct their wrongdoings against Indigenous Peoples.

To some extent, this book provides ideas of addressing problems, grievances, issues and expectations of the Indigenous Peoples of Nepal. This book contains rich information on Indigenous Peoples' related agendas of belated nation building process, i.e. pluri-national States with an ideology of Indigenism. It gives a roadmap to reduce the gaps between Indigenous Peoples and "mainstream" political parties that emerged from failure of meeting expectations as promised by them accordingly. This book facilitates to achieve social justice for Indigenous Peoples while making and reforming laws and policies in a pragmatic manner.

For Neighboring Countries and International Communities working in Nepal As a member of international community Nepal has direct and indirect obligation that applies reciprocally to neighboring countries (China and India) as well as International Communities, those who are working in Nepal. Indigenous Peoples and the rights of Indigenous Peoples are important subject of international polity, international laws and development plans and programs that are initiated globally.

The United Nations has various mechanisms to deal with the subject as well as the rights of Indigenous Peoples. The agenda of enhanced participation, including an observer status in the General Assembly is under the discussion at the UN. In this context, as the neighboring States, multilateral, bilateral, International Nongovernmental Organizations and business enterprises work in Nepal that have direct and indirect impact towards Indigenous Peoples. So, a million Dollar question is: Whether their supports do justice or injustice to the Indigenous Peoples of Nepal? Other questions include What is an impact of their support to Indigenous

Peoples? What kind of experiences and views do Indigenous Peoples have in relation to international aids, support, investment, projects and similar activities that are conducted in Indigenous peoples' lands? Also, the People to people relation is unique just like the country to country relation in place between Nepal and its neighboring countries (China and India) from the historical period. That is why, subject of Indigenous Peoples has its own importance in regional relation of Nepal. In this regard, this book provides information to some extent.

### **For International Development Partners and Investors**

International development support is accepted by the government of Nepal. Similarly, government encourages foreign investment in extraction of natural resources. These investments, particularly in the areas of Indigenous Peoples' ancestral lands have multiple impacts in social, cultural, economic, physical, religious, spiritual and psychological aspects. The adverse impacts of the projects undertaken in Indigenous Peoples' lands generate conflicts, some of which get resolved amicably, but many end with serious human rights violation, including tortures. Thus, it is expected that, this book provides some core information to international communities if they wish to continue to get involved in development activities in Nepal and do justice to indigenous Peoples of Nepal.

### **For Human Rights Organizations and NGOs**

Some of Human Rights Organizations in Nepal give less attention or no attention to the human rights and fundamental freedoms of the Indigenous Peoples of Nepal. In particular, Indigenous Peoples have been facing situation of grave human rights violation due to the fact of ignoring collective rights in the constitution, laws, policies, plans and programs of the government. This book highlights on the situation of collective rights of Indigenous Peoples; so, it would be helpful for human rights organizations and nongovernmental organizations to fully respect and uphold collective rights as human rights.

### **For Readers and Students**

Those readers and students who want to obtain knowledge about Indigenous Peoples in Nepal; this book will give information about the root causes of the ongoing problems, issues, challenges and opportunities, and also pragmatic ways to solve the problems relating to Indigenous Peoples for the common good. Similarly, it gives strategic ideas and

important data to those researchers who wish to research or study on the burning issues of Indigenous Peoples in Nepal.

To conclude, the book is in your hand, LAHURNIP welcomes any comments, feedback, suggestions about the book and the issues covered in the book.



NEPAL in 2006

by

Om Gurung



## NEPAL

Nepal is a country of great cultural diversity. The 1991 Constitution of Nepal also states that Nepal is a multi-ethnic, multi-cultural and multi-language country. Despite being a country of great cultural diversity, however, the constitution declares Nepal a Hindu kingdom and the *khasa Nepali* language as the only official language of the nation. The state policy of one language (*khasa Nepali*) and one religion (Hindu), and the state's institutional support to practising of the Hindu culture has eroded indigenous cultures, languages and religions and thereby contributed to a loss of ethnic identity among many indigenous communities. According to the latest national census, indigenous peoples constitute 37.2 % of Nepal's 23.4 million population. At present, 59 indigenous nationalities have been identified and listed in the official gazette but it is believed that many more are still outstanding.

The Nepal Federation of Indigenous Nationalities (NEFIN) is the umbrella organization for indigenous organizations in Nepal. It was established in 1991 with the aim of achieving social equality and justice for indigenous peoples by preserving their distinct identities and establishing ethnic autonomy, with the right to self-determination.

### Armed conflict

After Sher Bahadur Deuba's government failed to respond to the 40-point demand of the United Peoples' Front, Nepal Communist Party (Maoist), they declared a people's war on February 13, 1996. Since then the armed conflict has been escalating in Nepal. Over the past 10 years, more than 40,000 people have been internally displaced and 14,000



have been killed. Indigenous peoples are the communities most affected by the armed conflict.<sup>1</sup>

Peace-building efforts have been made both at national and international levels. But the peace-building agencies have ignored the participation of indigenous peoples, ignoring the fact that they are the communities most affected by the armed conflict. NEFIN is therefore strongly urging the government, political parties and international communities first to recognize the identity and rights of indigenous peoples and second to include their full and effective participation in the peace-building processes. NEFIN also believes that the current structure of the state is defective, discriminatory and non-inclusive. The ongoing violent conflict is a result of structural problems in Nepali society. As long as the present structure of the state exists, conflict in one form or another is unavoidable. One of NEFIN's clear demands is therefore the restructuring of the state.

### **Royal coup: collapse of democracy**

Since King Gyanendra dissolved parliament and dismissed the democratically elected government of Nepal on October 4, 2002, he has become more and more ambitious. With the royal coup of February 1,

2005, he has usurped all political and administrative power in the country, and democracy has collapsed. As a result, the political, civil and human rights of Nepali peoples have been denied. All sorts of democratic values and norms have been destroyed.

Indigenous peoples, who have been advocating for the protection and promotion of their rights and who have been raising issues of linguistic freedom, secularism, pluralism and national regional autonomy with the right to self-determination, have been badly affected by the collapse of democracy. The present regime is a replica of the pre-democracy panchayat regime, and the rulers are putting much of their efforts into reviving elements of the panchayat regime's autocratic state apparatus. They are trying to re-impose the monolithic policy of one nation, one culture, one language and one religion by any means. They have been advocating for homogeneity, despite the reality of a heterogeneous Nepali society.

### **Government ordinances and indigenous responses**

At present there is no rule of law in Nepal, the government is ruling the country by ordinances. The king's government has abolished the reservation policy for indigenous peoples introduced by the previous government in the education and civil service sectors (see *The Indigenous World 2005*). The government's ordinances issued to regulate communication have violated the freedom of expression. The code of conduct introduced to regulate NGO activities has severely affected the freedom to open ethnic association as, according to the government, it supposedly disturbs communal harmony. In several districts of eastern and mid-western Nepal, government security forces, in the name of security, have restricted indigenous peoples from talking on the telephone with their distant relatives in their mother tongue. The security forces have also encroached historically and spiritually onto important lands and territories of indigenous peoples by putting up wire fences.

So far 33 ordinances have been issued, and the government is preparing to issue many more. Along this line, the Ministry of Forest and

Soil Conservation began preparing to issue an ordinance that was against the interests of indigenous peoples, as it could affect indigenous peoples' control, access and benefit sharing of the biological resources on their territories. NEFIN therefore led a delegation of indigenous peoples to the Ministry of Forest and Soil Conservation on June 5, 2005 and presented a memorandum to the Minister demanding that the government should not introduce any ordinances affecting the interests of indigenous peoples without the consultation and effective participation of those peoples.

On July 25, 2005, NEFIN delegates met the vice-chairs of the Council of Ministers and presented them with another memorandum demanding:

- 1) that the reservation policy introduced by the previous government be implemented;
- 2) that the founding General Secretary of NEFIN, Mr. Suresh Ale Magar, who has been kept in isolation since the Indian authorities handed him over to the government in 2004 be made public and be presented to the court for legal treatment;
- 3) that a special time schedule be allocated on Nepal TV and Radio Nepal for indigenous peoples' programs; and
- 4) that August 9 be declared as the national holiday to honor the international Day of the World's Indigenous Peoples and special programs be prepared for the social, economic, educational and environmental development of indigenous peoples.

### **Advocating for inclusive democracy**

Indigenous peoples are experiencing a kind of political suffocation under the present regime. They find it very difficult to develop and preserve their cultures, languages, religions, norms, values and traditions. In the current situation, they cannot protect and promote their rights. Indigenous peoples have begun to realize that their rights cannot be guaranteed under the monarch's despotic regime. They are now aware of the importance of democracy. As a result, with their distinct identity

and independent demands, and under the collective leadership of NEFIN, indigenous peoples have been actively participating in the democratic movement of Nepal. But indigenous peoples are also aware of the fact that the type of democracy where “winner takes all” cannot serve the interests of indigenous peoples and does not address their multi-faceted issues. NEFIN is therefore advocating for inclusive democracy, whereby the participation and proportional representation of all communities is ensured. This has been a subject of national political debate among political leaders, academics, *janajati* intellectuals and activists in Nepal.<sup>2</sup>

### **Peace-building in a multicultural framework**

In line with the above, a NEFIN seminar on ILO Convention 169 and Peace-Building in Nepal promoted a multicultural framework for a lasting solution to the armed conflict. The seminar took place on January 19-20, 2005. Its aim was to sensitize thinking at national level on the use of ILO Convention 169 as an international legal framework for peace-building in a multicultural country such as Nepal. Former ILO director and United Nations special representative to the Guatemala peace process, Mr. Ian Chambers, was among others to present a paper at the seminar. During his presentation, Mr. Chambers shared his experience of the Guatemala peace process. This was very relevant and useful to the case of Nepal. During the seminar, the then Prime Minister Sher Bahadur Deuba repeated his commitment to ratifying ILO Convention 169.

### **Other advocacy activities**

Throughout the year, NEFIN has promoted indigenous peoples' rights and participation in the state mechanisms in Nepal through seminars, rallies, research, publications and a number of other activities. As in previous years, the International Day of Indigenous Peoples on August 9 was used as an occasion to attract the attention of the govern-

ment bureaucracy, political leaders, society at large and public and private sector media.

Whereas the August 9 celebrations in previous years have been Kathmandu-based, this year NEFIN organized events to mark the day in many parts of the country. Activities to celebrate the day included seminars, talks, advocacy, a poem recital competition in mother tongue languages, folk songs, a folk dance competition, ethnic food festivals, an exhibition of indigenous art, dresses and ornaments, traditional games and cultural rallies. Thousands of indigenous people participated in the programs.

On December 21, 2005, NEFIN organized a huge protest rally against a massacre of indigenous Tamangs and Newars in Nagarkot. The massacre took place at 11 pm on December 14, 2005 when a blood-thirsty soldier indiscriminately opened fire on a crowd of local people who were gathering at the temple of Nagarkot (12 km north-east of Kathmandu) to celebrate a traditional festival. The massacre took the lives of 11 ordinary people, 10 of whom were indigenous Tamang and Newars. At least 16 indigenous people were seriously injured in the incident. In order to investigate the details of the incident, NEFIN visited the spot, met family members of the dead and wounded, questioned eye witnesses and collected first-hand information. Based on that information, NEFIN believes that the government is responsible for the mass killing.

It has demanded appropriate compensation for the families of the dead and wounded and that those involved in the crime be brought to justice. It has also formed a committee to conduct a detailed investigation into the massacre, and warned the government to put a stop to such killings immediately.

At international level, NEFIN representatives participated in the UN Permanent Forum on Indigenous Issues in New York in May 2005, in the Beijing Plus 10 meeting in February 2005,<sup>3</sup> also in New York, as well as in a number of international conferences. At the Permanent Forum, NEFIN's General Secretary Dr. Om Gurung and NEFIN's Public Relations Secretary Lucky Sherpa made oral interventions on poverty reduction and universal education under agenda item 3 on Goals 1 and 2 of the Millennium Development Goals (poverty reduction and

universal education). Participation in the Permanent Forum also provided an opportunity to meet with Mr. Rodolfo Stavenhagen, Special Rapporteur on the Human Rights and Fundamental Freedoms of Indigenous Peoples within the Office of the High Commissioner for Human Rights. He was informed of the human rights violations committed both by the state and the Maoists against indigenous peoples, and Mr. Stavenhagen was encouraged to visit Nepal. □

## Notes

- 1 According to a report published by the Informal Sector Service Centre (INSEC) in 2004, indigenous peoples constitute the largest group (21%) of victims of the conflict between the state and the Maoists.
- 2 On August 28-29, 2005 NEFIN hosted a seminar on *Re-structuring the state from an indigenous perspective*.
- 3 The 49th Session of the UN Commission on the Status of Women (New York 28 February to 11 March 2005) is known as the "Beijing + 10 meeting", since review and appraisal of the Beijing Declaration and Platform for Action from the 1994 United Nations Fourth World Conference of Women (held in Beijing in September 1995) was the main agenda item of the meeting. -Ed.



NEPAL in 2007

by

SHANKAR LIMBU



## NEPAL

Nepal is a pluralistic country with many castes and ethnicities, cultures, languages, religions and practices. The total population of Nepal is 22.7 million, and over one hundred castes/ethnic and religious groups, and ninety-two mother tongues were listed in the Census 2001. Indigenous nationalities (*Adivasi Janajati*) comprise 8.4 million, or 37.19% of the total population. However, indigenous peoples' organizations claim they have been under-represented in the census, and their actual populations comprise more than 50% of the total population. Fifty-nine indigenous nationalities have been legally recognized under the National Foundation for Development of Indigenous Nationalities (NFDIN) Act 2002.<sup>1</sup> Numerous indigenous communities are yet to be recognized. Nepali society is highly stratified, with the state imposed and protected Hindu caste system's self-declared upper castes (*Bahun* and *Chetri*) holding key positions in the state, and indigenous nationalities, Dalits and Terai caste groups experiencing subjugation, exclusion, discrimination, oppression and exploitation.

### Political status

Indigenous peoples have very limited access to the decision-making level of Nepalese society. The right to form a political party is legally prohibited for *Adivasi Janajati*. There is only limited or symbolic representation and participation of indigenous peoples at every decision-making level due to the long-standing preferential policy towards the Hindu (*Bahun* and *Chetri*, the so-called highest castes in the four-fold Hindu caste system). Official data indicates that 77% of judges are



from the Bahun and Chetri castes and only 1.7 % are from indigenous nationalities. Similarly, in the Council of Ministers (*Mantry Parisad*), Bahun and Chetri represent 62% and indigenous peoples represent only 12.5%, excluding Newar (9.2%). In the legislative assembly, 62% are from Bahun and Chetri and 13% are from indigenous nationalities, in the Civil Service Administration Bahun and Chetri represent 84.5% and indigenous people represent 2.3%, excluding Newar.<sup>2</sup>

### Participation of Adivasi Janajati in existing political parties

Indigenous nationalities' participation in the governing bodies of major political parties in the government is as follows: in the *Nepali Congress* (NCP) it is 16.7%; in the *Communist Party United Marxist and Leninist* (CPN UML) it is 21.1%; and in *Nepal Sadbhawana* it is 20.7%.<sup>3</sup> The figures show clearly that indigenous nationalities are under-represented while Hindu castes, on the other hand, are over-represented. It is important, too, to notice that these indigenous representatives are accountable to their political parties rather than their own indigenous peoples. They are not formally recognized as indigenous representatives, and thus they do not have a mandate to raise indigenous issues and problems. They are symbolic representatives that have failed to raise indigenous nationalities' concerns, so it is crystal clear

that there is no place in which indigenous peoples can raise their voice. The current political system has a policy of divide and rule over indigenous peoples and prohibits them from organising politically.

### **Economic status**

The major subsistence strategies of indigenous peoples are foraging, horticulture, pastoralism and agriculture, which all depend on lands and natural resources. Landlessness is an acute problem among indigenous nationalities. Census 2001 data on operational landholdings reveals that huge proportions (45.8 to 58.6%) of indigenous households are landless. The Land Reform Act of 1964, and the Land (Survey and Measurement) Act of 1963 abolished and displaced indigenous peoples from their traditional lands and natural resources (known as the Kipat System) and transferred them to Hindu people (*Bahun* and *Chetri*) without their consent or compensation. Indigenous nationalities who were displaced from their customary land are over-represented in poverty statistics, with 71% of *Limbu*, 56% of *Rai* and 59% of *Tamang* living below the poverty line.<sup>4</sup>

Similarly, the Pastoralist Land Nationalization Act of 1974 nationalized the grazing lands and allocated them to profit-oriented corporations and companies owned by Hindu (*Bahun* and *Chetri*), thereby displacing indigenous peoples from their highland pastures, and from their traditional occupation of pastoralism. Many of the displaced were compelled to become involved in illegal businesses such as drugs trafficking. Likewise, the provision of Community Forest User Groups in the Forest Act of 1993 displaced indigenous peoples from their traditional homelands and transferred ownership/ possession to community forest user groups, which are more often than not dominated by non-indigenous peoples, basically *Bahun* and *Chetri*. Section 59 of the Forest Act authorizes forest guards to shoot anyone found displacing trees and grass from a forest, and this prohibits indigenous peoples from carrying out their subsistence activities.

## **Educational status**

Indigenous peoples' right to education is not fully guaranteed by existing laws, including the Constitution. These laws are inconsistent with international standards. The right to education in one's mother tongue is crucial since only 31% of the country's indigenous people have fluency in the Nepali language.<sup>5</sup> On average, the literacy rate of 26 indigenous groups is 34.24%, and only up to 1.1% of indigenous nationalities have attained higher education (Bachelor's degree or above - except among the Newar (23.7%)), whereas the national average is 37.9%. It is thus clear that there are wide disparities in educational status between indigenous peoples and Hindu. The main reason for this disparity is due to the Nepali language being the language of education.

## **Religion**

Despite the resistance of indigenous nationalities, suppression and discrimination by non-Hindus still prevails. The religions of indigenous nationalities were not reported in the Census 2001. On the contrary, data is "manufactured" to show a majority of the Hindu religion.

## **Peoples' Movement II 2006 against King's regressive political move**

The eleven-year-long armed conflict led by the Maoist Party under the name of the "Peoples War" began in indigenous territories in Rolpa District on February 13, 1996. Indigenous peoples were highly involved in the conflict for several reasons: firstly, the conflict was focused on rural indigenous areas; secondly, Maoists identified one of the ills of Nepal as being oppression of indigenous nationalities.<sup>6</sup> Thirdly, they also raised the issue of indigenous peoples' right of self-determination. Fourthly, during the conflict the Maoist organization had a higher proportion of Janajati representation.<sup>7</sup> Indigenous peoples were massively

mobilised and faced irreparable damage, including killing, abduction, use as human shields, displacement, cultural violence, etc.<sup>8</sup>

In April 2006, a Seven Party alliance (SPA) and the Maoists organized the "Peoples' Agitation II" movement against the King's regressive regime. The king had dissolved parliament and the elected government on October 4, 2002, after which he appointed a new Prime Minister. On February 1, 2005 he ousted the prime minister and took absolute power. The main agenda of the Peoples' Agitation II was the formation of a republican state (abolition of the monarchy) and reconstruction of the state on the basis of proportional representation. Every sector of society, including indigenous peoples' organizations, participated in the people's agitation, which continued for 19 days and succeeded in demolishing the king's absolute regime. On 27 April 2006, the King stepped down from his absolute power and appointed the unanimous choice of the Seven Party Alliance, Nepali Congress Leader Grija Prasad Koirala, as Prime Minister. The following day, the reinstated House of Representatives convened for the first time since 2002.<sup>9</sup> The House of Representatives declared Nepal a secular country, and declared the restructuring of the nation as a national agenda item. It also unanimously passed a "Directive Resolution" requiring the government to ratify Convention No. 169 on August 28, 2006. Ironically, the government is delaying ratification of this Convention.

## Ceasefire

On 26 April, the Maoists changed their strategy and declared a ceasefire. They decided to join the peaceful movement (Peoples' Movement II) against the king's absolute power. The major impact of the ceasefire was the king's step down from absolute power and reinstatement of the parliament, which again paved the way for comprehensive agreements on a peace accord and arms management, signed between the government and the Maoists in November 2006. The Comprehensive Peace Agreement of November 2006 between government and Maoists made a commitment to address excluded groups', including indigenous peoples', issues and problems by ending the unitary political system through inclusion, democracy and restructuring of the nation.

## Interim Constitution

In June 2006, the government formed a committee to draft an Interim Constitution based on an agreement of the Seven Party Alliance and the Maoists. The Constitution failed to address indigenous issues and problems, despite the strong efforts of indigenous members, given their lesser number in the committee. When the topmost leaders of the Seven Party Alliance and the Maoists signed the Interim Constitution, some of the prominent provisions relating to indigenous peoples, such as the restructuring of the state based on the right to self-determination, were diluted. The Interim Constitution prohibits indigenous peoples from forming a political party (Art. 12.3, 141, 142.3); Art. 5 allows oral use of mother tongue languages in local administrations but translations into the national Nepali language for documentation are mandatory. This provision is problematic because it does not recognize the use of indigenous languages at all levels of public office, and thus does not prevent continued exclusion based on language. Article 17 of the Constitution limits mandatory mother tongue education to the primary level. The Interim Constitution perpetuates Hindu supremacy by declaring Hindu cultural symbols, such as the cow, crimson, the Coat of Arms, etc., national symbols (Art. 6 and 7).

Indigenous peoples have been organizing a peaceful movement to defy the continuation of Hindu domination and demand reform of the Constitution. The prime minister and other party leaders have verbally given a positive response but they have taken no action. The Parliament passed the Interim Constitution in January 2006, ignoring the proposal of indigenous members of parliament to reform it. The Prime Minister confessed that many national issues, including indigenous peoples' issues, needed to be addressed constitutionally but that this would be done through Constituent Assembly Elections in 2007.

Lowland people (*Madhesis*) and indigenous peoples are continuing their movement, organizing various Nepal *Bandhs* (strikes) to mount peaceful pressure to reform the Interim Constitution with provisions guaranteeing the restructuring of the nation around federalism and proportional representation based on ethnicity.

