

**INDIGENOUS PEOPLES JOINT SUBMISSION ON NEPAL'S 2ND
UNIVERSAL PERIODIC REVIEW**

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By

A coalition of indigenous peoples' organisations in Nepal

Secretariat

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A. INTRODUCTION

1. This joint submission of 40 indigenous peoples' organisations (IPOs) (*See Annex I*) in Nepal focuses on the collective rights of Indigenous Peoples (IPs), particularly the thematic areas of participation in decision-making, lands, territories, and natural resources, development, language and cultural rights, women, disabled peoples and recommendations.

B. METHODOLOGY

2. This report has been prepared collectively by the IPOs having Meetings and consultations at different levels to identify thematic priority areas based on the recommendations of the UPR second cycle review of Nepal held in 2015. The primary data accommodated in the report has been acquired from the experience of indigenous communities. The secondary data is based on the reports of various governmental agencies, publications (*Kanoon Patrikas*) of the Supreme Court, Courts decisions, newspaper reports and case studies.

C. INDIGENOUS PEOPLES IN NEPAL

3. The IPs (*Adivasi Janajati*) of Nepal constitutes 40% of the total population and are recognized by the 2015 Constitution, laws and policies. The National Foundation for the Development of Indigenous Nationalities (NFDIN) Act 2002 has legally recognised 59 *Adivasi Janajati* (*See Annex II*). However, there are a number of groups who are yet to be enlisted. Among the enlisted IPs 14 are classified as disadvantaged groups; 19 as marginalized; 12 as highly marginalized and 9 as endangered groups.¹
4. Due to the institutionalised Hindu caste hierarchical system, which sustains the concept of pure and impure, IPs have for centuries been subjugated, excluded, marginalized and discriminated against.
5. IPs were recognized only after the political change in 1990. In the Comprehensive Peace Agreement of (2006) it was clearly articulated that to end discrimination based on ethnicity, language, religion, cultural and regional the problems of indigenous peoples will be address by undertaking a progressive, democratic and inclusive state restructuring (3.3). The term indigenous peoples have been accommodated in the 2015 Constitution.
6. When disabled IPs are categorised, they are categorized into 10 types of disability.

D. NORMATIC FRAMEWORK OF THE STATE

7. Nepal is party to various human rights treaties and declarations that includes ICCPR, ICESCR, CRC, CERD, CEDAW, CAT, ILO Convention No.169, UNDRIP etc. The Article 51 (b)(3) of the 2015 Constitution states of Implementation of "international treaties and agreements to which Nepal is a State party." Section 9 of the Nepal Treaty Act, 1991 states that the international law has a higher status than the national law. In case of inconsistency, international law prevails over the national law.
8. At least nine Agreements have been concluded between indigenous peoples' organizations and the Government of Nepal relating to peace building, reconciliation, progressive restructuring of the nation, constitution making and social justice. These Agreements aim at easing up the constitution writing process and resolve the existing problems amicably. They further reflect the will of Indigenous people and provide the basic principle for the new constitution of the Secular, Inclusive Federal, and Democratic Republic of Nepal.

E. INDIGENOUS PEOPLES BURNING ISSUES

¹ https://www.google.com/?gws_rd=ssl#q=nefin

Inclusive and progressive restructuring of the Nation

9. Nepal is an independent, indivisible, sovereign, secular, inclusive democratic, socialism-oriented federal democratic republican state² with multi-ethnic, multi-lingual, multi-cultural and diverse geographical specificities.³ The 2015 Constitution recognised that there is discrimination based on "class, caste, region, language, religion and gender...including all forms of racial untouchability..."⁴ However, there is lack of substantive legal provision to end discriminations and "... to create an egalitarian society on the basis of the principles of proportional inclusion and participation, to ensure equitable economy, prosperity and social justice."⁵ Major demands of the indigenous peoples regarding autonomy and self-rules were not addressed and recognised by the constitution. This is contradictory to the vision of the Constitution to "...protect and promote unity in diversity, social and cultural solidarity, tolerance and harmonious attitudes"⁶. Apart from that the constitutional provision regarding formation of "special, protected and autonomous regions"⁷ for "sociocultural protection or economic development"⁸ has not been materialised in the course of state reconstructing.
10. Similarly, there is no representation of indigenous peoples in the laws and policies amendment and wiring process where numbers of laws and policies have been amended and dozens of new have been introduced for implementation of the 2015 constitution. Due to lack of meaningful participation of indigenous peoples in the law making process the laws limit and violate the rights of indigenous peoples.