## Conclusion

The legal and policy framework based on preferential treatment of Hindu people (Bahun and Chetri) has been perpetuated since the state was formed. No substantial changes have occurred. The laws and policies discriminate, exclude and marginalize indigenous peoples, indigenous women, Madhesi lowlanders, women and Dalit, and create enormous disparities between these groups and the Hindu. This defective state policy has fostered structural violence and fuelled conflict.

To ensure social justice and establish everlasting peace, the state should be reconstructed and political power transferred to the excluded groups, including indigenous peoples, for example by applying a federal model. The identity of and historical injustices towards indigenous peoples should be recognized. Discriminatory and racial laws, policies and practices should be repealed. International laws that have been ratified by Nepal should be complied with, and inconsistent provisions of laws should be standardized. ILO Convention No. 169 should be ratified immediately according to the Directive Resolution of Parliament. □

## Notes and references

- 1 The 2002 National Foundation for Development of Indigenous Nationalities (NFDIN) Act defined Indigenous Nationalities (*Adiwasi Janajati*) as communities who perceive themselves as distinct groups (having a feeling of “we”) and have their own mother tongue, traditional culture, written and unwritten history, traditional homeland and geographical areas, and egalitarian social structures. The Foundation for Development of Indigenous Nationalities (*Janajati Uthhan Rastriya Pratistan*) is a focal governmental organization under the Ministry of Local Development with a mandate to make suggestions to the government for the development and upliftment of the indigenous peoples of Nepal. The NFDIN mainly works in the areas of preserving cultures, language, belief system, history. It also provides scholarships for education and works for the economic development of indigenous peoples.
- 2 **Newpane, Govinda. 2000:** *Nepalko jatiya prasna: Samajik Banot ra Sajhedariko Sambhanvana* (Nepal’s National Question: Social Composition and Possibilities of Accommodation). Kathmandu: Center for Development Studies. Lawati, Mahendra 2005. *Towards a Democratic Nepal. Inclusive Political Institutions for a Multicultural Society*. New Delhi: Sage Publications. London: Thousand Oaks.

- 3 **Institute of Integrated Development Studies (IIDS) 2000:** Adivasis/Janajatis in National Development. Major Issues, Constraints and Opportunities. Plan of Action Proposed for the Tenth Plan, 2000-2007. Kathmandu (unpublished report), p. 108.
- 4 Adapted from **Gurung, Harka 2006.** From Exclusion to Inclusion. Socio-Political Agenda for Nepal. Kathmandu: Social Inclusion Research Fund Kathmandu, page 19.
- 5 Gender, Caste and Ethnic Exclusion in Nepal 2006, supported by DFID and World Bank. Summary published and distributed by World Bank Nepal office, Drbar Marga, Kathmandu.
- 6 **Bhattarai, Baburam, 2003:** Political Economy of the People's War; in: Arjun Karki & David Seddom, *The People's War in Nepal: Left Perspectives*. Delhi: Adroit Publishers.
- 7 **Gurung, Harka 2005:** Social Exclusion and Maoist Insurgency, in: Sarah Webster and Om Gurung (ed.), *ILO Convention 169 and Peace Building in Nepal*. Kathmandu: Nepal Federation of Indigenous Nationalities (NEFIN) and International Labour Office Nepal, p.147.
- 8 Report communicated to Special Rapporteur by LAHURNIP in 2006.
- 9 *Report of the United Nations High Commissioner for Human Rights on the human rights situation and activities of her Office, including technical cooperation in Nepal A/61/374, 15 September 2006.*

NEPAL in 2008

by

SHANKAR LIMBU



## NEPAL

Nepal is a pluralistic country with many castes and ethnicities, cultures, languages, religions and practices. The total population of Nepal is 22.7 million, and over one hundred castes/ethnic and religious groups, and ninety-two mother tongues were listed in the Census 2001. Indigenous nationalities (*Adivasi Janajati*) comprise 8.4 million, or 37.19% of the total population. However, indigenous peoples' organizations claim they have been under-represented in the census, and their actual populations comprise more than 50% of the total population. Fifty-nine indigenous nationalities have been legally recognized under the National Foundation for Development of Indigenous Nationalities (NFDIN) Act 2002. The NFDIN Act defines Indigenous Nationalities (*Adivasi Janajati*) as communities who perceive themselves as distinct groups and have their own mother tongue, traditional culture, written and unwritten history, traditional homeland and geographical areas, and egalitarian social structures.<sup>1</sup> Numerous indigenous communities are yet to be recognized. Nepali society is highly stratified, with the state imposed and protected Hindu caste system's self-declared upper castes (*Bahun* and *Chetri*) holding key positions in the state, and indigenous nationalities, Dalits and Terai caste groups experiencing subjugation, exclusion, discrimination, oppression and exploitation.

### Indigenous movement in transitional stage

In 1996, the Nepal Maoist Communist Party began its so-called "People's War". The Maoist movement had no significant impact, however, until it began to raise indigenous issues, including the right to self-determination. A number of indigenous peoples then joined its

army, which eventually controlled 80% of the country's territory. The twelve-year-long armed conflict ended with a power-sharing pact between the Seven Party Alliance (SPA) and the Maoists on 22 November 2006.

The restructuring of the nation was identified as crucial for addressing the problems of all sectors of society in Nepal, including the indigenous peoples, and a commitment was made in the pact to hold elections for a Constituent Assembly. The SPA and the Maoists collectively urged all interested parties, including indigenous peoples, to join the Second People's Movement against the King's autocracy in order to restore democracy and reinstate Parliament, which was dissolved by the King in 2002. Indigenous peoples' organizations actively participated in the movement, demanding a secular state, the restructuring of the nation, the right to self-determination for indigenous peoples as well as other political, social and cultural rights. The nineteen-day-long movement forced the King to step down, and he then urged the agitating political parties to recommend the next Prime Minister on 5 April, 2007. This, however, did not pacify the movement and the unrest continued until the dissolved parliament was reinstated on 24 April, 2007. This was an historical turning point in Nepalese politics.

In the same month, the reinstated parliament announced that a new Constitution was to be drawn up by a Constituent Assembly. It declared Nepal a secular state, and this was later incorporated into the Interim Constitution. The Interim Constitution also – if only partially – addressed some of the issues raised by the indigenous peoples. Since the end of the armed conflict, various agreements, such as the Twelve Point Agreement of November 2006, the Eight Point Agreement of June 2007, the Comprehensive Agreement of November 2007, the Resolution of the SPA and Maoists Meeting of October 2007, reaffirmed the agenda of including excluded groups, including indigenous peoples, and abolishing the continuing racially discriminatory policies and practices. Ironically, the collaboration between political parties and indigenous peoples established during the movement was sabotaged when the Interim Constitution Drafting Committee (CDC) was formed without the participation of indigenous peoples. This was in clear disregard of the mandate of the people's movement and the ruling parties' own declared commitment. Later on, three new members



of the CDC were appointed, including three indigenous advocates. However, the appointments were made by political parties, and were not selected or nominated by the indigenous peoples themselves. The exclusion of indigenous peoples from the CDC was a clear message that indigenous peoples had to continue their struggle if they wanted to ensure that their rights were recognized in the Nepal of the future. As the indigenous advocates Shanti Kumari Rai and Kumar Yonjon stated, indigenous rights were largely ignored during the Interim Constitution-making process due to the overwhelming representation of the dominant Hindu groups.

### The Interim Constitution

Parliament passed the Interim Constitution in November 2007. It was highly criticized by legal experts, civil society, the *Madhesi* (Hindu minority in the Terai region bordering India), the *Dalit* (Hindu consider them as “untouchables”) and indigenous peoples. The fundamental issue of free and full proportional representation in the electoral system for the Constituent Assembly, based on ethnicity, language and region, was totally disregarded. Indigenous peoples thus felt compelled to respond with a peaceful demonstration.

Both Article 63 of the Interim Constitution and Section 58 of the Constituent Assembly Election Act 2007 fail to provide the much-desired free representation of indigenous peoples in the Constituent Assembly but grant powers to political parties to select candidates, even for the proportional representation seats. These are supposed to be elected or selected by indigenous peoples which, however, is not going to happen under the present status quo. This perpetuates the divide-and-rule policy over indigenous peoples who, for their emancipation, depend on political parties that are overwhelmingly controlled by conservative forces of the dominant groups.

Furthermore, the discriminatory policy on language, culture and religion of the previous Constitution is, although cloaked in new wording, perpetuated in the new Constitution. Rights to land and natural resources are not recognized even though Article 35 clearly stipulates that, in mobilizing the natural resources and heritage, priority should be given to the local communities.

In protest at the failure of the drafters of the Interim Constitution to address their concerns, indigenous peoples gathered in Mandala, Kathmandu, on January 17, 2007 and burned a copy of the Interim Constitution. They subsequently intensified their peaceful movement in various parts of the country, organized by the Nepal Federation of Indigenous Nationalities (NEFIN), demanding free representation in the Constituent Assembly, the collective right of communities to elect constitution-makers through a proportional electoral system, Constituent Assembly elections, federalism, regional autonomy based on ethnic identity and the guarantee of human rights and fundamental freedoms. They demanded the immediate amendment of the Interim Constitution. So far, the Interim Constitution has been amended three times but has not heeded the demands of the indigenous peoples.

### **The Constituent Assembly**

In light of the above, the drafting of the new Constitution will be critical for the future of indigenous peoples. Elections for the Constituent Assembly have been postponed twice and the new date announced by the government is now 10 April 2008. A number of non-indigenous

political organizations representing minorities, such as the Tarai Loktantrik Party, have already made it clear that, under the current conditions, they will not take part in the Constituent Assembly elections. Similarly, indigenous political organizations such as the Federal Democratic National Forum, the Federal Limbuwan Council and Tambasaling, Khumbuwan Mukti Morcha have called strikes demanding the free participation of indigenous peoples in the Constituent Assembly, and political assurances of autonomy based on region, language, ethnicity and history.

However, the Seven Party Alliance, which is in government and likely to obtain a majority in the Constituent Assembly, has responded negatively to these demands, labeling them an avenue for the disintegration of the nation. The Prime Minister publicly denied the right to self-determination of indigenous peoples or other groups. Similarly, the Secretary General of the Communist Party UML (one of the largest parties in the country) also expressed same view in response to the Madhesi minority's demand for the right to self-determination.

Another major concern of the indigenous organizations is that Article 67 of the Constitution and Section 3 (d) of the Party Renunciation Act 1998 prohibit Members of Parliament from taking up issues in Parliament which are not authorized by their party. Decision-making within the Constituent Assembly is thus undemocratic since – in the name of consensus building – decision-making power ultimately rests with the political parties. If consensus cannot be achieved, a two-thirds majority is necessary for a decision to be taken. Since indigenous representatives in the Constituent Assembly are not expected to hold more than 20% of the 601 seats, it is not likely that any of their key issues of concern will find their way into the new Constitution.

## **Restructuring of the nation**

Significantly, the historical injustices suffered by excluded groups, including indigenous peoples, are recognized and the need to restructure the nation is stipulated in the Interim Constitution. Article 33 declares the Nepalese state to be democratic and federal, and Article 138 states that all discrimination based on class, ethnicity, language, gen-

der, culture, religion and sector is to be prohibited. These provisions have thus far not been translated into practice, however, and all voices of concern were disregarded. For example, the Lawyers' Association for Human Rights of Indigenous Peoples (LAHURNIP) filed a complaint to the Special Parliamentary Hearing Committee against the government's recent appointment of ambassadors mostly from the dominant groups, thus violating Article 33(d)1, which clearly states that marginalized groups must be included in the appointment of such positions. However, no action was taken.

Nepal's indigenous peoples continue their struggle for self-determination. The historical movement for the restoration of autonomy of the Limbu people, or the movements for autonomy of Khumbuwan, Tamsaling, Newa Mandal, Tharuwan or Tamuwan, for example, are encouraged by and determined to seize the historical opportunity offered by the drawing up of a new Constitution and the restructuring of the state.

### **Positive developments: ratification of ILO Convention 169**

Over the past months, the indigenous movement has undoubtedly also made considerable achievements. In general, indigenous issues have made it onto the national political agenda, and this is reflected in various provisions of the Interim Constitution. Most significantly, Convention No. 169 was ratified by Parliament on August 22 and formally submitted to the ILO on September 5, 2007 by the Minister for Local Development, Dev P. Gurung. ILO Convention 169 is so far the only legally binding international instrument focusing on the rights of indigenous peoples, and Nepal is the first Asian country to have ratified it.

### **Bitter experiences in the indigenous movement**

Ironically, at this crucial juncture in the history of Nepal, the indigenous movement has been weakened by the political maneuvers of the United Marxist and Leninist Party (UML) and the Maoist Party. For

instance, the indigenous agenda of full proportional representation and right of self-determination was dropped in the Twenty Point Agreement that was made between the government and the Nepal Federation of Indigenous Nationalities (NEFIN) on August 6, 2007. Furthermore, indigenous leaders in Parliament and the government are not taking a strong stand on indigenous peoples' issues, which creates conflict among indigenous peoples and severely weakens the movement. The main reasons for this are the influence of the political parties they belong to, personal interests and the lack of conceptual clarity and accountability within the leaderships. □

## Notes

- 1 The Foundation for Development of Indigenous Nationalities (*Janaajati Utthan Rastriya Pratistan*) is a focal governmental organization under the Ministry of Local Development with a mandate to make suggestions to the government for the improvement of the situation of the indigenous peoples of Nepal. The NF-DIN mainly works in the areas of preserving cultures, language, belief system and history. It also provides scholarships for education and works for the economic development of indigenous peoples.

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NEPAL in 2009

by

MUKTA S. TAMANG



## NEPAL

Nepal is a country of immense cultural diversity. Its total population is 22.7 million, and over one hundred castes/ethnic and religious groups, and ninety-two mother tongues were listed in the 2001 Census. Indigenous nationalities (*Adivasi Janajati*) make up 8.4 million, or 37.19% of the total population. However, indigenous peoples' organizations claim they have been under-represented in the census, and that their actual populations comprise more than 50% of the total population. Fifty-nine indigenous nationalities have been legally recognized under the National Foundation for Development of Indigenous Nationalities (NFDIN) Act 2001. The NFDIN Act defines indigenous nationalities (*Adivasi Janajati*) as communities who perceive themselves to be distinct groups and who have their own mother tongue, traditional culture, written and unwritten history, traditional homeland and geographical areas, plus egalitarian social structures.<sup>1</sup> There are a number of indigenous communities yet to be recognized. Nepali society is highly stratified, with the state-imposed and protected Hindu caste system's upper castes (*Bahun* and *Chhetri*) holding key positions in the state, and indigenous nationalities, Dalits and Tarai caste groups experiencing subjugation, exclusion, discrimination, oppression and exploitation.

### Political transformation

The past year has been full of transformatory events for the Nepali state. Political developments, in which the indigenous movement has played a major part, have effectively led the country towards a democratic transition. The country, for example, is moving from autoc-

racism to democracy, from a Hindu kingdom to a secular republic, and from a unitary and centralized structure to a federal design. The concept of "inclusion", promoted by the indigenous movement, served as a key word in the discourse in terms of breaking the existing deep-rooted caste/ethnicity-based structural inequality.

The indigenous peoples' movement has successfully drawn the attention of the state and various other stakeholders over the past few years to equitable resource distribution and protection of indigenous peoples' rights, as enshrined in national and international instruments. The Three-Year Interim Plan 2008-2010 (TYIP) announced by the National Planning Commission, for example, set specific targets and allocated a budget for the development of indigenous peoples. The development regime in general, including the United Nations and donor agencies, has now adopted "social inclusion" as one of its priorities. The development discourse itself has widened to incorporate identity and cultural rights. The Government of Nepal's ratification of ILO Convention 169 on Indigenous and Tribal Peoples in 2007, as well as its support of the UN General Assembly's adoption of the UN Declaration on the Rights of Indigenous Peoples, was applauded by the indigenous peoples and brought great hope for them.

The following key events capture the major political developments, the responses from the state and international development community and the trends within the indigenous movement itself.

- Agreement between the Janajati party's Federal Democratic National Forum (FDNF) and the Government of Nepal for recognition of an ethnically-based federal system in the new Constitution. March 2008
- Constituent Assembly Election, 218 CA members elected from indigenous communities (First Past the Polls Election 82, Proportional Representation system 120 and Nominated 16). April 2008
- Fifth Amendment to the Interim Constitution, declaring Nepal a "republic" by abolishing the monarchy. May 2008
- The International Day of the World's Indigenous People celebrated on 9 August 2008 with a demand for a federal design that



ensures indigenous peoples' autonomy and right to self-determination.

- ILO Convention 169, ratified by the Government of Nepal, came into effect. Prime Minister Puspa Kamal Dahal Prachanda expressed his commitment to implementing ILO Convention 169. National Action Plan for Implementation of ILO 169 under preparation. September 2008
- UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Professor James Anaya, visited Nepal. November - December 2008
- The Nepal Foundation for Indigenous Nationalities (NFDIN) and Ministry of Local Development initiated a process of addressing demands for recognizing separate identity for indigenous groups. December 2008
- The Janajati Empowerment Project (JEP), funded by DFID, successfully concluded the formation of 57 District Coordination Councils and 2000 Village Coordination Councils. December 2008
- Formation of informal indigenous Caucus by 35 CA members for promoting indigenous rights in CA. December 2008

As the above time line shows, there have been some important advances in policy commitments over this period, along with the active mobilization of indigenous organizations around their rights.

## **Consolidation and expansion of the indigenous movement**

Indigenous organizations have increased in both number and quality. The organizational growth, on one hand, shows the increased intensity of the activities being undertaken by these entities while, on the other, has also increased the cleavages and tensions within the movement.

The national representative organization of indigenous peoples' organizations (IPOs) – the Nepal Federation of Indigenous Nationalities (NEFIN) - has expanded its organizational wings on a number of levels. For example, from a point when NEFIN had a limited number of organizational linkages at grassroots level three years ago, it had by the end of 2008 been able to form indigenous Village Coordination Councils within 2000 Village Development Committees (also known as VDCs – the local-level administrative units of the state). This outreach was primarily achieved by forming and activating Indigenous Peoples' District Coordination Councils (IP-DCC). Currently, NEFIN has IP-DCCs in 57 districts, coordinating the activities of different indigenous peoples' organizations (IPOs) and working collectively to influence decision-making at local level with regard to state resource distribution. Similarly, out of 59 indigenous groups enlisted, only 48 had their organization registered in 2005. There are now 54 IPOs formed and affiliated to NEFIN as Federal Council members.<sup>2</sup>

Besides expanding its own organs at different levels, NEFIN has itself started to expand to include various indigenous civil society groups, such as lawyers' associations, NGOs, students' organizations, youth associations, indigenous environmental groups and journalists' associations, as sister organizations. This coalition has proved helpful in influencing the political parties and relevant authorities, as well as developing a broad-based process of collective action.

Along with the organizational growth of NEFIN, indigenous women have also formed various fronts and are actively engaged in raising issues of indigenous women's rights. The National Indigenous Women

Federation (NIWF) is very active and has a broad-based set-up, with representation in 20 of the country's districts.<sup>3</sup> The National Network of Indigenous Women (NNIW) is another high-profile indigenous women's organization, and its current president is also serving as a CA member.<sup>4</sup> There are a number of other indigenous women's organizations active either within their communities or on specific issues.

Indigenous journalists have played an important role in Nepal's democratic process in recent years. A study of the ethnic media counted around 400 publications, although most are sporadic papers/magazines published by different indigenous groups. Indigenous journalists are organized in the Association of Nepalese Indigenous Nationalities Journalists (ANIJ), which currently has 500 members. The organization has branches in 29 districts producing and disseminating information on indigenous peoples' rights.<sup>5</sup>

There are two indigenous lawyers' associations currently operating. The Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) has taken international human rights instruments, to which Nepal is a party, as key instruments in their advocacy work and in their legal battle to protect the rights of indigenous peoples. Among these international instruments are ILO Convention 169 on Indigenous and Tribal Peoples, the UN Declaration on the Rights of Indigenous Peoples, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESC). Over the last year, LAHURNIP has focused on reviewing national laws,<sup>6</sup> including the Interim Constitution, in order to indicate areas in which domestic law runs counter to indigenous peoples' rights and is not in line with international human rights law.

The NGO Federation of Nepalese Indigenous Nationalities (NGO-FONIN), established with 11 NGOs in 2003, was able to bring together 53 affiliated organizations by the end of 2008. It was also able to set up district networks in 17 districts.

As the future federal units are gradually decided by the different political parties, the indigenous groups with small populations have started to spontaneously come together to make sure that their rights are respected. For example, minority indigenous groups such as the Hayu, Thami, Surel, Jirel and Yolmo, which fall within the state/prov-

ince proposed as Tamsaling, have come together to form an alliance to ensure their rights in the future federal Nepal. Similar trends can also be seen in regions such as Limbuwan, Khumbuwan and others so far named by the political parties.

## **Political parties and indigenous peoples**

Over the last half-century, indigenous peoples in Nepal have participated in different political parties, with different experiences. The indigenous leaders are frustrated with the mainstream political parties in terms of their exclusionary cultures, and see a need for their own strong political force. They are not, however, currently in a position to organize such a force. Many therefore believe that they should continue to work through the different political parties.

For the Constitutional Assembly (CA) elections in 2008, indigenous political leaders did not choose to leave their mother parties to form their own political parties. Apart from the small Janajati (indigenous) parties, the majority of indigenous leaders contested the election from within established political parties. Overall, of the 3,946 candidates who stood in the CA elections, approximately 26% were indigenous people from 40 different political parties. Only six of the participating parties were exclusively Janajati parties. Interestingly, none of them won a seat in their constituencies in the first-past-the-post election. The Communist Party of Nepal Maoist (CPN Maoist) had the highest number of indigenous candidates with 72, out of which 51 or 70% of those who stood won the direct election. This number was much higher than within the Nepali Congress or the Communist Party of Nepal United Marxist-Leninist (CPN-UML), in which only 11 and 12 indigenous candidates won the election respectively.

In the CA elections, 218 out of total of 601 members elected were indigenous. This is a very significant change in the political landscape of the country, as the indigenous representation in the CA is now almost proportionate to the indigenous population of 37.2%. In the last elections in 1999, the indigenous groups gained only 24% while Bahun and Chhetris constituted 65% of the members elected. The increased number of indigenous representatives was celebrated, and the post-

election period was marked by satisfaction and hope among indigenous activists. But, as time passes, the indigenous activists are gradually becoming skeptical of their effectiveness and ability to contribute to the Janajati cause within the CA process. This is primarily due to their role within their parties. The majority of the indigenous CA members do not have the necessary educational background and operate at the lower echelons of the party hierarchy; they are therefore able to make little impact on the party's decisions. In addition, the central committee composition of each of the major parties remains as exclusive as usual. For example, a recent report showed that indigenous peoples' representation on the central committee of Nepali Congress and CPN (UML) was as low as 11%. CPN (Maoist) has also not done much in this regard, with 17% of indigenous representatives on its central committee.<sup>7</sup> Seen in this light, increased indigenous representation in the current CA is merely a quick fix in response to popular pressure and not a systematic attempt at real inclusion, as promised in the Interim Constitution. Radical voices within the indigenous movement argue that the current indigenous CA members do not represent the indigenous peoples as they are accountable to their political parties and respective political ideologies rather than to their own communities. They argue that indigenous peoples should be granted the right to represent themselves "through representatives chosen by themselves in accordance with their own procedures" as enshrined in Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples.<sup>8</sup>

As the debate on federal structure deepens, the indigenous peoples are expecting the political parties to remain true to their promises made in the election manifestos, in which each of the parties stated that "history, ethnicity and language and region" would be taken as a basis for designing the federal system. CPN (Maoist) even provided a map of the proposed federal units in its Election Commitment Paper, based on indigenous territories. Contrary to the hopes generated by the electoral promises, there is a growing feeling among Janajati activists that issues of ethnic equality and linguistic rights have gradually been sidelined. Indigenous leaders within the Maoist and other political parties are publicly warning that there may be a rebellion within the parties if issues related to indigenous peoples' rights are ignored in the forthcoming constitution. One manifestation of such growing dis-

content, and also a proactive initiative on the part of indigenous leaders, can be seen in the formation of an informal caucus within the Constituent Assembly.

While all political parties have formed "Janajati fronts/organizations" to deal with indigenous issues, they are not able to effectively channel Janajati voices within their parties. The Janajati wings of the political parties have instead become, as the Janajati activists complain, tools for intervening in Janajati action. Party interventions are generally aimed at co-opting indigenous leaders and generally have a damaging impact on Janajati movements.

The failure of the political parties to address ethnic issues has often resulted in the rise of more radical forms of ethnic organization. A case in point is the activities of the Federal Democratic National Forum (FDNF) – a political party which has two seats in the CA, with affiliated state councils in Limbuwan, Khumbuwan, Tamang-Saling and Tharuhat (indigenous regions of the country). FDNF has organized to encourage the general public to take indigenous issues seriously in the different regions of the country. In the mainstream party fashion of forming para-military youth-wings, FDNF has also formed its own youth groups, called "Limbuwan Volunteers" or "Tharu Volunteers" as wings for possible armed struggle, if needed.

As can be seen, the possibility of violence in Nepali politics cannot be ruled out given that the state and relevant authorities continue to fail to respond to the legitimate demands of ethnic groups in coherent and logical ways. NEFIN, its affiliated indigenous organizations and its district and village chapters are making a conscious effort to remain separate from the groups who propose violence as a way of achieving their goals. This is one of the challenges facing civil organizations such as NEFIN when they wish to peacefully pursue their agenda while also needing to influence and work with political groups such as FDNF, CPN-Maoist and others, which see armed struggle as not only a possible but a necessary means to an end.

Ongoing Tharu and other Janajati identity movements in the Tarai region reflect another kind of challenge to the civil movements of NEFIN and indigenous organisations when dealing with Madhesi political forces. Madhesis are groups of people who live in the southern plains of Nepal known as Tarai, adjoining the Indian border, and who

have been discriminated against by the Hill Brahmin/Chhetri-centric state policies of the past. Madhesi society is characterized by the Hindu caste system, with hierarchical arrangements. Indigenous societies in Nepal Tarai distinguish themselves from Madhesi society by their egalitarian social character with no caste system, as well as their relationship to the land. On the one hand, NEFIN and other indigenous organizations are working with the Madhesis in a coalition to end exclusion and discrimination, and secure a fairer distribution of resources. On the other, they have had to defend themselves from a tendency towards encroachment on the part of the Madhesis. When Madhesi political parties started to take the position of “*ek madhes, ek pradesh*” or “one Madhes, one province”, Janajatis considered this an infringement of their rights and opposed it. To them, it was a hegemonic approach adopted by Madhesi political parties mostly dominated by Tarai high-caste elites, aimed at assimilating Tarai indigenous groups within the Madhesi category.

### **Indigenous engagement in the constitution-drafting process**

During his official visit in November - December 2008, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, emphasized the need to develop additional mechanisms within the constitution-making process in order to consult directly with indigenous peoples through their own chosen representatives and in accordance with their own methods of decision-making, as required by the international standards to which Nepal has subscribed.

Through its own method of civil activism, NEFIN is currently preparing collective suggestions for the Constituent Assembly (CA). For this, NEFIN's leadership has called on indigenous intellectuals, lawyers, academics, planners and educators to work in different thematic committees parallel to the sub-committees of the CA. These committees are in the process of developing suggestions on given themes which will then be discussed and adopted by NEFIN's Federal Council. Once the Federal Council has endorsed the proposals, they will be taken up for debate within the respective indigenous organisations at different levels. This process was thought crucial for producing a col-

racism to democracy, from a Hindu kingdom to a secular republic, and from a unitary and centralized structure to a federal design. The concept of "inclusion", promoted by the indigenous movement, served as a key word in the discourse in terms of breaking the existing deep-rooted caste/ethnicity-based structural inequality.

The indigenous peoples' movement has successfully drawn the attention of the state and various other stakeholders over the past few years to equitable resource distribution and protection of indigenous peoples' rights, as enshrined in national and international instruments. The Three-Year Interim Plan 2008-2010 (TYIP) announced by the National Planning Commission, for example, set specific targets and allocated a budget for the development of indigenous peoples. The development regime in general, including the United Nations and donor agencies, has now adopted "social inclusion" as one of its priorities. The development discourse itself has widened to incorporate identity and cultural rights. The Government of Nepal's ratification of ILO Convention 169 on Indigenous and Tribal Peoples in 2007, as well as its support of the UN General Assembly's adoption of the UN Declaration on the Rights of Indigenous Peoples, was applauded by the indigenous peoples and brought great hope for them.

The following key events capture the major political developments, the responses from the state and international development community and the trends within the indigenous movement itself.

- Agreement between the Janajati party's Federal Democratic National Forum (FDNF) and the Government of Nepal for recognition of an ethnically-based federal system in the new Constitution. March 2008
- Constituent Assembly Election, 218 CA members elected from indigenous communities (First Past the Polls Election 82, Proportional Representation system 120 and Nominated 16). April 2008
- Fifth Amendment to the Interim Constitution, declaring Nepal a "republic" by abolishing the monarchy. May 2008
- The International Day of the World's Indigenous People celebrated on 9 August 2008 with a demand for a federal design that



ensures indigenous peoples' autonomy and right to self-determination.

- ILO Convention 169, ratified by the Government of Nepal, came into effect. Prime Minister Puspa Kamal Dahal Prachanda expressed his commitment to implementing ILO Convention 169. National Action Plan for Implementation of ILO 169 under preparation. September 2008
- UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Professor James Anaya, visited Nepal. November - December 2008
- The Nepal Foundation for Indigenous Nationalities (NFDIN) and Ministry of Local Development initiated a process of addressing demands for recognizing separate identity for indigenous groups. December 2008
- The Janajati Empowerment Project (JEP), funded by DFID, successfully concluded the formation of 57 District Coordination Councils and 2000 Village Coordination Councils. December 2008
- Formation of informal indigenous Caucus by 35 CA members for promoting indigenous rights in CA. December 2008

was that Prime Minister Pushpa Kamal Dahal Prachanda made a public commitment to implementing the convention and to making Nepal an exemplary case for promoting indigenous rights in the Asian region.<sup>11</sup>

In line with spirit of the Interim Constitution, the National Planning Commission has also taken steps to include the issue of indigenous people's development within its consideration. The Three-Year Interim Plan (2008-2010), for example, set a target to increase the Human Development Index (HDI) by 10% for indigenous peoples, for which around 15 billion Rupees (USD 188 million) was allocated.

The indigenous movement in Nepal has, over the past few years, established itself as a critical force that has taken an active part in the ongoing democratization and peace process. With an agenda promoting social inclusion, secularism, linguistic rights, equality and the rule of law, the indigenous movement played a significant role in the process leading up to the Constituent Assembly (CA) elections in April 2008. The election of 218 members from indigenous communities was a significant achievement. The country is currently in the process of crafting a new Constitution. As this process takes its course, the indigenous movement is continuing to fight for the space in which to contribute to the new statute as well as draw attention to the inadequacies of policy measures undertaken and the weak implementation of promises made by the state of Nepal with regard to their inclusion. □

## Notes

- 1 The Foundation for Development of Indigenous Nationalities (*Adivasi Janajati Utthan Rastriya Pratistan*) is a focal governmental organization under the Ministry of Local Development with a mandate to make suggestions to the government for the improvement of the situation of the indigenous peoples of Nepal. The NFDIN mainly works in the areas of preserving cultures, languages, belief systems and history. It also provides scholarships for education and works for the economic development of indigenous peoples.
- 2 NEFIN: <http://www.nefin.org.np>.
- 3 NIWF-affiliated organizations include: 1) Nepal Magar Women's Association, 2) Sunuwar Women's Association, 3) Nepal Kirant (Rai) Women's Association, 4) Nepal Tamang Women's Association, 5) Thakali Women's Association, 6) Kumal Women Society Reform Committee, 7) Dolpo Women's Association, 8) Danuwar Women's Community Reform Union, 9) Nepal Sherpa Women's Fed-

- eration, 10) Nepal Pahari Women's Development Federation, 11) Meche Women Upliftment Federation, 12) Rajbanshi Women's Society, 13) Kirat Yaakthung Chumlung, 14) Nepal Majhi Mahila Utthaan Sangh, 15) Nepal Bhasa Misha Khala, 16) Nepal Tamu Mahila Sangh, 17) Tharu Mahila Jaagan Kendra, 18) Lhomi Mahila Kalyan Manch and 19) Walung Mahila Sangh. <http://www.niwf.org.np/>
- 4 Personal communication with Krishna Kumari Waiba, General Secretary of NNIW. See also <<http://www.nniw.org.np>>
  - 5 Gurung, C.B. (2007). An assessment and analysis of ethnic media in Nepal. Kathmandu.
  - 6 Limbu, S. (2005). Comparative study of prevailing national laws concerning Indigenous Nationalities in Nepal and ILO Convention No. 169 on Indigenous and Tribal Peoples. In ILO Convention No. 169 and Peace Building in Nepal, S. Webster and O. Gurung, eds. ILO/NEFIN: Kathmandu.
  - 7 Bhurtel, B.P. (2008). *Rājnitik Dalharumā Samābesikaranko Abasthā*, (Status of inclusion in Political Parties). In *Samābeshikaran: Rājnitik Dal, Rājya ra Medā*. [Inclusion: Political parties, State and Media]. A. Ajit ed. Martin Chautari: Kathmandu.
  - 8 Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples states: "Indigenous peoples have the right 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."
  - 9 Article 46 of UNDRIP states "Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States."
  - 10 Bhattachan, K. (2008). *Sanghiyeta, Atma nirnayako Adhikar ra Adivasi Janajatiya Swayetta* [Federalism, right to self-determination and indigenous peoples' autonomy]. NFDIN: Kathmandu.
  - 11 See Prime Minister's speech of 13 September 2008. Adivasi Janajati Bulletin. Issue 8, December 2008. NFDIN: Kathmandu.

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NEPAL in 2010

by

PASANG DOLMA SHERPA



## NEPAL

The total population of Nepal is 22.7 million, and over 100 castes/ethnic and religious groups, and 92 mother tongues were listed in the 2001 census. Indigenous nationalities (*Adivasi Janajati*) officially comprise 8.4 million, or 37.19% of the total population, while indigenous peoples' organizations claim that indigenous nationalities comprise more than 50% of the total population. Even though they constitute a significant part of the population, throughout the history of Nepal, indigenous peoples have been marginalized in terms of language, culture, and political and economic opportunities.

The National Foundation for Development of Indigenous Nationalities (NFDIN) Act of 2002 defines indigenous peoples as "a tribe or community having its own language, traditional rites and customs, distinct cultural identity and social structure as well as a written or unwritten history of their own."<sup>1</sup> Only 59 indigenous nationalities have so far been legally recognized under the NFDIN Act. However, the list is currently being reviewed by a high-level task force set up by the government.<sup>2</sup> The interim constitution of Nepal from 2007 focuses on promoting cultural diversity and talks about enhancing the skills, knowledge and rights of indigenous peoples. The indigenous peoples of Nepal are waiting to see how these intentions will be made concrete in the new constitution, which is in the process of being promulgated. In 2007, the Government of Nepal also ratified ILO Convention 169 on Indigenous and Tribal Peoples and voted in favour of adopting the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) in the UN General Assembly. However, the implementation of ILO Convention 169 is still wanting, and it is yet to be seen how the new constitution will bring national laws into line with the provisions of the ILO Convention and UNDRIP.



### Political transformation and the role of the indigenous movement

Indigenous peoples' movements have been able to put pressure on the Government of Nepal and activate international instruments to support their struggle on issues such as their language, culture, resources, traditions and skills. These developments have been noted in the interim constitution of Nepal (2007) and in the government's ratification of ILO Convention 169, as well as in its endorsement of the UN Declaration on the Rights of Indigenous Peoples. In 2009, the Nepal Federation of Indigenous Nationalities (NEFIN)<sup>3</sup> and the National Foundation for Development of Indigenous Nationalities (NFDIN) submitted a joint memorandum to the government asking that those international commitments be honoured in the new constitution. They also stated that they would not accept the prepared Action Plan for the implementation of ILO 169 unless it took into account a phase-wise implementation and revision of the plan based on the international treaties, with full endorsement by the new constitution.

There are considerable worries and concerns among the indigenous peoples regarding their proportional or adequate representation in the legislative bodies. In the Constituent Assembly poll held in April 2008, none of the indigenous parties won seats under the first-past-the-post system (direct election of constituencies). Only two such parties – the

Federal Democratic National Forum and the Nepal Party - managed to win one seat each under the proportional representation system.<sup>4</sup> However, owing to pressure from the indigenous movements - mainly NEFIN - that had signed a 21-point agreement with the government on the eve of the election, national political parties felt obliged to give maximum space to indigenous peoples. As a result, in a House of 601, around 36.8% of the seats are occupied by indigenous peoples. There are still questions being raised, however, as to whether these representatives' first loyalty and commitment will be to indigenous peoples' rights or to the parties they belong to. After all, they do not represent indigenous peoples' parties or indigenous voters exclusively. The prevailing system of the "party whip", which obliges party members in Parliament or in the Constituent Assembly to follow the decisions of the party, gives credence to this fear. Many believe, however, that the presence of indigenous peoples in the Constituent Assembly, though not perfect, is better than nothing. The indigenous Constituent Assembly members, especially those elected via proportional representation through each party during the Constituent Assembly elections, are more sensitive to indigenous peoples' rights than those elected directly or under the first-past-the-post system as direct representatives of the political parties.

The process of producing the new constitution and the aspirations of the indigenous peoples are interlinked. The indigenous peoples are determined to ensure their rights in the new constitution and are moving systematically in that direction. Confusion and uncertainty over the constitution-making process remains, however, and it will not be without consequences for the indigenous peoples' movements if it is not delivered by the mandatory May 28, 2010 deadline. The Indigenous Nationalities Broad Front, known as the "Mega Front" has been formed as a pressure group to ensure that the *Adivasi Janjatis'* linguistic, cultural and political rights, including the right to self-determination, are ensured in the new constitution. It is also calling for the establishment of a federal autonomous state.

### **Indigenous peoples and the Constituent Assembly**

The Constituent Assembly (CA) has 36.8% indigenous members. Subhash Chandra Nemwang,<sup>5</sup> who is the chairperson of the Constituent

Assembly, is one of them. Nemwang states that: "The Constituent Assembly represents most political groups in Nepal. As the first inclusive constituent assembly that represents Nepal's multi-religion, multilingual and multiethnic communities, it is a mosaic of Nepali diversity and pluralism. It is the house of peasants, the house of industrialists and the house of marginalized people". There is no doubt as to the inclusive nature of CA members. The issue of how to ensure the fundamental rights and self-determination secured by the interim constitution, international treaties and conventions will, however, depend on the role played by the indigenous CA members in their respective thematic committees.

Altogether, 11 thematic committees have been formed to prepare reports on different core issues of the new constitution. The reports of the committees are to be debated first in the Constitution Committee, and then by the Constituent Assembly, and adopted preferably by consensus but under no circumstances by less than a two-thirds majority. The provisions thus adopted will form part of the new constitution which, according to a joint commitment from the political parties, will be progressive, inclusive and democratic. Most thematic committees have already submitted their reports but the one on state restructuring and another on the model of governance - whether it is going to be a parliamentary or presidential form or a different model of government - are outstanding as these are major divisive issues.

Indigenous CA members have been demanding that the thematic committee's report on indigenous peoples' rights should be incorporated by all thematic groups, but they are worried that this demand may not be included in the final draft. So far, the outcome of the thematic groups has been in favour of the right to self-determination, ethnic autonomy, a secular state, proportional representation and primary rights over natural resources but these reports have not yet been made public. This perhaps shows a fear that the recommendations could be manipulated against the aspirations of the indigenous peoples; for example, if the constituent committee members representing different political parties were not in favour of passing them through the Constituent Assembly.

## The Indigenous Peoples' Caucus in the Constituent Assembly

The Indigenous Peoples' Caucus, headed by NEFIN, consists of 176 members, of which 32 are secretariat members. It is a purely informal caucus with members drawn from different ideologies, coming together to work on indigenous peoples' issues and to develop areas of common interest. Among other things, the Caucus studies and analyzes the reports of the 11 thematic committees of the Constituent Assembly on issues related to indigenous peoples. There are doubts, however, as to whether the members are able to cut across party lines on issues of indigenous peoples' rights. One of the indigenous CA members put it as follows:

*Members are less focused and oriented, especially the ones who represent the Congress and the UML parties. Congress party is more feudal type and pro-personal and individual freedom and least bothered about collective rights of the indigenous peoples. The Communist Party focuses more on the international society (jati) and takes up more vociferously the issues of the indigenous peoples.<sup>6</sup>*

## State restructuring process

Restructuring of the state has always been a divisive, as well as a priority, issue in Nepal's current politics and constitution making. The Constituent Assembly, as well as the political parties, have not only failed to get closer to an understanding of the modality of state restructuring and the type of federalism that Nepal is to adopt, but there are also major differences within most of the political parties.

The level of confusion can be seen in the fact that Dr. Ganesh Gurung,<sup>7</sup> who was appointed head of the proposed State Restructuring Council, resigned because no terms of reference had been formulated by the government for the council's role and responsibilities. Moreover, the government also failed to nominate other members to the proposed council. The Thematic Committee on State Restructuring of the Constituent Assembly has submitted a proposal to form 14 states (provinces) in Nepal - six of them on the basis of ethnic groups and nationalities and

the rest on the basis of natural borders such as rivers and mountains. The proposal, however, divides the political spectrum and no decision has yet been taken on this issue in the Constituent Assembly. ○

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NEPAL in 2011

by

KRISHNA B. BHATTACHAN



## NEPAL

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*Pasang Dolma Sherpa is a member of the High Level Task Force and lecturer in sociology at the Department of Sociology, Tribhuvan University, Nepal.*

NEPAL in 2012

by

KRISHNA B. BHATTACHAN



## NEPAL

The indigenous nationalities (*Adivasi Janajati*) of Nepal officially comprise 8.4 million people, or 37.19% of the total population, although indigenous peoples' organizations claim a larger figure of more than 50%. 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.

The 2001 census listed the population as belonging to 50 Hindu castes, 43 indigenous peoples, 2 Muslim groups, 4 religious groups and 3 unidentified groups. The census, however, failed to provide data on 16 indigenous nationalities as the Nepal government has legally recognized 59 indigenous nationalities under the National Foundation for Development of Indigenous Nationalities (NFDIN) Act of 2002. Controversial recommendations for a revision of the list have recently been made.

The 2007 Interim Constitution of Nepal focuses on promoting cultural diversity and talks about enhancing the skills, knowledge and rights of indigenous peoples. The indigenous peoples of Nepal are waiting to see how these intentions will be made concrete in the new constitution, which is in the process of being promulgated. In 2007, the Government of Nepal also ratified ILO Convention 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation of ILO Convention 169 is still wanting, however, and it is yet to be seen how the new constitution will bring national laws into line with the provisions of the ILO Convention and the UNDRIP.

### Uphill battle to establish identity-based federalism

In 2010, the Committee on Restructuring of the State and Sharing of the State Powers (CRSSSP), one of ten thematic committees of the Constituent Assem-



bly (CA) mandated to draft the constitution, recommended the formation of 14 provinces, 23 autonomous regions, and unspecified numbers of special and protective areas based on the primary criterion of identity and secondary criterion of ability, as agreed unanimously by all political parties represented in the CA (see *The Indigenous World 2011*).

However, since then, political parties, including the Nepali Congress (NC) and the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML), have been trying to undo these recommendations by giving primacy to ability, not identity. The top leaders of all the three main political parties (NC, CPN-UML and Communist Party of Nepal (CPN)-Maoist) are hatching conspiracies that involve many different highly coordinated actions with many twists and turns. Last year, the dominant caste groups, i.e. Bahun and Chhetris, were visible on a political front (in the CA, Legislature-Parliament and political parties), agreeing to devalue identity-based federalism, and on an intellectual front, organizing international seminars and (mis)using the media to deconstruct identity-based federalism.