Lands, territories and natural resources

11. IPs have the right to their special cultural and spiritual relationship with their lands, waters, and natural resources, and to pass these rights to future generations. They have the right to own and develop these lands and resources, in accordance with their traditions and customary laws. Indigenous peoples also have the right to be compensated when their lands, territories or natural resources have been confiscated, occupied, or damaged without their free, prior, and informed consent.⁹
12. In Nepal, these collective rights are routinely violated. IPs' land is being confiscated at an alarming rate, particularly in connection with large-scale infrastructure and energy projects. The right to free, prior, and informed consent with regards to such projects is not respected, and environmental and social impact assessments are seldom conducted or made public. IPs are rarely compensated for land that is confiscated or damaged, and when compensation is issued, it often falls below market value of the land. IPs are subsequently losing the ability to manage their territories. When IPs peacefully protest against the violations of their rights and demand proper information and consultation processes they are portrayed as being against development and in some cases criminalized.

² The Constitution of Nepal, 2015, Art. 4(1).

³ *Id.*, Preamble.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*, Art. 56(5).

⁸ *Id.*, Art. 56(5).

⁹ ILO C. 169 and UNDRIP

13. IPs are also severely affected by protected areas such as national parks and hunting reserves. The establishment of protected areas on indigenous territories without the consent and engagement of the communities whose ancestral lands have been included in the areas has resulted in dispossession, displacement and resettlement, the violation of their rights and the loss of access to natural resources on which the communities depend for their livelihood and spirituality.
14. The Dhorpatan Hunting Reserve covers areas that have been inhabited by the Magar people since before the formation of the Nepali state. The reserve was established in 1987 despite protests from the locals. In an April 2013 memorandum submitted to the government following its decision to mobilize the army, 80 Magar community representatives recounted how the reserve was providing entertainment to the elite at the expense of the local communities. They were—and continue to be—denied access to the natural resources in the reserve, harassed, fined, and imprisoned on various charges and their homes have been demolished.¹⁰ Despite the protest of communities the government has stationed army in the name of security of the reserve.
15. When the Makalu Barun Park was established in 1992 the people, who belong to Rai, Sherpa and Bhotia communities, directly affected by the park were assured by the government that the conservation project would not hamper their livelihoods and culture, that the army would not be mobilized, and that the revenue from the park would be used for community development. In the following years, however, the locals' access to resources was gradually curtailed. Their traditional farming practices such as swidden agriculture was banned. They were told they could not carry out any community development work without the permission of the park authorities. When the locals decided to collect money from each household and start a micro hydropower project to bring electricity to their village, the park did not grant them permission. People started getting arrested, beaten and penalized for using forest resources.¹¹
16. Road widening project is one of the government initiatives that massively affect the Newa: indigenous community in Kathmandu valley. Approximately 150,000 populations is directly affected by the project. The affect of the project includes displacement, illegal land acquisition, adverse impact to sacred sites, cultural heritages etc. The communities filed a writ petition at the Supreme Court (SC) 2017. In response to the writ the SC issued verdict in favor of the community.
17. The verdict includes: ¹²Acquire land lawfully before marking the road boundaries since Section 4 of Public Road Act 2031 requires land acquisition to be done for road boundaries; Treat the act of depriving the right to housing as an extremely sensitive manner and do not proceed with any work that adversely affects the security of a house, unless there are no alternative solutions; In the event of road having to run through residential areas, consider the children's right to education and provide ample time to find alternative solutions to avoid adversely affecting them; Since talks are an easy, simple, effective and indisputable means of acquiring land, highly prioritize talks between expert groups and stakeholders to acquire land; the rights to relocation

¹⁰ Lawyers' Association of Human Rights of Nepalese Indigenous Peoples (LAHURNIP) (2014): The Glimpses of Indigenous Peoples' Human Rights Violation in Nepal; The Record: Good Intentions Gone Wrong (<http://recordnepal.com/wire/good-intentions-gone-wrong>)

¹¹*Id.*

¹² *Sanu Shrestha and et.al. v. Government of Nepal, Office of the Prime Minister and Council of Ministers and others*, Writ No.: 073-WF-0003 (decision date 2074/06/2).

and rehousing of the displaced should be addressed equitably and benefits and compensation provided as per sections 13, 16 of Land Acquisition Act 2034 and Land Acquisition Regulations 2026; and Keep environment conservation and conservation of sites of archeological significance at the center of developing and executing a development project. However, the government of Nepal is reluctant to implement the decision of the court.