On 1 November 2011, the three dominant political parties and the Madhesi<sup>1</sup> political parties struck a seven-point agreement to the effect that the government would present a bill seeking an 11th amendment to the Article 138 (2) of the Interim Constitution.<sup>2</sup> The bill would provide for the formation of an experts' committee from within the CA by scrapping the existing provision for a state restructuring commission, which had become outdated and irrelevant as it was supposed to have been formed before the birth of the CA. The government registered the bill

on 4 November. The top leaders of the three major political parties, namely the CPN-Maoist, CPN-UML and NC, all led by the dominant Bahun caste, decided to endorse the proposed bill in the Legislature-Parliament but the House failed to pass the bill due to very strong objections from the indigenous caucus and Mohan Baidhya, who leads one of the three factions of CPN-Maoist lawmakers/CA members and who stood firm for securing the rights of indigenous peoples and other excluded groups.

The government's second attempt to pass the bill was also thwarted by the Indigenous Caucus and the Baidhya faction.<sup>3</sup> They opposed the proposed amendment bill and demanded that the committee's Terms of Reference be determined prior to the proposed amendment so as to work further on, and not dismantle, the recommendations made by the CRSSSP. At the same time, the indigenous peoples' movement staged a protest against the bill outside the Legislature-Parliament building. As a result, the government withdrew the constitutional amendment bill on 18 November.

The main political parties and the government subsequently, belatedly, formed the State Restructuring Commission with a limited mandate to provide further suggestions based on the reports and recommendations made by the CRSSSP to the CA. 2011 will thus go down in history as a watershed in the struggle of Nepal's indigenous peoples for enforcement of their human rights in accordance with the international standards laid out in the UNDRIP and ILO Convention No. 169.

### **Defining moment postponed once more**

The drafting of the new constitution was supposed to be finalized by 28 May 2011 but, as the work was incomplete, the CA's term was extended three times and finalization postponed until first 30 August, then November 2011 and, finally, 28 May 2012. The Supreme Court ruled on 25 November 2011 that the CA could not further extend its term and that if the work of drafting the constitution were still incomplete, there would either have to be fresh elections or another alternative found. The Nepal government tried to file a writ petition to review the decision but the Court refused to register the petition and, on 27 December 2011, the Supreme Court rejected the parliament's and government's pleas to review its decision.

The continuing hatching of conspiracies against the rights of indigenous peoples, Madhesi and other oppressed and excluded groups/communities, as well as intra-party and inter-party political wrangling for power, appears to be making the CA unable to produce the new constitution within the extended timeframe. The constitution would be drafted in time if indigenous peoples and Madhesis agreed to restructure the state by giving primacy to ability, but this is next to impossible. It means the Nepali Congress and CPN-UML will try to dillydally in order to buy time to hatch more conspiracies aimed at dividing indigenous peoples and Madhesis. To do this, they are using the cards of integrating the Peoples' Liberation Army into the Nepal Army and returning confiscated lands to their owners as pre-conditions for writing the constitution.

With a deal reached between the political parties on 1 November 2011 on the integration and rehabilitation of Maoist fighters – a major stumbling block to the constitution-drafting process – the work is now speeding up. However, with previous attempts by the NC and CPN-UML to divide indigenous peoples and Madhesis in order to do away with ethnic-based federalism, there are no guarantees that the constitution will address the fundamental rights of indigenous peoples.

### **Claim to indigenous identity by dominant groups**

As part of the efforts to curtail indigenous peoples' rights, Brahman *Samaj* ("Society"), Chhetri *Samaj* and Khas Chhetri *Samaj* (all very recent organizational offshoots of the dominant caste groups) are demanding recognition of Bahun and Chhetris as indigenous peoples and are against the restructuring of the state or federalism based on identity and/or ethnicity. They are making such demands by rallying in the streets, staging sit-ins in front of the CA, submitting memoranda to the main political parties and expressing their views in both the print and electronic media. Although Brahman and Chhetris are not indigenous in Nepal, on 18 November, the government formed a nine-member taskforce to enlist Chhetris as indigenous peoples. The coordinator of the task force, Prof. Chhetri, claims: "Chhetris have been residents of Nepal for thousands of years, yet they were not recognized as an indigenous people. Therefore, the taskforce will come with credible evidence to prove that Chhetris are aboriginal inhabitants".<sup>4</sup> The formation of Brahman and Chhetri organizations demanding their recognition as indigenous peoples and rejecting indigenous peoples' rights to self-determination,

autonomy and self-rule is a malicious attempt to continue their centuries-long domination. Hence, it appears likely that violent communal and/or armed confrontations between Bahun-Chhetris and indigenous peoples could break out in the near future.

### **DFID against indigenous peoples**

The Nepal Federation of Indigenous Nationalities (NEFIN), an umbrella organization of 59 indigenous peoples recognized by the government, called a nationwide strike on 27 April. The previous week, the British Department for International Development (DFID)-Nepal had publicly announced that it would no longer continue its financial support of NEFIN's Janajati Empowerment Project II (JEP II) project due to NEFIN's continued involvement in national strikes and *bandhs*.<sup>5</sup> NEFIN uses *bandhs* to protest for the constitutional rights of *Janajati* and people from marginalised communities. In its strong response to DFID-Nepal's decision to stop funding the JEP II, NEFIN accused DFID of practising "double standards" in the name of providing assistance for transparency and good governance and blamed it of "interfering" in the internal matters of a sovereign country.<sup>6</sup>

### **Mega Front demands FPIC mechanism**

During 2011, the CA and the Nepal government did not establish the Free, Prior and Informed Consent (FPIC) mechanism as recommended by the ICERD Committee on 13 March 2009 and the Special Rapporteur on the rights of indigenous peoples on 20 July 2009 and 15 September 2010 (see *The Indigenous World 2011*), despite the fact that, on 11 March 2010, the Nepal government had responded to the Special Rapporteur's letter by saying that: "Constituent Assembly regulations provide that the Constituent Assembly Chairman may form additional committees as needed" and that: "In addition to existing means of representation in the Constituent Assembly, special mechanisms should be developed for consultations with the Adivasi Janajati, through their own representative institutions, in relation to proposals for new constitutional provisions that affect them."

On 16 January 2011, the Indigenous Peoples' Mega Front thus submitted a memorandum to the Chairperson of the CA calling on him to establish the FPIC

mechanism. However, he merely stated that he would inform all the political parties represented in the CA about it, implying that he had no power to establish such a mechanism.<sup>7</sup>

### **Indigenous women submit historic CEDAW Shadow Report**

The National Indigenous Women's Federation (NIWF) and the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), with support from the Forest Peoples' Programme and International Women's Rights Action Watch Asia Pacific, submitted a Shadow Report entitled *The Rights of Indigenous Women in Nepal* for the combined 4th and 5th Committee on the Elimination of Discrimination against Women (CEDAW) Periodic Reports of Nepal.<sup>8</sup> On 18 July 2011, Yasso Kanti Bhattachan, one of the founders of and current advisor to NIWF, made a three-minute presentation to the CEDAW Committee during the informal meeting between NGOs and CEDAW committee members in New York.<sup>9</sup> The Committee responded well to the discussions that the delegation had with them over the course of the session, and recommendations were made to the Nepal state in response to three key demands in the shadow report, namely equitable political participation through quotas for indigenous women, the need to address access to education for indigenous girls and the need to more effectively respond to the ongoing challenges of bonded labour among the Tharu people.<sup>10</sup>

### **REDD**

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.<sup>11</sup> 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. ○

## Notes and References

- 1 Madhesi (referring to the Hindu caste groups of the Terai region) are regionally excluded groups but, since the Madhesi movement of 2007, they have emerged as the fourth most powerful political force. Their issues, such as regional autonomy, are, however, yet to be fulfilled.
- 2 The Madhesi political parties, like indigenous peoples, are excluded by the dominant Hill Hindu caste groups but, in this case, they aligned themselves with the dominant political parties with the aim of not allowing indigenous peoples of the Terai region to have their own autonomy and self-rule.
- 3 "House fails to pass bill again - Baidhya faction indigenous caucus stand in opposition". *The Himalayan Times*. 17 November 2011. Accessed on 1 January 2012 from: <http://www.thehimalayanimes.com/fullNews.php?headline=House+fails+to+pass+bill+again&NewsID=309552>
- 4 "Chhetri taskforce starts work". *Ekantipur.com* 18 November 2011. Accessed on 1 January 2012 from: <http://www.ekantipur.com/the-kathmandu-post/2011/11/18/nation/chhetri-taskforce-starts-work/228373.html>
- 5 *Bandh* is a form of strike used mainly in Nepal, Bangladesh and India. It can be local, regional or national. In most of the *Bandhs*, no vehicle is allowed to run and no shop is allowed to open. It paralyzes the normal life and the *Bandh* organizers succeed in drawing public attention to their demands.
- 6 "DFID promoting corruption: NEFIN". *Himalayan Times*, 17/5- 2011. Accessed on 1 January 2012: <http://www.thehimalayanimes.com/fullNews.php?headline=DFID+promoting+corruption%3A+NEFIN&NewsID=288239>
- 7 "Vow to ensure indigenous people's rights". *Ekantipur.com*, 17/1-2011. Accessed on 29 January 2012 at: <http://np.ekantipur.com/2011/01/17/national/vow-to-ensure-indigenous-peoples-rights/328148.html>
- 8 CEDAW/c/NPL/4-5
- 9 [http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FPP\\_NIWF\\_Nepal49.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/ngos/FPP_NIWF_Nepal49.pdf) Accessed on 29 January, 2012.
- 10 "Indigenous women raise their voices at CEDAW". Posted on *Forest Peoples Programme's website* on 7 October 2011. Accessed on 29 January, 2012 from: <http://www.forestpeoples.org/topics/gender-issues/news/2011/10/indigenous-women-raise-their-voices-cedaw>.
- 11 <http://www.icimod.org/?q=3743>. Accessed on 29 January 2012.

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NEPAL in 2013

by

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## NEPAL

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%. The 2011 census listed the population as belonging to 125 caste and ethnic groups, including 63 indigenous peoples, 59 castes, including 15 Dalit castes, and 3 religious groups, including Muslim groups. Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal indigenous peoples have been marginalized by the dominant groups in terms of land, territories, resources, language, culture, customary laws, and political and economic opportunities.

The 2007 Interim Constitution of Nepal promotes cultural diversity and talks about enhancing the skills, knowledge and rights of indigenous peoples. Nepal's indigenous peoples are waiting to see how these intentions will be made concrete in the new constitution, which is still in the process of being promulgated. Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation of ILO Convention 169 and UNDRIP is still wanting, however, and it is yet to be seen how the new constitution will bring national laws into line with the provisions of ILO 169 and the UNDRIP.

### Failure to adopt new constitution

In 2010, one of the committees of the Constituent Assembly (CA) mandated to prepare a concept paper, as well as to make recommendations on state restructuring and state power divisions for drafting of the Constitution, recommended the formation of 14 provinces, 23 autonomous regions and unspecified numbers of

special and protective areas based on the primary criterion of identity and secondary criterion of ability (see *The Indigenous World 2011*). Since then, political parties, including the Nepali Congress (NC) and the Communist Party of Nepal - Unified Marxist Leninist (CPN-UML), have tried to undo these recommendations (see *The Indigenous World 2012*). In 2012, the three main political parties decided to go for a vote at the CA on controversial issues such as the names and numbers of federal units. This was done with the expectation that the main political parties could control indigenous and Madhesi<sup>1</sup> CA members, through party whips, to vote against identity-based federalism.

In response to this, the Indigenous Peoples' Caucus and Madhesi political parties formed an alliance and, on 11 May, stated publicly that they would vote in favour of single identity-based federalism. Together with other CA members belonging to the Dalit Caucus, Muslims and CPN (Integrated Maoist), this alliance formed a majority in the CA. Faced with this prospect, the CA was dissolved on midnight of 27 May, thus failing to deliver the new Constitution by the 27 May deadline. The Prime Minister announced that elections would be held on 22 November although the Interim Constitution has no provision for holding fresh elections. Due to legal problems and political disagreements, the CA election was subsequently postponed to April/May 2013.

### **Continued indigenous pressure for identity-based federalism**

In the lead-up to the deadline for promulgation of the Constitution in May, the Indigenous Peoples' Mega Front realized that there was a need for mass demonstrations along with intellectual debates to put pressure on the main political parties and dominant groups, and that such pressure would be possible only if each Indigenous Peoples' Organization (IPOs) were inspired to engage (see *The Indigenous World 2011 and 2012*). Leaders of the Mega Front and a number of IPOs' leaders therefore organized a series of events, starting with an international conference in Limbuwan (19-21 January), followed by similar events in Tamuwān (29 April-1 May), Tharuwan (11 May), Tamslaing (18 May) and Newa (19 May). During these events, positions on the nature of the right to self-determination, autonomy and self-rule were discussed and international experts, academics and activists from Switzerland, India and the USA were invited to share their views and interact with Nepal's indigenous leaders. Each event was followed by a



march, and the estimated number of indigenous peoples who marched in the streets of Dharan, Limbuwan was 20,000, in Pokhara, Tamuwan 60,000, and Dhangadhi, Tharuwan 70,000.

Just a week before the demise of the CA, the Indigenous Nationalities' Joint Struggle Committee, an alliance of NEFIN (Nepal Federation of Indigenous Nationalities) and other IPOs and fronts, enforced a nationwide three-day (20 to 22 May) general strike demanding identity-based federalism with autonomy and self-rule in the new Constitution. Hundreds of thousands of indigenous peoples marched in the streets of various parts of the country, with a greater concentration in the capital, Kathmandu. The protest was only called off after the government signed a nine-point agreement with the indigenous peoples' movement, promising ethnicity-based federalism.<sup>2</sup>

### **From movement to political parties**

After the dissolution of the CA, NEFIN, the Indigenous Peoples' Caucus and other IPOs jointly organized a political conference in Kathmandu on 4-5 July. Indigenous leaders began intense soul searching during the conference and came to the conclusion that the main political parties, led by dominant groups, would never ensure identity-based federalism in the new Constitution and that an alternative political force was inevitably necessary. A task force was established to

form an indigenous peoples' political party, to be declared on 9 August. On that auspicious day, the manifesto of the Social Democratic Pluri-National Party was declared, creating a ripple through national politics.<sup>3</sup> Indigenous leaders associated with the CPN-UML<sup>4</sup> and NC<sup>5</sup> began to leave their respective parties *en masse*. Efforts were made to find common ground among indigenous leaders, with their previously varied political associations from left to right. All leaders were unanimously agreed on indigenous issues, including the right to self-determination, autonomy and self-rule but were polarized around ideological ones: left leaning groups insisted on Marxism as a guiding principle but considered pluri-nationalism and indigenism as debatable, whereas others, including those from the indigenous peoples' movement, were for social democracy, pluri-nationalism and indigenism but against Marxism as a guiding principle. As efforts to reconcile the two groups failed, left-leaning groups declared their Federal Socialist Party (FSP) on 22 November,<sup>6</sup> followed by the Social Democratic Party (SDP) led by a council of chairpersons on 30 December. Some indigenous intellectuals and movement leaders joined neither of the parties as the task of merging the different indigenous political parties or forming an alliance was necessary to advance the cause of indigenous peoples, especially autonomy and self-rule, in a meaningful way.

### **Dominant groups engineering a movement against indigenous peoples' demands**

To counteract the indigenous demands, some Bahun and Chetri (dominant caste groups) political leaders from various political parties, including the CPN-Maoist, CPN-UML, NC and Rastriya Prjatantra Party, staged an indefinite strike, beginning on 27 April, with a demand for *Akhanda Sudurpachim* ("Undivided Far-West") in the far-western region of Nepal, in order to deny autonomy and self-rule of the Tharu indigenous peoples, in particular, and of all indigenous peoples and the Madhesi, in general. Even the government's security forces and civil servants marched in the streets after their official duty was over, providing their full support to such a movement. In order to protest against the strike in the Tharus' ancestral land, around 70,000 Tharus and other indigenous and pro-indigenous peoples assembled in Dhangadhi on 11 May under the banner of the "Joint Tharu Struggle Committee" (JTSC). Police fired tear gas to disperse the masses and the activists threw stones at the hotel where indigenous leaders were residing. The strike was

used by the main political parties to prove that many “Nepalese people” are not in favour of identity-based federalism.

### **Racism rears its ugly head**

On 8 May, the National Integrity and Ethnic Goodwill Society (NIEGS), comprising dominant groups, marched to the Tharu Museum at Danda in Nawalprasi district, set fire to it and vandalized the motorbike of a JTSC activist.<sup>7</sup> On 9 May, a clash took place between police and demonstrators at Kawasoti and Danda as the JTSC was calling a strike to protest at the vandalism of Tharu Museum. The police fired 12 rounds of ammunition and 20 rounds of tear gas into the people, leaving at least 17 injured on either side.<sup>8</sup> Dhan Bahadur Thanet Tharu, who sustained a bullet wound during a clash with police at Danda of Nawalparasi, died on 5 June.<sup>9</sup> Bowing to intense pressure from NEFIN, the government declared Dhan Bahadur Tharu Thanet a martyr.<sup>10</sup> This unfortunate incident did not explode into communal riots, as the Tharu and indigenous leaders refrained from countering the violence however, it is an indication that racist riots could flare up at any time in the future.

### **Engineered census data**

On 26 November, the findings of the 2011 census were made public. NEFIN rejected the findings as they showed a decrease in the total indigenous population from 37.21% in 2001 to 35.81% in 2011. The census data revealed that the number of caste and ethnic groups had gone up from 100 in 2001 to 125 in 2011, but removed 12 of the 59 indigenous peoples from the list, i.e. Thduam, Surel, Bankaraia, Larke, Baragaunle, Marphali Thakali, Mugal, Tangbe, Tingaunle Thakali, and two extinct groups, Chhairrotan and Free, while adding the Athpahariya, Bahing, Bantawa, Chamling, Khaling, Kulubng, Loharunbg, Mewahang, Nachhiring, Sampangm Thulung and Yamfu, who were previously included under Rai indigenous peoples, and Ghale, previously included within the Gurung indigenous peoples.<sup>11</sup> To show their protest, NEFIN burnt copies of the census report on 2 December in front of the Central Bureau of Statistics in Kathmandu.<sup>12</sup>

## Allegations against donors

Although international donors are required to forge new partnerships with indigenous peoples and implement them as per the objectives of the first and second International Decade of the World's Indigenous People, the funding available to indigenous peoples has thus far been negligible. Almost all donor money goes either to the Government of Nepal or to civil society, both controlled by the dominant groups. The dominant groups, however, often falsely allege that the UN, Norway, the UK and other Western donors are providing funding for caste- and ethnicity-based politics in Nepal. On 25 May, a delegation of Hindu upper-caste people complained to a group of diplomats representing the UNDP, Switzerland and the Department for International Development (DFID) that their support to certain groups in Nepal was being used against them. The UK Minister of State for International Development (DFID), Alan Duncan, replied that the comment was “biased”, and that the DFID—Nepal office was helping Nepal implement its “own commitment on inclusion”. He categorically denied that DFID was supporting the ongoing campaigns for federalism based on ethnic lines but he “strongly conveyed the message that the voices raised in the campaigns should be heard” and that “It’s untenable and unacceptable that any society can have second class citizens and I have no doubt that lasting peace will only be achieved when Nepal has a truly inclusive society.”<sup>13</sup>

## Follow-up on CEDAW Shadow Report

To follow up the status of implementation of the concluding observations and recommendations made by the CEDAW (Committee on the Elimination of Discrimination against Women)<sup>14</sup> (see *The Indigenous World 2012*), the National Indigenous Women's Federation (NIWF) organized an interactive program between government officials and indigenous women leaders in Kathmandu on 27 November. The government officials confessed that they had done nothing so far but promised that they would try to implement the recommendations relating to indigenous women.

## Reducing Emissions from Deforestation and Forest Degradation (REDD)

Nepal has been implementing the Readiness Preparation Plan (RPP) since 2010 and will complete it in 2013. In line with the RPP, the Climate Change and REDD Forestry Cell under the Ministry of Forest, Soil and Conservation prepared a draft framework for the national REDD+ strategy. In September, the Climate Change and REDD Forestry Cell presented the revised REDD+ Social and Environmental Safeguards (SES) indicators and gave 30 days' notice for further feedback and inputs, also announcing a national level multi-stakeholders' workshop on the indicators. In order to ensure that indigenous peoples' earlier feedback on the draft indicators had been duly included and that, among other things, proper reference was made to ILO Convention 169 and the UNDRIP, and recognition of indigenous traditional knowledge, skills and customary practices for sustainable management of the forest, NEFIN established a working team with the mandate of closely looking at the revised indicators. NEFIN participated in the indicators workshop in October and, jointly with the NIWF, submitted their final inputs within the month. ○

## Notes and References

- 1 Madhesi (referring to the Hindu caste groups of the Terai region) are regionally excluded groups but, since the Madhesi movement of 2007, they have emerged as the fourth most powerful political force. Their issues, such as regional autonomy, are, however, yet to be fulfilled.
- 2 <http://www.ekantipur.com/the-kathmandu-post/2012/05/22/top-story/govt-janajati-groups-sign-9-pt-deal-banda-called-off/235169.html>
- 3 <http://www.youtube.com/watch?v=s0a1-p3csLw>
- 4 [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=42982](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=42982)
- 5 [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=42928](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=42928)
- 6 <http://www.thehimalayantimes.com/fullNews.php?headline=Rai+declares+Federal+Socialist+Party-Nepal+&NewsID=355247>
- 7 [http://reliefweb.int/sites/reliefweb.int/files/resources/Nepal\\_Monthly\\_Update\\_2012-May.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/Nepal_Monthly_Update_2012-May.pdf)
- 8 [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=34875](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=34875)
- 9 <http://www.ekantipur.com/2012/06/06/top-story/nefin-activist-tharu-passes-away/355161.html>
- 10 <http://www.ekantipur.com/2012/06/07/top-story/cabinet-declares-thanel-a-martyr/355225.html>
- 11 <http://www.ekantipur.com/the-kathmandu-post/2012/12/01/nation/nefin-to-protest-census-report/242341.html>

See also, a PowerPoint presentation on the 2011 Census by Yogendra Gurung in a program organized by NEFIN in Kathmandu on 6 January 2013.

- 12 <http://www.ekantipur.com/2012/12/02/headlines/indigenous-people-torch-copies-of-census-report/363527/>
- 13 <http://www.thehimalayantimes.com/fullNews.php?headline=Duncan+faces+questions+on+DFID%27s+role&NewsID=337547>
- 14 <http://www.unhcr.org/refworld/publisher,CEDAW,CONCOBSERVATIONS,NPL,4eeb45822,0.html>

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Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal, indigenous peoples have been marginalized by the dominant groups in terms of land, territories, resources, language, culture, customary laws and political and economic opportunities.

The 2007 Interim Constitution of Nepal promotes cultural diversity and talks about enhancing the skills, knowledge and rights of indigenous peoples. Nepal's indigenous peoples are waiting to see how these intentions will be made concrete in the new constitution, which is still in the process of being promulgated. Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation of ILO Convention 169 and UNDRIP is still wanting, however, and it has yet to be seen how the new constitution will bring national laws into line with the provisions of ILO 169 and the UNDRIP.

### **The Supreme Court's directive order on representation of indigenous peoples**

In 2009, 20 organizations, including the Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP) and the National Indigenous Women's Federation (NIWF), filed a writ petition in the Supreme Court of Nepal demanding amendments to the electoral laws in order to enable the direct repre-



sentation of indigenous peoples in the Constituent Assembly (CA). The Court repeatedly deferred its decision but, realising its relevance to the second CA election, later scheduled for 19 November 2013, on 21 April 2013 the Court issued a directive order to amend the Constituent Assembly Member Election Law, 2064, Constituent Assembly Member Election Regulation, 2064, and Constituent Assembly Regulation, 2065 in accordance with the state's obligation to ratify/adopt the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on Elimination of all Forms of Racial Discrimination, ILO Convention 169, the UNDRIP and other international laws that guarantee direct representation of indigenous peoples in the constitution-making process, in accordance with their own customary practices. The Court informed the government body concerned, namely the Ministry of Law and Justice, that it should implement the decision.

The Special Rapporteur on the rights of indigenous peoples also raised the issue of indigenous peoples' participation in the constitution-making process in 2013 by reiterating his earlier recommendations to provide special mechanisms to ensure the effective participation of indigenous peoples, through their own representative institutions, in the process of developing the new constitution.<sup>1</sup>

In September, the Nepal Federation of Indigenous Nationalities (NEFIN) and other indigenous peoples' organizations submitted a memorandum to the National Election Commission demanding the laws be amended before the November CA elections, in accordance with the directive order of the Supreme Court.

The government that was formed to hold the elections, however, ignored the directive order and organized the CA elections without amending the laws. Indigenous peoples' organizations, academics and activists have made it clear that they are not required to agree with or own the new constitution produced by the CA, as they have no direct representation in this, in accordance with their customary practices and as per the state's obligation, as endorsed by the Supreme Court through its directive order.

The discriminatory effect of solely relying on a political party system exclusively controlled by elites to ensure indigenous peoples' participation in the constitution-making process is compounded by the refusal to register political parties that claim to represent indigenous peoples alone, on the basis of a provision in Nepal's Interim Constitution that prohibits a political institution that could jeopardize social harmony on the basis of race, ethnicity, religion or sect.<sup>2</sup>

### **Two-thirds majority of “anti-single identity” political parties in the second Constituent Assembly**

Election for the CA took place peacefully on 19 November, despite a 10-day nationwide transport strike prior to election day, called by an alliance of 17 political parties led by the Communist Party of Nepal (Maoist), popularly known as the Baidhya Group. The group was protesting at the CA election process that had been adopted by the main political parties and was demanding that a round-table conference of all political parties and social movements be held in order to build a consensus around fundamental issues, including the inclusive restructuring of the state and decision-making without external interference. Eleven political parties won seats in the First-Past-The-Post (FPTP) election for 240 CA members, and a further 27 political parties won seats in the proportional elections for 335 CA members. The Nepali Congress (NC) became the largest political party, with 196 CA members, including 105 from FPTP and 94 from proportional representation, followed by the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML) with 175 CA members, the Unified Communist Party of Nepal-Maoist (UCPN-Maoist) with 80 CA members, and the Rastriya Prajatantra Party Nepal (RPP-Nepal) with 24 CA members. None of the political parties formed by indigenous peoples were successful in the FPTP election; however, five political parties with

an explicit indigenous agenda won 12 of the 335 CA members in the proportional elections.<sup>3</sup>

Of the 240 FPTP seats, a total of 68 indigenous individuals (five women and 63 men), representing 11 of Nepal's 59 indigenous peoples, namely the Newar, Limbu, Magar, Tharu, Tamang, Gurung, Rai, Sunuwar, Chantyal, Sherpa and Thakali, were elected from five political parties, including the three main political parties, i.e. the Nepali Congress, CPN-UML and UCPN-Maoist. Of the 335 seats from the proportional elections, 115 indigenous individuals (57 women and 58 men), representing a further nine indigenous peoples, namely the Bhujel, Marphali Thakali, Rajbanshi, Tingaunle Thakali, Darai, Baramu, Pahari, Hylmo and Yakkha, were elected. Some CA members with caste family names, such as Bhandari, Khuna, Dhami, Tudu, Modi, Dev and Nisadh, were wrongly included in the proportional election as indigenous peoples.

Apart from the 240 CA members elected through the FPTP and the 335 CA members elected through proportional representation, 26 CA members have to be nominated by the Cabinet. As there is pressure on the government to nominate influential political leaders from the main political parties and marginalized groups such as women and the disabled, it is highly unlikely that indigenous peoples will be prioritized in the nominations. And even if all 26 nominations were drawn from different indigenous peoples, there would still be some left out in the CA.

As mentioned in *The Indigenous World 2013*, the Nepalese indigenous peoples are fighting for federalism based on single identities, implying collective rights. In the first CA (27 May 2008-27 May 2012), at least 417 of 601 CA members were in support of "single identity" based federalism but, in this second CA, two-thirds of the 601 CA members are against it, i.e. they are for "multiple identities" based federalism. "Single identity" indicates ethnic and regional federal units and "multiple identities" indicates geographical federal units.

Although national and international election observers said that the CA elections passed in a free and fair manner, the CPN (Maoist) and other small political parties made serious allegations of systemic, structural and policy-based rigging on the grounds that the army transported the ballot boxes without any escorts from the representatives of the political parties, that fragments of ballot papers were found dumped in the forest, that the seals on the ballot boxes were tampered with, that the Election Commission issued instructions during the counting of the ballots to accept ballot papers even if the ballot box seals had been tam-

pered with, and that the number of ballots were more than the actual number of voters who cast their vote. The Unified Communist Party of Nepal initially called for an independent commission to probe these allegations but the four main political parties later agreed that the matter should be investigated by a parliamentary committee.

### **Rising demands for the effective implementation of Free, Prior and Informed Consent (FPIC)**

Indigenous peoples are becoming increasingly frustrated as the Nepalese government and donors, multilateral, bilateral and international NGOs, are failing to effectively implement the UNDRIP and ILO Convention 169, in general, and FPIC processes, in particular, when implementing programs, projects and activities on the ancestral lands of indigenous peoples. Conflicts between local indigenous peoples and non-indigenous peoples, on the one hand, and the government and donors, on the other, are on the rise.

For example, in Sindhuli district, the Nepal Electricity Authority has begun work on the Khimi-Dhalkebar 220 KV high-voltage power line with financial support from the World Bank. The transmission line affects both indigenous peoples, especially the Tamangs, and non-indigenous peoples living on indigenous peoples' ancestral lands. On 18 February 2013, the communities affected sent a letter of concern about the project to the World Bank President. This was followed by a meeting between the World Bank management and community leaders on 13 March and an official request for a World Bank Inspection Panel review on July 10.<sup>4</sup> A Management response published on 11 September "identified some weaknesses concerning disclosure and consultations, which are currently being addressed" and presented an action plan developed by the Nepal Electricity Authority and the World Bank.<sup>5</sup> Subsequently, the World Bank Inspection Panel made a visit to the area and recommended that an investigation be carried out after 30 April 2014.<sup>6</sup>

In the ancient town Kirtipur in Kathmandu, the municipal authority has implemented a road expansion project with the indirect financial support of the Asian Development Bank (ADB) and without going through the process of FPIC, which the locals have been strongly protesting about. Similar conflicts have intensified in Dhorpatan Hunting Reservation Area where expansion of a buffer zone is tak-

ing place without the FPIC of the indigenous Magars. Tension is also building in Barun National Park, located on the ancestral lands of the Sherpa, due to the army's mobilization in the park. Furthermore, the Armed Police Force and National Sports Council have been constructing a sports stadium on the sacred burial grounds of indigenous peoples. A negotiation process is ongoing between the parties. ○

### Notes and references

- 1 A/HRC/24/41/Add.4
- 2 <http://www.lahurnip.org/details.php?id=136>
- 3 These are: the Federal Socialist Party (5), Rastriya Janamukti Party (2), Tharuhat Terai Party (2), Khambuan Rastriya Morcha (1), Nepa: Rastriya Party (1), and Sanghiya Loktantrik Rastriya Munch (1)
- 4 <http://www.lahurnip.org/details.php?id=186>
- 5 [http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/Nepal\\_PDP\\_ManagementResponse\\_Sept11\\_2013.pdf](http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/Nepal_PDP_ManagementResponse_Sept11_2013.pdf)
- 6 <http://www.accountabilitycounsel.org/wp-content/uploads/2013/02/Final-IPN-Report-and-Recommendation.pdf>

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NEPAL in 2015

by

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## NEPAL

According to the 2011 census, the indigenous nationalities (*Adivasi Janajati*) of Nepal comprise 36% of the total population of 26.5 million, although indigenous peoples' organizations claim a larger figure of more than 50%. The 2011 census listed the population as belonging to 125 caste and ethnic groups, including 63 indigenous peoples, 59 castes (including 15 Dalit castes<sup>1</sup>) and 3 religious groups (Muslim, Sikh and Bangali). The Government of Nepal has, however, since 2002 recognized only 59 indigenous peoples.

Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal indigenous peoples have been marginalized by the dominant groups in terms of land, territories, resources, language, culture, customary laws, and political and economic opportunities.

The 2007 Interim Constitution of Nepal promotes cultural diversity and talks about enhancing the skills, knowledge and rights of indigenous peoples.<sup>2</sup> Nepal's indigenous peoples are waiting to see how these intentions will be made concrete in the new constitution, which is still in the process of being promulgated. Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation of ILO Convention 169 and UNDRIP is still wanting, however, and it is yet to be seen how the new constitution will bring national laws into line with the provisions of either of them.

### Constituent Assembly polarized on “Process” versus “Agreement”

Throughout 2014, the 601 members of the second Constituent Assembly (CA) were polarized into ruling and opposition camps, arguing about whether to opt

for a “process path”, or an “agreement path”. The former prioritizes the adoption of a new constitution by the given deadline of 22 January 2015, solving the remaining disputes via a vote (majority rule), while the latter seeks broader political agreements, arguing that this approach is a prerequisite for upholding the commitment to the ongoing peace process and the spirit of the interim constitution. The ruling camp was led by the ruling parties, led jointly by the Nepali Congress and the Communist Party of Nepal (CPN)-Unified Marxist-Leninist (UML), and supported by other political parties who together muster a 2/3 majority of the 601 CA members. The opposition camp comprises 19 political parties led by the Unified Communist Party of Nepal (UCPN) Maoist, supported by the Madhesi and indigenous political parties. They oppose the “process” of deciding disputed issues via a vote in the CA. The main reason is that, in the first CA, the Maoist and the Madhesi political parties had a two-thirds majority but did not pursue the “process path” (majority rule via a vote), instead opting for a consensus-seeking “agreement path”. In the second CA, the Nepali Congress and CPN-UML want to go through the “process” (voting), as they believe that they have a comfortable majority to pass the constitution in the way they want.

The main task for the current CA was to try to resolve, through formal and informal processes, the remaining disputed issues, including federalism, a restructuring of the state, electoral system and judiciary. This work rested with the Political Dialogue and Agreement Committee of the CA. Despite claiming that 90 percent of the outcome of the first CA's work was owned by the second CA, the ruling parties very strongly opposed both the 14 identity-based provinces recommended by the first CA (see *The Indigenous World 2011*), and the 10 identity-based provinces recommended in 2012 by the State Restructuring Commission formed by the first CA. Instead, they proposed 5 to 7 provinces by carving out provinces based on geographical criteria, without separating the Terai lowland from the Hills while doing so. They fully opposed a proportional electoral system, which indigenous peoples argue is needed to ensure proper representation of the marginalized groups. They also wanted to undo certain provisions of the interim constitution and past agreements with movements of indigenous peoples, Madhesis, Muslims and Dalits, including Article 138 of the interim constitution,<sup>3</sup> replacing the term “secularism” with “religious freedom”.

The year ended with heightened polarization, indicating two main possibilities: one is the continuation of the stalemate, as the current CA theoretically has three more years to run, and the other is that the ruling parties may use force,



including the army, to come up with a new constitution that denies the rights of indigenous peoples, Madhesis,<sup>4</sup> Dalits, Muslims, and other minorities. If this should happen, it is likely to provoke some sort of violent reaction.

### **Supreme Court order concerning representation of indigenous peoples**

On 28 April 2014, the Supreme Court of Nepal issued an order relating to the nomination of the 26 CA members that remained to be nominated directly by the government,<sup>5</sup> in line with a 2013 order on guaranteeing the direct representation of indigenous peoples in the constitution-making process.<sup>6</sup> The court ruled that the nominations should include indigenous peoples who had not been represented in the First-Past-the-Post- and Proportional Representation elections, and prominent personalities who were not members of political parties. The government and the main political parties largely ignored the ruling, nominating persons who were either members of their respective political parties or kith and kin of the leaders of those political parties. The CPN-UML, however, nominated the General Secretary of the Nepal Federation of Indigenous Nationalities (NEFIN), thus making it difficult for NEFIN and other indigenous peoples' organizations to file a case against the ruling political parties for contempt of court.

## Coalitions promoting identity-based federalism

To counter the opposition to identity-based federalism from the ruling parties in the CA, the opposition parties, led by UCPN-Maoist in alliance with Madhesi and indigenous political parties represented in the CA and other allies not represented in the CA, formed a coalition of 22 political parties in September with a slogan to “ensure federalism with identity, constitution with federalism”. They called on people to take to the streets in order to muster support for their efforts inside the CA.

Indigenous peoples formed several political parties as part of their movement towards forging coalitions based on identity.<sup>7</sup> A new indigenous peoples’ national struggle committee was also formed at the initiative of Mr. Pdmratna Tuladhar, former advisor to NEFIN, and the leaders of some of the numerically-large indigenous communities. It was, however, soon contested by NEFIN itself, in a parallel initiative. The desired unity and strength of the country’s indigenous movement thus continues to be challenged by party affiliations and other political aspirations, and the movement appears fragmented.

## Formation of indigenous caucus(es) in the CA

Although the CA regulation does not allow for the formal establishment of caucuses, there is an ongoing effort to form a caucus that would include most of the indigenous CA members belonging to various mainstream political parties, including the Nepali Congress, CPN-UML and UCPN-Maoist. CA members representing political parties that were established from within the indigenous peoples’ movements have already formed the *Sajha Muddaka lagi Smyukta Manch Gatha-bandhan* (Joint Forum Coalition for Common Issues, i.e. Indigenous CA Members’ Forum or Caucus). Ten political parties are represented in this caucus. Likewise, 41 Tharu CA members have formed the Tharu Caucus to ensure the Tharu people’s rights in the new constitution, and to promote the formation of the Tharuwan/Tharuhat province. Following suit, the Magar and Rai CA members also formed their respective caucuses. When the Nepali Congress and CPN-UML filed a suggestion to have seven provinces based on geography in the Political Dialogue and Agreement Committee (feeling confident that they could muster the needed 2/3 majority if the proposition was put to a vote in the CA), the Tharu

Caucus publicly disagreed with the proposal. This drained the confidence of both the Nepali Congress and CPN-UML to push forward as, at the end of the day, during the vote in the CA, most of the indigenous CA members would likely have defied their whip in order to protect their indigenous peoples' rights.

### **Unification of five Limbuwan<sup>8</sup> political parties**

After months of effort on the part of *tututumyang* (intellectuals and elderly leaders), five Limbuwan political parties merged in 2014.<sup>9</sup> The integration of the five parties into one (the Limbuwan Party, Nepal) has injected fresh hope into the leaders, cadres, supporters, well-wishers and activists of the indigenous peoples' movement with regard to the launch of a strong movement to secure Limbuwan autonomy in the new constitution, and has also inspired other indigenous peoples' movements and political parties to unify in order to gain strength at this critical historical juncture.

### **Rising demand for effective implementation of free, prior and informed consent (FPIC)**

Violations of indigenous peoples' rights to their ancestral lands and natural resources continued to occur in 2014. One example was in Upper Marsyangdi, where a hydropower project will affect at least five Gurung and Tamang villages. According to local villagers, no meaningful consultation has been held with the communities, and the Environmental Impact Assessment data is incorrect. The project was slated to be completed by July 2015 but work on the project was held up due to joint protests by indigenous peoples and project workers demanding better working conditions.<sup>10</sup> As a result of the protests, the project management held talks with representatives of the project workers on 3 March 2014 in relation to their demands, thus creating divisions between project workers and indigenous peoples and isolating the latter. Local indigenous human rights defenders later initiated a dialogue with project staff on the FPIC process and a meeting has been agreed for early 2015.

NEFIN has finalized and passed FPIC guidelines to be implemented by itself and its affiliated District Coordination Committees. The guidelines were drafted

because most of the local level IPOs and their leaders are not familiar with the procedures for a proper dialogue between indigenous peoples and project/program staff on the impact of such projects/programs on indigenous peoples' lands and resources.

## Presentation of Nepal's issues at the World Conference on indigenous peoples 2014

The High Level Plenary of the United Nations General Assembly, known as the World Conference on Indigenous Peoples, was held at the United Nations Headquarters, New York, from 21-22 September 2014. Yasso Kanti Bhattachan, who represented the National Indigenous Women's Federation (NIWF), Nepal, and Pratima Gurung, who represented the International Disability Forum, read out statements in Table Discussion 1: United Nations system action to implement the rights of indigenous peoples on 22 September 2014. ○

## Notes and references

- 1 Hindu cosmology divides the population into hereditary caste groups, who are ranked according to ritual purity. The Dalit castes form the lowest tier of the caste system and are highly marginalized to this day. (-Ed. note)
- 2 Indigenous peoples in Nepal gained official recognition from the government under the 1990 Constitution and the 2002 (2059) National Foundation for the Development of Indigenous Nationalities Act (known as the NFDIN Act), which lists 59 distinct indigenous communities in the country. Although a task force was formed to make recommendations for revising the list so far no such revision has been made.
- 3 Article 138 stipulates: 1) To bring an end to discrimination based on class, caste, language, gender, culture, religion and region by eliminating the centralized and unitary form of the state, the state shall be made inclusive and restructured into a progressive, "democratic federal system.  
*#(1A) Accepting the aspirations of indigenous ethnic groups and the people of the backward and other regions, and the people of Madhes, for autonomous provinces, Nepal shall be a Federal Democratic Republic. The provinces shall be autonomous with full rights. The Constituent Assembly shall determine the number, boundary, names and structures of the autonomous provinces and the distribution of powers and resources, while maintaining the sovereignty, unity and integrity of Nepal.*  
 2) A High Level Commission shall be constituted to make recommendations for the restructuring of the State in accordance with clause (1) and (1A). The composition, function, duty, power and terms of service of such Commission shall be as determined by the Government of Nepal.

- 3) The final decision relating to the structure of the state and federal system shall be made by the Constituent Assembly.
- 4 Madhesis are inhabitants of the lowland Terai region of Nepal. Madhesi leaders include indigenous peoples of Terai, including the Tharus, as Madhesi but indigenous peoples do not accept this.
  - 5 The CA comprises 240 members elected through a first-past-the-post voting system (the candidate who gains the highest number of votes in each of the 240 constituencies wins the seat), 335 members elected through proportional representation (each of the country's diverse communities is ensured representation, in line with their overall proportion of the population), and 26 members nominated directly by the Cabinet (these 26 members are to represent "distinguished personalities" and indigenous peoples who fail to be represented through election). Source: United Nations Mission in Nepal Archive Site ([http://www.un.org.np/unmin-archive/?d=peaceprocess&p=election\\_system](http://www.un.org.np/unmin-archive/?d=peaceprocess&p=election_system)).
  - 6 See *The Indigenous World 2014*.
  - 7 The new indigenous parties include *Khambuwa Rastriya Morcha*, *Tharuhat Terai Party*, *Rastriya Janamukti Party*, *Manch Sambadda Sanghiya Limbuwan Rajya parishad*, *Nepa: Rastriya Party*, *Adibasi Janjati Party*, and *Samajik Loktantrik Party*.
  - 8 Limbuwan is a territory covering the existing nine districts that lie to the east of the Arun river. It is one of the provinces recommended by both the State Restructuring and State Power Division Committee of the CA and the State Restructuring Commission formed by the CA.
  - 9 These were the *Munch Sambaddha Sanghiya Limbuwan Rajya Parishad*, *Limbuwan Mukti Morcha*, *Limbuwan Mukti Morcha Nepal*, *Sanghiya Ganatantrik Party*, and *Limbuwan Rajya Parishad*.
  - 10 "The glimpse of Indigenous Peoples' human rights violation in Nepal" produced by Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), 2011; <http://www.ekantipur.com/2014/08/16/business/upper-marsyangdi-project-running-behind-schedule/393664.html> (accessed on 20 January 2015)

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NEPAL in 2016

by

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## NEPAL

According to the 2011 census, the indigenous nationalities (*Adivasi Jana-jati*) of Nepal comprise 35.81% of the total population of 26,494,504, although indigenous peoples' organisations claim a larger figure of more than 50%. The 2011 census listed the population as belonging to 125 caste and ethnic groups, including 63 indigenous peoples, 59 castes, among them 15 Dalit castes, and 3 religious groups, including Muslim groups.

Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal they have been marginalised by the dominant groups in terms of land, territories, resources, language, culture, customary laws, and political and economic opportunities.

The newly promulgated Constitution of Nepal of 2015 has been disowned by indigenous peoples and the Madhesis, as it denies identity-based federalism and the rights of indigenous peoples, Madhesis, Dalits, Muslims and women. Nepal has ratified ILO Convention No. 169 on Indigenous and Tribal Peoples and voted in favour of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The implementation of ILO Convention No. 169 and UNDRIP is still weak, however. It is yet to be seen how the new constitution will bring national laws into line with the provisions of ILO Convention No. 169 and the UNDRIP.

2015 will go down in Nepal's history as a disastrous year for all the victims of the devastating earthquakes in April and May, many of whom were indigenous peoples and Dalits.<sup>1</sup>

### **New constitution adopted in the aftermath of the earthquake**

The second elected Constituent Assembly had publicly declared it would promulgate the new constitution on 22 January, three years before the end of its four-

year term. The year began with intense political controversy over many thorny issues, such as whether the final constitution should be passed through the “process” (sticking to the 22 January deadline) or an “agreement” (allowing more time for consultation and consensus-building); whether the provinces should be carved out on the basis of identity or not; and whether past agreements on specific articles, adopted by the first Constituent Assembly, should be incorporated or not. A coalition of 33 political parties led by the Unified Nepal Communist Party of Nepal (Maoist) backed the proposal on identity-based federalism and sought a consultation-based approach to the adoption of the constitution. The governing Nepali Congress and the Communist Party of Nepal (Unified Marxist-Leninist) opposed identity-based federalism, and promoted fast-tracking the adoption of the constitution. As no agreement was reached between these two warring camps, the 2<sup>nd</sup> CA failed to agree on a new constitution by the promised 22 January deadline. Since then, political parties and the common people have been further divided and highly polarised.

The major earthquake of 26 April, followed by hundreds of aftershocks, brought together the supreme leaders of the main political parties under one umbrella to work together for search and rescue, relief, rehabilitation and reconstruction work. As the earthquake victims were trying to come to terms with the rubble of their flattened houses, and trying hard to cope with the natural disaster, Nepali Congress President and Prime Minister Sushil Koirala, CPN (UML) Chairman KP Sharma Oli, UCPN (Maoist) Chairman Pushpa Kamal Dahal and Madhesi Janadhikar Forum Nepal Loktantrik’s Chairman Bijaya Kumar Gachchhadar signed a 16-point agreement to finalise the draft constitution on 8 June.<sup>2</sup> Anticipating that there would be no street protests against their sudden agreement, even though it dealt with the most controversial issues of the whole constitution-drafting process, they agreed to a federal structure whereby only five of the nine provinces would be based on identity, their names would be decided by the provincial assemblies by a two-thirds majority vote, and the controversial demarcation of the provinces would be dealt with by a Federal Commission, reporting to the legislative assembly within a six-month period, which would then take the final decision by a two-thirds majority vote.<sup>3</sup> With this move, they cleared the way for adoption of the text in its entirety instead of passing each article one by one, as per the mandate of the CA. The foundation for fast-tracking the promulgation of the constitution had been laid, shrinking the time available for debates in the CA, and consultations with the Nepalese people.



Finally, on 16 September, 532 out of the 601 CA members cast their vote with 65 abstaining. Of the 532 members who voted, 507 voted for and 25 voted against the new constitution.<sup>4</sup> On 20 September, President Ram Baran Yadav officially promulgated the Constitution of Nepal 2015, putting his signature to five copies, and announcing its entry into force in an address to the Constituent Assembly and the nation.<sup>5</sup>

### Protests against the new constitution

The three main political parties branded the new constitution one of the best in the world, claiming that it protects the rights of all, including indigenous peoples, Madhesi,<sup>6</sup> Dalits and women. On the other hand, indigenous peoples and Madhesi, who make up an overwhelming proportion of the total population, started burning copies of the new constitution in the streets. They denounced it as racist, patriarchal, anti-secular, anti-indigenous peoples, anti-Madhesi, undemocratic, against the peace process, against the Interim Constitution of Nepal, against international human rights standards, including UNDRIP, and against past agreements between the government and the movements of indigenous peoples and Madhesi.

In a detailed analysis of the 2015 Constitution, the indigenous lawyers' association LAHURNIP criticised it for distorting or limiting whatever nominal provisions had been made in the name of secularism, identity, social inclusion and other issues that are key for indigenous peoples. For example, it characterises Nepal as a mono-cultural nation-state (Articles 3 and 4); its definition of secularism provides special status to Hinduism (Article 4); the Khas Nepali language is the only official language of Nepal, allowing for a few mother tongues to be official state languages only (Articles 6 and 7); the cow and other Hindu symbols continue to be national symbols (Article 9.3); the right to live with dignity has been limited to being a part of the state polices, which are unenforceable (Articles 16 J Para. 8, and 55). Participation in state bodies on the basis of inclusive principles (Article 42) has no meaning if it is not proportional with caste, ethnicity, region and gender identifiers. Further, the federal state structure and the distribution of power is far from the identity-based federalism the CA was mandated to develop as per the Interim Constitution, with its seven provincial and local levels (Article 56 and Schedule 4), the highly centralised power of the state (Schedule 5), the composition of the House of Representatives, which falls short of the Interim Constitution's provisions on proportional representation for *janajatis* and other marginalised groups (Article 84), etc. A movement of indigenous peoples and Madhesis hence demanded that the constitution be rewritten.

The indigenous Tharus and the Madhesis intensified their protest movement, demanding the rewriting of the constitution as soon as it had been promulgated. The protests were particularly intense in the Western Terai, from where the national daily, *The Republica*, reported:

*Tikapur area was declared a prohibited zone following violent protests by Tharuhat<sup>7</sup> activists for the past several days. Around 20,000 Tharuhat activists had arrived in Tikapur from various parts of the district to put up signboards of Autonomous Tharuhat in government offices and organize a protest rally.* "At least eight persons, including a Senior Superintendent of Police (SSP), two inspectors of the Nepal Police,<sup>8</sup> and a two-year-old toddler were killed and 42 other policemen were injured in the clash with agitating Tharuhat activists in Shankarpur area of Tikapur Municipality on Monday.<sup>9</sup>

In Tikapur and other places, the government-imposed curfew mobilised the army, and many Tharu leaders were arrested, killed or disappeared, and women were

abused. People belonging to the Unified Far West Movement, which opposed the formation of an identity-based Tharuhat province, burned houses, including a local FM radio station. Some 50 innocent people, including children and elderly, were killed due to the excessive force used by the security forces, disproportionately targeting the Tharu community.<sup>10</sup>

The Madhesi agitators have used sit-ins at the Nepal-India border entry points as part of a civil disobedience movement but the Nepal government has considered it an “economic blockade” enforced by India since 23 September. Since then, there has been a scarcity of petroleum products, cooking gas, and generally sky-rocketing inflation, causing serious problems for the general population.

### Neighbours’ changing gestures

The gestures of Nepal’s two neighbouring countries, India and China, have far-reaching consequences for both indigenous peoples and the Madhesis of Nepal: India did not welcome but rather “noted” the promulgation of the constitution, and China invited Nepal’s indigenous peoples’ leaders to visit the country. India issued a statement on 20 September, saying

*We note the promulgation in Nepal today of a Constitution” and “We are concerned that the situation in several parts of the country bordering India continues to be violent. Our Ambassador in Kathmandu has spoken to the Prime Minister of Nepal in this regard. We urge that issues on which there are differences should be resolved through dialogue in an atmosphere free from violence and intimidation, and institutionalized in a manner that would enable broad-based ownership and acceptance. This would lay the foundation of harmony, progress and development in Nepal.”<sup>11</sup>*

India’s strong position was a result of the Madhesi and indigenous peoples’ protests, including their demands for identity-based federalism (reflected in past agreements between the government and movements of Madhesi and indigenous peoples), and a reaction to the excessive violence used by the Nepal government against agitating Madhesi and Tharus in the Nepal Terai. It clearly shows that India is seriously concerned about the direct effects of any violent conflict in the neighbouring Nepali Terai region, with which India shares a 1,700-km-long border.<sup>12</sup>

The reaction of China was equally interesting, with the Chinese Embassy in Nepal arranging a week-long visit of a 25-member team of Nepal's indigenous peoples' leaders in Sichuan province in China from 14 to 21 December, as a part of the increasing people-to-people cooperation between China and Nepal.<sup>13</sup> This is, indeed, the very first time that China has invited Nepal's indigenous peoples' leaders to visit the country, and marks a significant change from past Chinese practice. It indicates that although China welcomed the promulgation of the new constitution of Nepal, it is familiar with Nepal's indigenous peoples' protest against it, and well aware of the fact that any escalation of ethnic conflict in Nepal and denial of rights of indigenous peoples' of Nepal could generate violent conflict, and subsequently bring political instability to Nepal that could pose a security threat to its northern neighbour, China.

### The big earthquake

On Saturday 26 April, at 11:56 local time, a 7.8 magnitude earthquake struck Nepal, with the epicentre in Barpak in Gorkha District, 76 km northwest of Kathmandu. It was followed by a series of aftershocks, including a 6.7 magnitude earthquake at 12:54 on 12 May, with disastrous effects in 31 of the country's 75 districts. Of the 31 districts, 14 were declared "crisis-hit". These are all the ancestral lands of several indigenous peoples, including Ghale, Gurung, Tamang, Jirel, Sural, Sunuwar, Thami, Majhi, Danuwar, Pahari and Newar. The Post-Disaster Needs Assessment report prepared by the National Planning Commission of Nepal states: "*Approximately 9,000 people lost their lives and more than 22,000 people were injured. As per the latest estimates, more than half a million houses collapsed or are damaged*".<sup>14</sup> It is estimated that 70% of the 9,000 dead belonged to indigenous peoples and Dalits and, of these, some 33% were from the indigenous Tamang people.<sup>15</sup>

There was discrimination against indigenous peoples' and Dalits' right from the search and rescue through to the relief and rehabilitation efforts, and the government's inability to provide adequate relief to vulnerable groups such as children and the elderly has been widely criticised. Reconstruction work should have started immediately after the relief work was over but, as the government was greedy enough to ask for cash donations from international donors, and international donors were cautious enough not to give cash to be misused by the government authority, the government failed to provide timely help and support in the form of warm clothes, medicine and support for the reconstruction of houses

to the earthquake victims. Such a conspicuous neglect on the part of the government led to many deaths of children, pregnant mothers and elderly people due to severe cold, illness and lack of timely medicine. ○

## Notes and References

- 1 The Nepal Police used to update the death toll on its website (<http://www.nepalpolice.gov.np/index.php/notices/nepal-police-crisis-response>), providing details, including name and family name, address, sex and citizenship. These details have, however, been removed. Shradha Ghale writes, "Unsurprisingly, more than 60 percent of the earthquake victims in Nepal were from marginalized ethnic groups." <http://recordnepal.com/perspective/heart-matter-part-3>
- 2 [http://setopati.net/politics/Parties-sign-16-point-agreement-to-draft-constitution-\(With-full-text-of-agreement-in-Nepali-\)](http://setopati.net/politics/Parties-sign-16-point-agreement-to-draft-constitution-(With-full-text-of-agreement-in-Nepali-))
- 3 <http://www.onlinekhabar.com/2015/06/286481/>
- 4 <http://thehimalayantimes.com/kathmandu/constituent-assembly-endorses-constitution-bill/>
- 5 <http://kathmandupost.ekantipur.com/news/2015-09-20/people-celebrate-constitution-promulgation-in-photos.html>
- 6 Madhesis are inhabitants of the lowland Terai region of Nepal.
- 7 Tharuhat is the name of a proposed identity-based province in the Western Terai (lowland) region, where the indigenous Tharus form a significant proportion of the population.
- 8 <http://myrepublica.com/politics/story/26925/scores-injured-as-demonstrators-clash-with-police.html>
- 9 <http://myrepublica.com/politics/story/26925/scores-injured-as-demonstrators-clash-with-police.html>
- 10 <https://www.hrw.org/news/2015/10/16/nepal-investigate-deaths-during-terai-protests>
- 11 [http://www.indianembassy.org.np/index2.php?option=Uf3vzctxn5xHZVIBeyayl4Esp\\_mDrgNiIomf1hL.Mr4&id=sXUBLxjbjmcd-68715fkTQ1eUzChfhV4\\_9TlyoQ\\_NAs](http://www.indianembassy.org.np/index2.php?option=Uf3vzctxn5xHZVIBeyayl4Esp_mDrgNiIomf1hL.Mr4&id=sXUBLxjbjmcd-68715fkTQ1eUzChfhV4_9TlyoQ_NAs)
- 12 <http://www.bbc.co.uk/news/world-asia-india-34313280?utoken=403857.82797.aa30edd022ed-094ef0462cb4a26eb2c>
- 13 <http://www.rajdhani.com.np/article/0060896001451101665>
- 14 See page 7 at [http://www.npc.gov.np/images/download/PDNA\\_Volume\\_A.pdf](http://www.npc.gov.np/images/download/PDNA_Volume_A.pdf)
- 15 These figures are based on the presentation made by the panelists in an interactive programme on Post-Earthquake Reconstruction and Social Justice jointly organised by the Jagaran Media Center, Samata Foundation and COCAP as a part of the Darnal award programme on 15 August 2015 in Kathmandu.

*Krishna B. Bhattachan belongs to the Thakali indigenous people. He is one of the founding faculty members and former Head of the Department of Sociology and Anthropology at Tribhuvn University in Nepal, and has published several books and articles on indigenous issues.*



NEPAL in 2017

by

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## NEPAL

According to the 2011 census, the indigenous nationalities (*Adivasi Janajati*) of Nepal comprise 36% of the total population of 26.5 million, although indigenous peoples' organizations claim a larger figure of more than 50%. The 2011 census listed the population as belonging to 125 caste and ethnic groups, including 63 indigenous peoples, 59 castes, including 15 Dalit castes,<sup>1</sup> and 3 religious groups, including Muslim groups.

Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal indigenous peoples have been discriminated, marginalized, excluded, subjugated, dominated, exploited and internally colonized by the dominant caste groups in terms of land, territories, resources, language, culture, customary laws, political and economic opportunities and collective way of life.

The new Constitution of Nepal promulgated in 2015 denies the collective rights and aspirations for identity-based federalism of indigenous peoples,<sup>2</sup> in spite of the fact that Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and passed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the WCIP Outcome Document. The implementation of ILO Convention No. 169, UNDRIP and the Outcome Document is still wanting. It is yet to be seen how the amendments in, or rewriting of, the new constitution and drafting of new legislation will comply with the provisions of these international human rights standards.

### Failure in the implementation of the Constitution

**T**he new Constitution of Nepal, promulgated in 2015 amidst controversy and the use of state violence against indigenous peoples and the Madhesi, has by and large failed in its implementation due to wrangling among the main political parties, a lack of meaningful inclusion of all groups in society in the drafting process, and continued protests by indigenous peoples and Madhesi (cf. Indige-

nous World 2016). As the new constitution lacks so many fundamental elements, such as the names of all seven provinces were not given, no special, protected or autonomous regions were set, elections were not held for federal and provincial parliaments, and elected local bodies were nowhere in sight, difficulty in implementation is obvious. Although the main political parties have claimed that the new constitution has many positive elements, including federalism, secularism, inclusive representation, and affirmative action, indigenous peoples' experts, movements and leaders have heavily criticized these as being doctored and misused in order to deny the collective rights of indigenous peoples. The Lawyers' Association for the Human Rights of Nepalese Indigenous Peoples (LAHUR-NIP) has identified four categories of discrimination against indigenous peoples in the constitution. These are as follows: (a) five provisions give racial supremacy to the Khas Arya caste group, (b) 11 provisions are against indigenous peoples, (c) 23 provisions discriminate against indigenous peoples, and (d) 49 provisions exclude indigenous peoples.<sup>3</sup> The indigenous peoples' movement (and also the Madhesi movement) are thus demanding either total amendments, from the preamble through to the annexes, or a complete rewriting of the constitution in line with the UNDRIP, ILO Convention N° 169 and the Outcome Document. Failure could, at worst, either lead to a dictatorship or result in protracted ethnic and regional violence. The year 2016 thus ended with such uncertainties unresolved.

### **Rising controversy over amendments to the Constitution**

Indigenous peoples, especially the Tharus, as well as the Madhesis, have been demanding a rewriting of the constitution to fulfil the mandate of the people's movement of 2006, Madhesi and indigenous peoples' movements of 2007, the interim Constitution of Nepal of 2007, which was agreed by all political parties of Nepal, and the indigenous peoples' movements. As the government, led by the Communist Party of Nepal–Unified Marxist–Leninist (CPN–UML), in coalition with Nepali Congress and other smaller political parties, has not taken any initiative to amend the constitution in order to address the demands of the Tharus and the Madhesis, successive governments led by the CPN Maoists, in coalition with the Nepali Congress and other smaller political parties, made efforts to table a bill in Parliament to amend the constitution. Opposition parties, namely the CPN–UML



and political parties of Madhesi and indigenous peoples took it as necessary but not sufficient.

### **Predatory restructuring of local bodies**

As part of the process of implementing the new constitution, the government has established the Local Body Restructuring Commission (LBRC). This commission is mandated to suggest a restructuring of local bodies due to an urgent need to hold elections for these. It began its work on 17 March 2016 and was mandated to recommend the number and format of local bodies by 15 December 2016, which it did not do. The most problematic issue in the commission's work is that many indigenous peoples are worried about the suggested division of their local ancestral lands and communities into two or more village institutions known as *Gaunpalika* ("Village Councils"). The Sanghiya Samajbadi Forum, a political party of the Madhesi and Hill indigenous leaders, has had strong objections to the work of the LBRC on the grounds that local bodies should be decided by the respective provinces and not by the current central government. It should be noted that no free, prior and informed consent was sought from the indigenous peoples in question, as required by the UNDRIP and the WCIP Outcome Document.

## **Establishing the commissions**

The Constitution of Nepal has provided for the establishment of two commissions: one for indigenous peoples and the other for the Tharus. While the idea is commendable, in reality it looks as if these two commissions will be powerless, with no judicial or other significant power or authority besides looking after some development work, such as income-generating activities, interactive programs, and capacity building of indigenous peoples' organizations. Former Prime Minister K. P. Oli expressed a view that the National Foundation for the Development of Indigenous Nationalities (NFDIN) should be shut down. Further, as the constitution states that the government shall review the need for these commissions 10 years after their establishment, it is very likely that it will be discontinued after this review.

## **Consultation on enhancing the participation of indigenous peoples in the General Assembly**

As a part of the follow-up to the World Conference on Indigenous Peoples Outcome Document of 2014, a four-member advisory body formed by the UN Secretary-General to advise on enhancing indigenous peoples' participation in the General Assembly (GA), consultations on venue, modalities, representation and selection criteria are ongoing. Krishna B. Bhattachan, representing LAHURNIP, participated in a consultation held at the UN headquarters on 14-15 December 2016 and made statements focused on granting unique, permanent observer status to indigenous peoples. Concerning the criteria by which to define indigenous peoples, LAHURNIP suggested, in the Nepalese and South Asia context, including those who do not belong to the Hindu fourfold Varna and caste systems.<sup>4</sup>

## **Protests against aggressive developments**

Protests against aggressive developments being pursued by the central and local governments of Nepal, many in collaboration with the World Bank and the Asian Development Bank (ADB), especially in hydropower projects, electricity transmission lines, road expansion and hunting ground reserve areas, intensified during

2016. More than 100 indigenous and local individuals signed a memorandum on road expansion in the Kathmandu Valley: "The memorandum calls for scrapping of the criteria drafted without consultation and consent of indigenous Newars and other locals as per their rights guaranteed in the Local Self Governance Act 1999 as well as International Labour Organization (ILO) Convention 169 and United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The memorandum further states that any development program should be undertaken only with Free, Prior and Informed Consent of indigenous peoples in the municipality and warns of protests if the demands are not addressed".<sup>5</sup> A total of 23 committees of indigenous Newars were formed in 2016 to protest against road expansion projects being implemented by the Kathmandu Metropolitan City. The committees stated they would close down the Kathmandu Valley on 4 January in protest.

### **Abuse of "Organized Crime Act"**

New legislation known as the Organized Crime Act of 2014 reared its ugly head this year with the arrests of 13 political cadres associated with the Mongol Mulbasi Rastiyra Force. Generally, organized crime denotes drug lords, the illegal arms trade and trafficking but, in Nepal, any organized efforts by an organization, including political, not registered with the government and which engages in the disruption of communal harmony would be considered organized crime, as denoted by the government. The activities of organized groups' whose mission is to achieve political goals should not be treated as organized crime but, unfortunately, this is the case in Nepal.

### **Climate change**

Some key tasks on climate change and REDD+ were undertaken by the government in 2016. Nepal signed the Paris Agreement on 22 April 2016 and ratified it on 5 October 2016. The National Adaptation Plan (NAP) was initiated by the Ministry of Population and Environment (MoPE) in 2016. The country's Intended Nationally Determined Contribution (INDC) was submitted by the Ministry of Population and Environment. Nepal's REDD+ Readiness Package (R-Package)

(prepared by the REDD+ Implementation Center/ RIC under the Ministry of Forest and Soil Conservation (MoFSC)) was approved by the World Bank's Forest Carbon Partnership Facility (FCPF). The Emission Reductions Program Document (ERPD) for 12 districts of the lowlands (Tarai) was commenced by RIC under the MoFSC. The National Forest Reference Level (FRL) was submitted to UNFCCC. The government and international aid agencies continued to focus on carbon, ignoring the free, prior and informed consent (FPIC) of indigenous peoples and equal sharing of benefits.

All of these climate-change related actions have to be informed by, and be in line with, the UNFCCC Paris Agreement, which acknowledges the rights of indigenous peoples. Importantly, the Paris Agreement does not contradict any of the UN conventions or international instruments on indigenous peoples' rights, including the UNDRIP. However, there are still challenges facing Nepal's indigenous peoples in terms of participating in these programs and policy formulation processes due to a lack of awareness, access to information, advocacy, and the hegemonic mind-set of the policy makers. With the objective of ensuring indigenous peoples' issues and rights, the Nepal Federation of Indigenous Nationalities (NEFIN), through its Climate Change Partnership Program, has been following climate-change related matters. NEFIN has been providing its input to the country's REDD+ Readiness, including the National REDD+ Strategy and FRL. It has raised many issues, including capacity building, information dissemination and obtaining the FPIC of indigenous peoples on matters which affect them, during submission of the R-Package to FCPF. Secondly, NEFIN submitted a position statement on ERPD urging the government and relevant actors to ensure the collective rights of indigenous peoples in Emission Reductions Programs. So far, the National Adaptation Plan (NAP) development process has nine different Thematic Working Groups (TWG) in which indigenous peoples do not yet have any meaningful participation. NEFIN is in one TWG and is calling for more opportunities to engage. The INDC included very few indigenous peoples' inputs, which runs the risk of including "false solutions" to climate change, such as mega hydro power projects. Furthermore, the government, INGOs, NGOs, bilateral and multi-lateral agencies are all working on climate change but have so far neither consulted with indigenous peoples nor dealt with indigenous peoples' issues in an appropriate manner. ○

## Notes and references

- 1 Hindu cosmology divides the population into hereditary caste groups who are ranked according to ritual purity and impurity. The Dalit castes form the lowest tier of the caste system, and are highly marginalized to this day. (Ed. note)
- 2 Six indigenous peoples were initially officially recognized in Nepal through the ordinance, *Rastriya Janajati Bikas Samiti (Gathan Adesh) 2054*. Indigenous peoples have been officially and legally recognized by the government since 2002 (2059 B.S.) through the National Foundation for the Development of Indigenous Nationalities Act (known as the NFDIN Act), which lists 59 distinct indigenous communities in the country.
- 3 LAHURNIP (2016) *Adibasi jajati Adhikarko Sandrvama "Nepalko Sambidhan"ko Adyayan ta-tha Bisleshan* ("A Study and Analysis of the 'Constitution of Nepal' in the Context of Indigenous Peoples' Rights"). Kathmandu: Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP).
- 4 [https://www.youtube.com/watch?v=LMQ2T-LI\\_4Q](https://www.youtube.com/watch?v=LMQ2T-LI_4Q)
- 5 <http://aippnet.org/nepal-indigenous-newars-in-kirtipur-demand-free-prior-and-informed-consent-for-road-expansion-in-the-municipality/>

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According to the 2011 census, the indigenous nationalities (Adivasi Janajati) of Nepal comprise 36% of the total population of 26.5 million, although indigenous peoples' organizations claim a larger figure, of more than 50%. The 2011 census listed the population as belonging to 125 caste and ethnic groups, including 59 indigenous peoples, 59 castes, and 3 religious groups.

Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal they have been discriminated, marginalized, excluded, subjugated, dominated, exploited and internally colonized by the dominant caste groups in terms of land, territories, resources, language, culture, customary laws, political and economic opportunities and collective way of life.

The new Constitution of Nepal promulgated in 2015 denies the collective rights and aspirations for identity-based federalism of indigenous peoples<sup>1</sup>, in spite of the fact that Nepal has ratified ILO Convention No. 169 on Indigenous and Tribal Peoples and passed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the WCIP Outcome Document. The implementation of ILO Convention No. 169, UNDRIP and the Outcome Document is still wanting. It is yet to be seen how the amendments in the new Constitution and drafting of new legislation will comply with the provisions of these international human rights standards.

### Local, provincial and federal elections

**T**he Nepal government was unable to hold local, provincial or federal elections during 2016 due to rising controversy between, for and against amendments in or rewriting of the Constitution of

Nepal 2015 (see [The Indigenous World 2017](#)). When the government, on 20 February, thus stated that the first local elections would shortly be held, indigenous peoples commenced 2017 with less hope than before of amending the racist Constitution to accommodate their aspirations. Violent protests in Terai forced the government to hold the local elections in three phases: the first in Province Numbers 3, 4 and 6 on 14 May, the second in Province Numbers 1, 5 and 7 on 28 June, and the third in Province Number 2 on 28 September.

As part of the requirement for local elections, and in accordance with a request from the Electoral Commission of Nepal, on 24 April the Government of Nepal published a list of 98 minorities to ensure their representation.<sup>2</sup> This included 40 of the 59 indigenous peoples: Kumal, Gharti/Bhujel, Rajbanshi, Sherpa, Dauwar, Majhi, Chepang, Sunuwar, Sattar/Santhal, Jhangad/Dhangar, Gagngai, Thami, Dhimal, Yakkha, Tajpuria, Darai, Pahari, Bhote, Thakali, Chantyal, Hyolmo, Bote, Bragmu-Baramo, Jirel, Dura, Meche, Raji, Dolpi, Byanshi-Sauka, Lepcha, Pattharkatta/Kushbadiya, Kisan, Topkegola, Walung, Hayu, Lhopa, Koche, Lhomi, Raute and Kusunda. It also included 13 yet-to-be-listed indigenous peoples: Kulung, Ghale, Khawas, Nachhiring, Yamfu, Chamling, Aathparya, Bantawa, Thulung, Mewahang Wala, Bahing, Sampang, Khaling, and Loharung.

A Writ Petition (Writ No. 073-WO-1333) was filed in the Supreme Court of Nepal against this government decision to list indigenous peoples as a minority. It was filed on 30 May by the Nepal Federation of Indigenous Nationalities (NEFIN) et. al, with the legal assistance of the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP). Indigenous peoples were listed as a minority in a notice published in a Home Office Gazette on 24 April 2017. This directly contradicts and is inconsistent with ILO Convention No. 169 and the Foundation for Development of Indigenous Nationalities (NFDIN) Act 2002, which recognizes Adivasi Janajatis (Indigenous Nationalities) as distinct peoples with distinct rights. Indirectly, it divides indigenous peoples and jeopardizes the entitlement of their rights as enshrined in ILO Convention 169 and UNDRIP. Justice Dr. Ananda Mohan Bhattarai's Bench issued a Show Cause Order and the case is ongoing at the moment.

Following the successful completion of the local elections, provincial and federal elections were conducted in two phases: the first in 32 districts on 26 November, and the second in 45 districts on 7 December.<sup>3</sup> At year end, a flame of hope remained alive for the indigenous peo-



ples as the Federal Socialist Forum,<sup>4</sup> which has been raising issues around indigenous peoples, Madhesi and other marginalized groups, turned out to be a “Kingmaker” with some bargaining power in national politics and, together with the Rastriya Janata Party, which focuses on Madhesi issues only, in command of the Provincial Parliament in Province No. 2, so there is still hope for indigenous peoples to have a voice in the political sphere in Nepal.<sup>5</sup>

The government had delayed holding local, provincial and federal elections primarily due to strong resistance from the Madhesi and Tharu indigenous peoples’ movements to any rewriting or amending of the Constitution to ensure an identity-based federalism. The pressure had waned as the leaders of the indigenous peoples’ movement, led by the Nepal Federation of Indigenous Nationalities (NEFIN), became co-opted mainly by the Communist Party of Nepal-Unified Marxist Leninist (CPN-UML), the Nepali Congress, and the Communist Party of Nepal-Maoist Centre (CPN-Maoist). However, indigenous peoples’ movements organized by those not associated with NEFIN continued to exert pressure to rewrite or amend the Constitution to ensure an identity-based federalism. CPN-UML, a diehard anti-indigenous political party, the CPN-Maoist Centre, who were apparently diehard pro-indigenous during 10 years of insurgency but abandoned identity-based federalism after the peace process, and the Nepali Congress Party, another anti-indigenous political party, took a bold decision to completely ignore the continuing political pressure from Madhesi and indigenous peoples.

They “successfully” organized the local elections and joint federal and provincial elections before the year was out. Strong resistance from the Madhesi resulted in the local elections being held in three phases and the federal and provincial elections in two.

The indigenous (and Madhesi) voters who went to the polling stations to cast their vote despite disagreeing with the Constitution only gave validity to something they were opposed to. Some indigenous intellectuals did not vote in order to avoid validating a Constitution that robbed them of their collective rights. As the year ended and the results of the federal and provincial elections emerged, it became clear that the CPN-UML had become the largest political party in the federal parliament, followed by the CPN-Maoist Centre, the Nepali Congress, the Federal Socialist Forum and Rastriya Janata Party. Of the seven provinces, CPN-UML had control over six with only Province No. 2 controlled by the Madhesi political parties.

Out of the total of 165 directly elected seats, 45 indigenous peoples had been elected, representing 10 of the 59 indigenous peoples: 10 Tharu, 9 Newar, 6 Khambu (“Rai”), 6 Magar, 5 Yakthunba (“Limbu”), 3 Tamu (“Gurung”), 1 Sunuwar and 1 Thakali, plus 1 Nisyamba (“Manage”) yet to be listed.<sup>6</sup> Elected indigenous peoples are in a majority in two provinces (1 and 4). Although the representation of indigenous peoples looks good, in reality they are unable to go against party policy. Raising indigenous peoples’ issues will therefore be a Herculean task. The national indigenous peoples’ movement, which reached a peak at the end of the first Constituent Assembly, went downhill during 2017 although there is now the possibility of a revival in five of the seven provinces, namely, Province Numbers 1, 3, 4, 5 and 7.

It should be noted that Resham Chaudhary, a young Tharu media professional and leader, stood as a candidate from his position of “self-exile” and won by a large margin in the direct election to the federal parliament from Kailali constituency number 1,<sup>7</sup> where violent confrontations between the Tharu indigenous peoples and government security forces resulted in the deaths of seven people, including the Senior Superintendent of Police and a child, and caused the displacement of more than 10,000 Tharus to India. Prime Minister Sher Bahadur Deuba received his certificate through his representative but both the National Electoral Commission and the Supreme Court of Nepal refused to allow Resham to receive his certificate for winning the election through his representative. Resham has been underground since the violent con-

frontation as he is wanted by the police. Many took this incident as a double standard that discriminates against indigenous peoples. Journalist Supriya Manandhar writes in the RECORD that this marks a rift between the Tharus and the Nepali state.<sup>8</sup> The rift between indigenous peoples, not only the Tharus, and the state is indeed widening, making a mockery of ILO C169 and the UNDRIP, to which Nepal is a party.

### **Indigenous peoples' lands, territories and resources**

One of the main themes of both ILO C169 and the UNDRIP is indigenous peoples' ownership, control, use, and management of their lands, territories and resources. Ten years have now past since Nepal's ratification of ILO C169 and adoption of the UNDRIP, both in September 2007, but their full and meaningful implementation is nowhere in sight. As the Constitution of Nepal was produced and promulgated without the Free, Prior and Informed Consent (FPIC) of the indigenous peoples, and completely ignoring two early warnings issued by the CERD Committee,<sup>9</sup> one Directive Order<sup>10</sup> and one Mandamus<sup>11</sup> issued by the Supreme Court of Nepal relating to the representation of indigenous peoples through their own organization and to ensuring their FPIC, one can hardly expect to see new legislation that is compatible with these international human rights standards.

As indigenous peoples' awareness of their rights increases, and the state and private sectors intensify their aggressive developments, indigenous peoples are resisting further loss of their individual and collective control over land, territories and resources. In 2017, LAHURNIP provided legal support to 13 cases of human rights violations and to the resistance movements in different parts of Nepal.<sup>12</sup> Of the 13 cases of violations, two are related to displacement by road expansion projects (one in Kathmandu and one in Dhankutta), two are related to hydropower projects, Padam Khola hydropower project and Uper Trishuli-1 Hydro-power Project, two relate to high-tension electricity transmission lines, Kabeli and Bhulbule Marsyangdi, one is a case of mining of limestone in Palpa, one a case of an animal slaughter house in Gulariya in Bardiya, one a case of pollution by Birat Poultry Farm in Morang, one a case of dignity and identity of the Khadgi in Kathmandu, one a case of forest, water and sacred sites of the Magar in Kailali, one a case against land takeovers by the Nepal Army in Panchthar, and one a continuing case of

gross human rights violation by the state against Tharu indigenous peoples in Kailali. What is common to all these cases is that neither the state nor the private sector have ever sought FPIC or given due compensation to those whose lands and property have been destroyed.

The Government of Nepal is implementing a Road Expansion Project (996 km) that will directly and indirectly affect more than 150,000 people. The primary victims or survivors of this project are the Newar indigenous peoples. They are facing serious human rights violations, including forced eviction, torture, destruction of countless religious, spiritual and sacred sites, and economic dispossession. Women, children and people with disabilities will suffer disproportionately. No alternatives to the road expansion have been considered and no proper compensation given. No impact assessment has been done. With the legal help of LAHURNIP, this action was challenged in the Supreme Court and, in September, the Supreme Court issued a writ against the project.<sup>13</sup> The Court has yet to make the full text of its final verdict public. Two high-tension electricity transmission line projects, one in Lamjung district in Western Nepal and the other in Kabeli in Taplejung district in Eastern Nepal, have agreed to pay 10 percent of the total compensation amount but the community have refused to accept this, and are demanding full compensation. In Morang, the Birat Poultry Farm has agreed to move its facility elsewhere within the next two years as the local indigenous peoples and others are seriously concerned that the pollution is making their daily life difficult.

## **Two Constitutional Commission Bills passed**

Parliament passed the Indigenous Nationalities Commission Bill on 2 August<sup>14</sup> and the Tharu Commission Bill on 19 September.<sup>15</sup> Months after enacting both laws, however, the government has yet to form either commission. Although both commissions are constitutional, they have no judicial or semi-judicial authority.

## **Indigenous women's economic empowerment**

On the evening of 17 March, as a part of the 61<sup>st</sup> session of the Commission on the Status of Women, there was a High-Level Panel Discussion

on “Challenges and Opportunities in Achieving Gender Equality and the Empowerment of Indigenous Women and Girls”, chaired by H. E. Mr. Antonio Patriota de Aguiar, Chair of the CSW 61, in which Ms Lakshmi Puri, Deputy Executive Director of UN Women, Ms Tarcila Rivera Zea, Executive President of FIMI, and the three main speakers representing indigenous women, including Ms Yasso Kanti Bhattachan, National Indigenous Women Forum (NIWF) Nepal, spoke on indigenous women’s political participation in decision making. Ms Yasso Kanti Bhattachan said that indigenous women should be visible at all levels of the UN and the Member States, UNIFEM should have a separate unit on and budget for indigenous women’s empowerment, disaggregated data should be collected on indigenous women, and indigenous peoples should obtain permanent observer status at the General Assembly. UNDP Nepal, in partnership with the National Indigenous Women’s Federation (NIWF), has commenced research into the economic empowerment of indigenous women in Nepal.

## Climate change

The main climate change activities in Nepal in 2017 were as follows. The Forest Investment Program (FIP), Investment Plan for Nepal ‘Investing in Forests for Prosperity at a Time of Transformation’ was approved by the World Bank in December 2017. Together with UNDP, IUCN and FAO, the Ministry of Finance has, as a National Designated Authority (NDA) to the Green Climate Fund (GCF), been developing different concept notes and proposals for the GCF. Climate change programs implemented by the government have yet to establish a mechanism for ensuring the Free, Prior and Informed Consent (FPIC) of indigenous peoples.

## Notes and references

1. Sixty-one indigenous peoples were initially officially recognized in Nepal through the ordinance, *Rastriya Janajati Bikas Samiti (Gathan Adesh) 2054*. Indigenous peoples have been officially and legally recognized by the government since 2002 (2059 B.S.), through the National Foundation for the Development of Indigenous Nationalities Act (known as the NFDIN Act), which lists 59 distinct indigenous communities in the country.

2. Nepal Rajpatra, Bhag 5 Khanda 67 Sankhya 2 Pages 2-6, 2072/1/11 (text in Khas Nepali) ["Nepal Gazette, Part 5 Section 67 Number 2, Pages 2-6, 24 April 2015"]
3. See <http://kathmandupost.ekantipur.com/news/2017-09-01/ec-divides-districts-for-two-phases-of-elections.html>
4. A party made by the merger of two parties (Federal Socialist Party and Madhesi Janaadhikar Forum)
5. See <https://setopati.com/politics/118441> (text in Khas Nepali)
6. See <https://www.onlinekhabar.com/2017/12/1645919>
7. See <http://www.myrepublica.com/news/32464/?categoryId=81>
8. See <https://www.recordnepal.com/wire/features/resham-chaudharys-victory-marks-the-rift-between-the-tharus-and-the-nepali-state/>
9. See <http://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Nepal28092009.pdf>
10. Full text of the decision yet to be uploaded. Case registration date: 2065-11-01 Case No. 065-WO-0475 Date of Verdict: 2070-01-08 <http://www.supremecourt.gov.np/cp/#listTable>
11. Case registration date: 2070-09-24 Case No. 070-WO-0476 Date of Verdict: 2071-01-29. See full text in Khas Nepali language at: [http://www.supremecourt.gov.np/cp/assets/downloads/supreme\\_126604.pdf](http://www.supremecourt.gov.np/cp/assets/downloads/supreme_126604.pdf)
12. Nepalma Adibasi Adhikar Hananka Ghatana ("Incidences of Violation of Indigenous Peoples' Rights in Nepal"). LAHURNIP. 2017, <http://www.lahurnip.org/uploads/articles/Adibasi%20Adhikar%20hananka%20ghatana-1.pdf>
13. See <http://www.lahurnip.org/news-details/86.html>
14. See <http://www.myrepublica.com/news/24948/>
15. See <https://kathmandutribune.com/parliament-passes-tharu-muslim-commission-bills/>

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# NEPAL



According to the 2011 census, the indigenous nationalities (*Adivasi Janajati*) of Nepal comprise 36% of the total population of 26.5 million, although indigenous peoples' organizations claim a larger figure of more than 50%. The 2011 census listed the population as belonging to 125 castes and ethnic groups, including 63 indigenous peoples; 59 castes, including 15 Dalit castes<sup>1</sup>; and 3 religious groups, including Muslim groups.

Even though indigenous peoples constitute a significant proportion of the population, throughout the history of Nepal indigenous peoples have been discriminated, marginalised, excluded, subjugated, dominated, exploited and internally colonised by the dominant caste groups in terms of land, territories, resources, language, culture, customary laws, political and economic opportunities, and collective way of life.

The new Constitution of Nepal promulgated in 2015 denies the collective rights and aspirations for identity-based federalism of indigenous peoples,<sup>2</sup> in spite of the fact that Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and passed the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the World Council of Indigenous Peoples (WCIP) Outcome Document. Their implementation is still wanting. The recent amendments in the laws and draft bills are not in line with the UNDRIP and ILO Convention 169.

## Legislation without FPIC

The *Criminal (Code) Act*, 2017, the *Criminal Procedure (Code) Act*, 2017, the *Civil (Code) Act*, 2017 and the *Civil Procedure (Code) Act*, 2017 went into effect from 17 August 2018.<sup>3</sup> According to the International Institute for Democracy and Electoral Assistance (International IDEA):

*The government has put forward the proposal to amend 56 laws that are against the constitutional rules promulgated in*

*2015. According to the spokesperson of the Ministry of Law, Justice and Parliamentary Affairs [...] the government has also sent a proposal to the Cabinet regarding another bill that calls for amendment of more than 110 existing laws.<sup>4</sup>*

These laws and bills are not in line with the UNDRIP, ILO Convention 169 and the Outcome Document of the WCIP 2014, and the free, prior and informed consent (FPIC) of indigenous peoples was not obtained by the state during the making, amending, passing or implementation of these laws.

## **Conflict between Nepal and the European Union**

The ruling dominant caste Khas Arya has been unhappy with European donors regarding their provision of support to the Dalit and Madhesi indigenous peoples. Support to help them claim their human rights and social justice through advocacy and dialogue has been especially contentious. The conflict between the rulers of Nepal and the European Union (EU) culminated in 2018. The EU Election Observation Mission (EU EOM) presented its final report on their observation of the House of Representatives and Provincial Assembly elections, which were held in Nepal in two phases (26 November 2017 and 7 December 2017). It included recommendations for elections on 20 March 2018.<sup>5</sup> The EU EOM recommended the government to review the impact of the quota system on the ethnic composition of the parliament and to “remove the Khas Arya from the groups included”.<sup>6</sup> In Art. 84 (2) of the Constitution of Nepal, the Khas Arya have been defined as consisting of the Kshetri, Brahmin, Thakuri and Sanyasi (Dashami) communities. In its recommendations, the EU stated:

*[...] The equality provisions refer only to indigent Khas Arya, but this qualification is not contained in the electoral provision. This is arguably in contravention of international standards on equality, as, under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Elimination of All Forms of Racial Discrimination, affirmative action measures are foreseen only as a means to promote equality.<sup>7</sup>*

In the article, “Is European Union instigating ethnic conflict in Nepal?” the Ministry of Foreign Affairs, the Election Commission of Nepal, the Press Council Nepal and leaders strongly criticised the EU EOM report as “unfounded”, “misleading”, “biased”, “baseless”, “mischievous” and “in contravention with the election observation with the election observation code of conduct...”<sup>8</sup> *The Indian Express* quoted Nepal’s prime minister saying, “I and the Nepali people have felt humiliated by the EU’s report. I humbly request the EU to correct it immediately.”<sup>9</sup> The EU response to the government’s objection on the report was that it was as per standard practice for international election observation missions.<sup>10</sup>

## Struggles for lands, territories and resources

Demand for FPIC as well as protests against aggressive development deepened this year. For example:

- The aggressive Road Expansion Project (REP) executed by the government in the ancestral land of the Newa indigenous peoples adversely impacted more than 150,000 peoples.<sup>11</sup> Gross human rights violations, including mass-forced eviction, demolishing of symbols of identity such as cultural and religious sites, as well as intimidation, have occurred. The Supreme Court issued its Directive Order on 17 September 2017 on the case of *Shanu Shrestha v. Prime Minister Office et. al.* In the full text of the verdict (made available only in 2018), the Court said not to proceed with any work that adversely affects the security of a house, unless there are no alternative solutions; it said to address the rights to relocation and rehousing of the displaced equitably; and to provide benefits and compensation as per the *Land Acquisition Act* and the *Land Acquisition Regulations*, and focus on conservation of environment and archaeological sites while implementing any development project.<sup>12</sup> On 11 June 2018, the International Labour Organization (ILO) decided to set up a tripartite committee to examine alleged non-observance – relating to Nepal’s REP – of ILO Convention 169 in response to a complaint lodged by the Nepal Telecom Employees’ Union (NTEU).
- With support of the Lawyers’ Association for Human Rights of

Nepalese Indigenous Peoples (LAHURNIP), an appeal was launched in the Provincial Court of Sindhuli against the conviction and fining of community leaders who had led a movement against the adverse impact of human rights violations in the form of loss of housing, lands and resources, resulting from the electricity transmission line in the Sindhuli District. On 21 December 2018, the Court reversed the decision of the Chief District Officer (CDO) and the community leaders were acquitted from the charge.<sup>13</sup>

- On 8 October 2018, with support of LAHURNIP and the Accountability Council, a complaint was lodged requesting mediation by the Head of the Complaint Mechanism of the European Investment Bank (EIB) regarding adverse impacts on particularly indigenous peoples – loss of their lands, resources and livelihood – caused by the high voltage electricity transmission line project in Lamjung. The EIB indicated that it would take the case further and that it is pending.<sup>14</sup>

### **Armed conflict and alleged organised crime**

Khambuwan Mukti Morcha Samyukta, an indigenous armed group that has been fighting for separate statehood in the eastern hill districts for the past eight years has, according to a news article, “surrendered weapons and pledged peaceful political activism” to the government.<sup>15</sup> On 5 November 2018, fourteen indigenous leaders of the *Mongol Mulbasi Rastriya Force* (Kirat), who had been detained in judicial custody since 16 October 2016, were acquitted by the District Court Bhaktapur from the charge that they were involved in organised crime .

### **The CERD grills the State party**

The Committee on the Elimination of Racial Discrimination (CERD) issued its concluding observations on the combined 17<sup>th</sup> to 23<sup>rd</sup> periodic reports of Nepal on 29 May 2018 and made several recommendations relating to indigenous peoples. It recommended that “the right of indigenous peoples to participate in government bodies [is] effectively respected and that indigenous peoples can freely choose their representatives”; that laws that criminalise aspects of indigenous cultures are

repealed; and that FPIC is obtained “prior to the approval of any project affecting the use and development of their traditional lands and resources”.<sup>16</sup>

## Indigenous women

The Committee on the Elimination of Discrimination against Women (CEDAW) considered the sixth periodic report of Nepal at its meetings held on 23 October 2018 in Geneva. A consortium of indigenous women’s organizations<sup>17</sup> led by the National Indigenous Women’s Federation (NIWF) had submitted a Shadow Report on the Situation of Rights of Indigenous in Nepal to the CEDAW.<sup>18</sup> The CEDAW Shadow Report Preparation Committee (SRPC) with 93 mainstream women’s organizations,<sup>19</sup> had invited the indigenous women’s consortium to take part and submit one report, but the indigenous women’s consortium submitted a separate shadow report as the issues of indigenous women’s rights are distinct.

On 14 November 2018, the CEDAW made 15 recommendations to Nepal relating to indigenous women.<sup>20</sup> It observed a “lack of recognition of the rights of indigenous women in the Constitution, and the general lack of recognition of the right of indigenous peoples to self-determination”.<sup>21</sup> It, therefore, recommended that these rights should be explicitly recognised by amending the constitution in line with the UNDRIP was historic, and indicative of indigenous women’s success at the world stage.

## Economic empowerment of indigenous women (NIWF/UNDP)

As a part of the follow-up of the 61<sup>st</sup> session of the Commission on the Status of Women (CSW) with a special focus on economic empowerment of indigenous women, the UN Development Programme (UNDP) Nepal, together with the NIWF, carried out research on the *Economic Empowerment of Indigenous Women in Nepal* and published it.<sup>22</sup> Its recommendations were that any economic empowerment programmes being or about to be implemented in Nepal should focus on customary knowledge and skills of indigenous women; amend or enact new legis-

lation to give ownership and control over lands, territories and resources in line with UNDRIP and ILO Convention 169; and on developing the indigenous business hub.<sup>23</sup>

## Mounting pressure on the nomadic Raute

The Raute, the last nomadic indigenous peoples of Nepal, were given ID cards that stated the Gurans Rural Municipality in Dailekh district as their permanent address, as ordered by the Ministry of Federal Affairs and General Administration following a Cabinet meeting on 14 June.<sup>24</sup> As Raute have no control over their customary lands, territories and resources and as there has been a mounting pressure on them to live a settled life, the distribution of ID cards could lead to the Raute abandoning their nomadic lifestyle.

## Notes and references

1. Hindu cosmology divides the population into hereditary caste groups who are ranked according to ritual purity and impurity. The Dalit castes form the lowest tier of the caste system and are highly marginalized to this day (Ed. note).
2. 61 indigenous peoples were initially officially recognised in Nepal through the ordinance *Rastriya Janajati Bikas Samiti (Gathan Adesh) 2054*. Indigenous peoples have been officially and legally recognised by the government since 2002 (2059 B.S.) through the *National Foundation for the Development of Indigenous Nationalities Act* (known as the NFDIN Act), which lists 59 distinct indigenous communities in the country.
3. See The Rising Nepal, "The Modified Criminal And Civil Codes," available at: <http://bit.ly/2N5cjsQ>
4. See ConstitutionNet, "Nepal plans bulk amendments to 110 existing laws to meet constitutional deadlines," available at: <http://bit.ly/2NOVdNI>
5. See European External Action Service, "EU Election Observation Mission presents final report on the House of Representatives and Provincial Assembly elections, with recommendations for future elections," available at: <http://bit.ly/2N4cBQW> The final report can be downloaded at: <http://bit.ly/2N2hcTC>
6. Ibidem, pages 8 & 37, available at: <http://bit.ly/2N2hcTC>
7. Ibidem, page 14, available at: <http://bit.ly/2N2hcTC>
8. See Nepal Foreign Affairs, "Is European Union instigating ethnic conflict in Nepal?" Available at: <http://bit.ly/2NaB7jz>
9. See The New Indian Express, "European Union's report on polls 'humiliates'

- Nepal: PM KP Sharma Oil," available at: <http://bit.ly/2N0vIAj>
10. See The Kathmandu Post, "Recommendations offered in a spirit of partnership: EU – National," available at: <http://bit.ly/2Tcb5Tl>
  11. See the statement made by the Country Rapporteur in the video footage from 1:25:2 to 1:35:08 from UN Web TV, available at: <http://bit.ly/2N4yLTh>
  12. Information provided by the LAHURNIP.
  13. Ibidem.
  14. See Naya Patrika Archive for "New coverage by vernacular," available at: <http://bit.ly/2TaDYiJ> accessed on 12 August 2018.
  15. See The Kathmandu Post, "Khambuwan gives up arms, enters into peaceful politics – National," available at: <http://bit.ly/2GpvJrV>
  16. See the CERD CO, available at: <http://bit.ly/2Dyb5Ch>
  17. The consortium comprised of the NIWF, the National Indigenous Women Forum (NIWF), the National Indigenous Disabled Women's Association of Nepal (NIDWAN) and the Indigenous Women's Lawyer's Group (INWOLAG).
  18. See the shadow report on the Situation of the Rights of Indigenous Women in Nepal, available at: <http://bit.ly/2N5KGjn>
  19. See the SRPC shadow report, available at: <http://bit.ly/2N2xqos>
  20. See the CEDAW Recommendations, available at: <http://bit.ly/2N4lzh3>
  21. See para 40(a) of the CEDAW Recommendations, available at: <http://bit.ly/2N4lzh3>
  22. This research was carried out by a team of researchers led by Krishna B. Bhattachan. To download the book, see: <http://bit.ly/2N2xSKM>
  23. *Economic Empowerment of Indigenous Women in Nepal*. Page 104. Available at: <http://bit.ly/2N2xSKM>
  24. See Kathmandu Post, available at: <http://bit.ly/2N2q4lP>

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NEPAL in 2020

by

KRISHNA B. BHATTACHAN



# Nepal



According to the 2011 Census, the Indigenous nationalities (*Adivasi Janajati*) of Nepal make up 36% of the total population of 29.8 million,<sup>1</sup> although Indigenous Peoples' organisations claim a larger figure of more than 50%. The 2011 Census listed the population as belonging to 125 caste and ethnic groups, including 63 Indigenous Peoples; 59 castes, including 15 Dalit castes;<sup>2</sup> and three religious groups, including Muslim groups.

Although Indigenous Peoples constitute a significant proportion of the population, throughout Nepal's history, they have been discriminated, marginalised, excluded, subjugated, dominated, exploited and internally colonised by the dominant caste groups in terms of land, territories, resources, language, culture, customary laws, political and economic opportunities, and their collective way of life.

The new Constitution of Nepal, promulgated in 2015, denies Indigenous Peoples their collective rights and aspirations for identity-based federalism,<sup>3</sup> despite the fact that Nepal has ratified ILO Convention 169 on Indigenous and Tribal Peoples and passed both the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and the World Council of Indigenous Peoples' (WCIP) Outcome Document. Their implementation is still lacking however. Recent amendments to laws and draft bills are not in line with the UNDRIP or ILO C169. The Nepalese government has shown no sign of implementing the recommendations, including that of amending the constitution to explicitly recognise the right to self-determination and all Indigenous women's rights in line with the UNDRIP, as outlined by the UN Committee on the Elimination of Discrimination against Women (CEDAW).

## Largest historic protest since the 2006 people's movement

**T**he Nepalese government introduced a bill in the federal Parliament [upper house] on 29 April 2019 scrapping Guthi, the customary self-government system of the Newa,<sup>4</sup> supposedly to reg-

ulate endowments in religious institutions, especially Hindu temples, which are also known as Guthi. 2019 will be remembered as a year when thousands of Indigenous people, especially the Newa, came out on the streets of Nepal Mandala, their ancestral lands, to collectively protest at the attempted annihilation of their customary self-government systems by the dominant “Khas Arya” (Brahmanist) rulers of Nepal.

The Kathmandu Post reported: “Despite the government’s withdrawal of the bill from the National Assembly on Tuesday, residents of the Kathmandu Valley—mostly Newars [Newa]—took to the streets in large numbers, protesting what they called a state-led attempt to wipe out centuries-old customs and traditions.”<sup>5</sup> The Newa Indigenous Peoples had demanded the bill be repealed for good and that no attempt should be made to bring it back in any way in the future. The Kathmandu Post quoted Ganapati Lal Shrestha, coordinator of the *Rastriya Paghichan Samukta Sangharsha Samiti* (Joint Struggle Committee for the Preservation of National Identity), who said: “Eleven days ago, when we protested, the government thrashed us with batons and used water cannon to disperse us. Many of us were injured. Now, the whole city has woken up to fight to preserve our culture and protest the government’s autocracy.”<sup>6</sup> The Kathmandu Post reported on June 10 that: “At least six people were injured on Sunday when police used force to disperse heritage conservationists, locals and stakeholders who were protesting the proposed Guthi Bill that the government has quietly moved to Parliament without holding proper consultation.”<sup>7</sup>

This extraordinary historic event sent a clear message to political leaders that Indigenous Peoples would go beyond their party lines to defend their customary self-government systems. If the Newa, one of the 59 formally recognised Indigenous Peoples, could stage a protest equivalent to the people’s movement of 2006, what might happen if all 59 Indigenous Peoples, and other yet to be formally recognised Indigenous Peoples, took to the streets demanding changes in the constitution in line with UNDRIP that would guarantee collective rights, including the rights to self-determination, autonomy, self-rule and customary laws?

The ancestral lands, territories and resources of the Newa people lie in the Kathmandu Valley, and they have more than 1,000 Guthi rules within their customary self-government system that maintain their everyday collective life, including clan-related, life cycle rituals, social,

cultural, religious, spiritual, judicial and economic activities that bind all the clan's families together by involving them in both mandatory and voluntary activities. It is true that there is no Newa if there is no Guthi.

## **Protest against scrapping of reservation by the Public Service Commission**

In alliance with the Dalit and Madhesi movement, the Nepal Federation of Indigenous Nationalities (NEFIN) jointly organised several street protests in 2019 claiming that the federal Public Service Commission's advertising of 9,161 vacant posts at the local level as a reserved quota of 45% of the total positions vacant to marginalised groups (Indigenous Peoples, Dalit, Madhesi, Muslims, persons living with disabilities and people living in remote areas) was not in line with the Civil Service Act. The Public Service Commission (PSC) was reported as saying that "it could not ensure inclusion because there were not enough seats in all local levels". Those who were for the quota argued that the total vacant posts needed to be distributed to each cluster by putting all vacant positions in one basket.<sup>8</sup> The government, however, responded to the protests with excessive use of the security forces. The chair of NEFIN and eight other protestors were injured.<sup>9</sup> The positive side of this movement is that all groups facing social exclusion have now joined forces to reclaim their lost quota.

## **Land, territories and resources**

2019 has been an eventful year in the Indigenous Peoples' continuing struggle to reclaim ownership and control over lands, territories and resources. For example, the Supreme Court of Nepal issued a Directive Order on 31 December 2018 that laws should be passed to establish the Baram Special, Protected or Autonomous region as stated in the constitution (*Bhuvan Baram & Tek Bahadur Baram vs Prime Minister of Nepal WN 074-WO-0239*). Baram are one of the 59 Indigenous Peoples formally recognised by the government and they are a highly marginal-

ised group. The Supreme Court has clearly stated that the culture and social structure of the Baram cannot be protected without establishing the Baram Special or Protected area. Inspired by this directive order, the Majhis, Baram, Newa, Magar, Kiratis and Santhals are all raising the issue of Protected, Special and Autonomous Areas with the support of the Lawyers' Association for Human Rights of Nepal's Indigenous Peoples (LAHURNIP). A Writ Petition was filed (076-WO-0259) in this regard by Sadaar Sing Limbu et al against the Prime Minister of Nepal. The Supreme Court issued Show Cause Order and the case is ongoing. Article 56 (5) has a provision that "any Special, Protected or Autonomous Region can be established under the Federal law for social, cultural protection or economic development"<sup>10</sup> but this has never been implemented by the government.

Another example is a Writ Petition (*Amitra Shakya et al vs. Government of Nepal*) filed at the Supreme Court of Nepal against forced eviction, for the protection of cultural rights and against development aggression in the ancestral lands of the Newa Indigenous Peoples. A third example relates to a letter sent by the Director-General of the International Labour Organisation (ILO). The letter was the result of a decision of the ILO's Governing Body taken at its 333rd session (June 2018).<sup>11</sup> According to this decision, the ILO would set up a tripartite committee to examine the matter of a complaint lodged by the Nepal Telecom Employees Union (NTEU) on behalf of Indigenous Newa<sup>12</sup> on 6 November 2019. The ILO asked the NTEU if they wanted them to mediate (if both parties agreed to it) or otherwise conduct an investigation into the complaint and take the necessary action. The government did not accept the option of reconciliation and so the ILO will have to conduct an investigation. Leaders of the movement against illegal road expansion do not believe the government will settle this case of violation in line with ILO Convention No. 169.

## **"WWF continues to ignore violations of human rights"**

The rangers of the Chiwtan National Park put Shikharam Tharu, an

## Participation

The Supreme Court of Nepal issued a Show Cause Order on 11 August 2019 to a Writ Petition filed by LAHURNIP on the issue of Indigenous Peoples' meaningful participation in decision-making, including law making processes (076-WO-0104). This case is ongoing and at the point of a final hearing.

## Indigenous Peoples in the periodic plan

The government approved the Concept Paper for the 15th periodic plan (2019/20–2023/24) on 29 April.<sup>18</sup> Nepal's National Planning Commission (NPC) included a number of plans and programmes for Indigenous Peoples following an intervention by the Lawyer's Association for Human Rights of Nepal's Indigenous Peoples (LAHURNIP) during the drafting of the Concept Paper. According to the Concept Paper, the Special, Protected and Autonomous areas will be organised and operationalised according to the constitution and the local-level operation act. It mentions conducting surveys of the rest of the non-surveyed/non-mapped lands, bringing them under land administration systems and protecting them by preparing detailed documents of governmental, public community and Guthi (Trust) lands. Further, the survey will state all the local-level biodiversity and associated/related knowledge, skills, practices, socio-cultural systems, arts and intellectual property of Indigenous and tribal peoples (*Adivasi Janajati*), and local communities will be documented and duly registered. It also commits to implementing and institutionalising a special programme for the protection of marginalised and endangered disappearing peoples (such as the Raute, Kusunda, Chepang, Rajbansi, Chamar, Musahar, Vadi, Raji, etc.). This may be positive but only if the government carries it out in line with the UNDRIP and ILO C169, obtaining FPIC and with the meaningful participation and representation of Indigenous Peoples. Otherwise, it could potentially be a threat to Indigenous Peoples as they may not agree to the categories classifying their land.

## **Raute in a “human zoo”**

Guranse rural municipality in Dailkeh district decided to confine 42 families (149 individuals) of the nomadic Raute people in their village on the banks of Garche River by erecting fences around them so that visitors could pay an entrance fee to see or meet them, effectively putting the Raute in a human zoo. LAHURNIP issued a press statement on 5 July 2019 condemning this violation of the Raute’s human right to move freely in their ancestral forests.<sup>19</sup> After three months of this confinement against their will, the Raute moved to Surkhet, first to Satakhani in Lekbesi municipality, then to Sattachaur in Guranse rural municipality. One group has now camped on the banks of Bagrne River in Surkhet municipality, and another on the banks of Sot River in Barhatal rural municipality in Surkhet. The Raute chief said that they cannot give up their customary practice of nomadic life and they enjoy living in the forest because it is their home.<sup>20</sup>

## **Indigenous women**

Indigenous women’s organisations, especially the Nepal Indigenous Women’s Forum (NIWF -Nepal), Nepal Indigenous Women’s Federation (NIWF), Indigenous Women’s Legal Awareness Group (INWOLAG) and National Indigenous Disabled Women’s Association Nepal (NIDWAN) met the minister and secretary of the Ministry of Women, Children and Senior Citizens (MWCSC) and secretary of the National Women’s Commission (NWC) in 2019 to be updated on the level of compliance with the Committee on the Elimination of Discrimination against Women’s recommendations issued to Nepal on 14 November 2018. One year has now elapsed but the Nepalese government has done nothing in this regard and remains non-compliant. Although the minister gave insufficient time for discussion, they said they would look into this matter. The NWC officials have given assurances that they will draw the government’s attention to the issue.

conference and training session on the Universal Periodic Review and other international laws and advocacy on the rights of Indigenous women and LGBTI in Kathmandu. This was an historic conference in Nepal where issues of Nepal's Indigenous LGBTI community were discussed and an advocacy strategy was formulated. The participants highlighted the need to make the Yogyakarta Principles+10<sup>22</sup> compatible with the UNDRIP and to specify Indigenous LGBTI in UNDRIP.

## Notes and references

1. Nepal's central Bureau of Statistics (CBS) makes population projections every day <https://cbs.gov.np/>
2. Hindu cosmology divides the population into hereditary caste groups ranked according to ritual purity and impurity. The Dalit castes form the lowest tier of the caste system and are highly marginalised to this day (Ed. note)
3. 61 Indigenous Peoples were initially officially recognised in Nepal through the ordinance, *Rastriya Janajati Bikas Samiti (Gathan Adesh) 2054*. Indigenous Peoples have been officially and legally recognised by the government since 2002 (2059 B.S.) through the *National Foundation for the Development of Indigenous Nationalities Act* (known as the NFDIN Act), which lists 59 distinct indigenous communities in the country.
4. The Newar in Khas Nepali language. The Newar call themselves the Newa in their Nepa Bhasa mother tongue.
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6. Ibid.
7. Ojha, Anup "Police use force against those protesting Guthi Bill". The Kathmandu Post, 10 June 2019: <https://kathmandupost.com/valley/2019/06/10/police-use-force-against-those-protesting-guthi-bill>
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12. "Illegal and inhumane act in the name of Road Expansion". Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), 5 February 2017: <http://www.lahurnip.org/news-details/62.html>
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15. Op. Cit (13)
16. For more information on the Accountability Counsel, see :<https://www.accountabilitycounsel.org/>
17. For more information on Lawyers Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), see: <https://www.lahurnip.org/>
18. “NPC approves concept paper of 15th plan”. My República, 29 April 2019: <https://myrepublica.nagariknetwork.com/news/npc-approves-concept-paper-of-15th-plan/> See detailed plans in Khas Nepali language at [https://www.npc.gov.np/images/category/15th\\_Plan\\_Approach\\_Paper2.pdf](https://www.npc.gov.np/images/category/15th_Plan_Approach_Paper2.pdf)
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21. “Climate Change Policy 2019 Towards Climate Resilient Economic Prosperit”. Spotlight Nepal, 29 September 2019: <https://www.spotlightnepal.com/2019/09/29/climate-change-policy-2019-towards-climate-resilient-economic-prosperity/>
22. The Yogyakarta Principles are 29 principles adopted by an international meeting of human rights groups in Yogyakarta, Indonesia, in November 2006, and the Yogyakarta Principles Plus comprise 38 principles plus and additional 9 Principles in 2017. These 38 Principles are on the application of human rights law in relation to sexual orientation and gender identity. See the Principles at [https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5\\_yogyakartaWEB-2.pdf](https://yogyakartaprinciples.org/wp-content/uploads/2017/11/A5_yogyakartaWEB-2.pdf)

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## **About LAHURNIP**

Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), a pioneer organization, was established in 1995 by professional Indigenous lawyers to work for human rights and fundamental freedoms of Indigenous Peoples in Nepal.

LAHURNIP envisions a situation where Indigenous Peoples of Nepal are freely enjoying collective rights, including right to self-determination, ownership and control over lands, territories and resources, customary rights and justice system and self-determined development. Indigenous Peoples are free from all forms of colonization, discrimination, racism and hegemony, and are participating through freely chosen representatives in the decision-making process at all levels of the State. They exercise their fullest potential, equal rights, dignity and democracy.

It empowers, mobilizes and provides technical support to engage in advocacy, and legal aid to those Indigenous Peoples to defend their collective rights. It produces knowledge on the rights of Indigenous Peoples and dissemination to a wider audience to create public discourse and influence in policy change.

## **About IWGIA**

IWGIA - International Work Group for Indigenous Affairs - is a global human rights organisation based in Denmark, dedicated to promoting, protecting and defending indigenous peoples' rights.

Since 1968, IWGIA has cooperated with indigenous organizations and international institutions to promote recognition and implementation of the rights of indigenous peoples. IWGIA works to empower indigenous peoples through documentation, capacity development and advocacy on local, regional and international level.