18. Similarly, the multiple projects introduced by the government of Nepal impacts indigenous Newa: communities in the Khokana areas of Kathmandu valley. There are at least eight project planned in this area such as "smart city", "outer ring road", "fast track" road connecting to Tarai, rail ways, electricity transmission line etc. If all the projects are implemented whole community will be displaced and the historical and cultural site turns into concrete jungle. The communities are engaged in constant protest and also filed a case at the Supreme Court. The Court issued a "show cause" order in the name of the government.
19. The hydropower projects in Lamjung district have started since 10 years before but some causality were not taken into account. But in the recent years, the climate change impacts have been emerging and growing rapidly. When the dams of hydropower projects are opened due the heavy melting of glaciers, many people are impacted by such regular incidences. In the last few years, many people have lost their lives in floods, 3- 6 peoples became physically disabled for the first time and many peoples have displaced from that place due to such frequent casualties. The blasting of the stone in hydropower projects have caused many respiratory problems to children, women and elderly peoples and hearing impaired, psychological mental health problems have increased a lot in these recent years which has ultimately increased number of person with disabilities from indigenous and marginalized communities but no measures, precaution, health related measures have been intervened.

F. IMPLEMENTATION STATUS OF THE RECOMMENDATIONS CONCERNING TO INDIGENOUS PEOPLES FROM THE SECOND REVIEW CYCLE 2015

Implementation of Constitution, Laws and Policies (Recommendation# 121.1, 121.9, 121.16, 121.17, 121.18, 122.1)

20. The recommendation of the UPR second cycle pertaining to "strengthen the legislative and institutional framework for the promotion and protection of rights of indigenous peoples, in particular to ensure their full participation in society"¹³. Similarly, the CERD Committee also recommended in its concluding observation that "ensures that the right of indigenous peoples to participate in government bodies under article 42 of the Constitution is effectively respected and that indigenous peoples freely choose their representatives"¹⁴ has not been complied despite the Constitutional provisions. The 2015 Constitution provisioned for creation of "special, protected and autonomous regions"¹⁵ for "socio-cultural protection or economic development"¹⁶. The provision has been undermined in the course of restructuring of the local level, despite reservation of IPs. On the writ petition of Baram Indigenous

¹³ Human Rights Council. (2015) Report of the Working Group on the Universal Periodic Review, Recommendation # 121.9. A/HRC/31/9.

¹⁴ Committee on the Elimination of Racial Discrimination (2018) Concluding observations on the combined seventeenth to twenty-third periodic reports of Nepal. CERD/C/NPL/CO/17-23.

¹⁵ The Constitution of Nepal, 2015, Art. 56(6).

¹⁶ *Id.*

Peoples of Gorkha district the Supreme Court of Nepal issued a directive orders in the name of the government of Nepal formation of "necessary laws pertaining to demarcation of special, protected and autonomous region"¹⁷ of Baram Community accommodating their traditional lands as they have claimed. However, no substantive steps have been taken by the State to implement the decision of the Supreme Court.

Human Rights (Recommendation#121.13, 121.16)

21. Promotion and protection of human rights of IPs have been the crucial issues in Nepal. Even though there the fundamental the 2015 Constitution assured that "each person shall have the right to live with dignity."¹⁸ No initiatives have taken to ensure the fundamental freedom and human rights of IPs in the case of violation of collective rights of IPs in Nepal. The occurrence of human right violation in the name of development projects are rampant across the country where the projects, such as road construction/expansion, hydropower generation, installation of transmission lines etc., are implemented in the lands and territories of IPs without free, prior and informed consent (FPIC) as provisioned by the UDRIP¹⁹ and ILO Convention No. 169.²⁰
22. For instance, the road expansion project directly affects more than 150,000 populations in the Kathmandu valley alone. However, the State never took initiatives for consultation and consent with the indigenous Newa: community, which are the indigenous groups in the Kathmandu valley. In response to the writ petition of the affected communities the extended full bench of the Supreme Court issued a order²¹ in the name of the government. The verdict of the Supreme Court explicitly indicated that "acquire and lawfully before marking the road boundaries"²², " Treat issues of the right to housing as an extremely sensitive manner and do not proceed with any work that adversely affects the security of a house, unless there are no alternative solutions"²³, "highly prioritize talks between expert groups and stakeholders to acquire land"²⁴, " The rights to relocation and rehousing of the displaced should be addressed equitably and benefits and compensation provided as per sections 13, 16 of Land Acquisition Act 2034 and Land Acquisition Regulations 2026²⁵" and " Keep environment conservation and conservation of sites of archeological significance at the center of developing and executing a development project."²⁶

Discrimination (Recommendation# 121.17, 121.32, 122.40)

23. The promulgation of the 2015 led the nation towards the regression in compare to the interim Constitution of 2007. The constitutional provision²⁷ regarding declaration of national animal "cow" and national colour "Crimson" are discriminatory provisions. Because slaughtering of cow and consumption of beef is crime according to the law. The Country Penal (Code) Act, 2017 provisioned for three years o imprisonment for

¹⁷ Bhuwan Baramu etal. v. Office of the Prime Minister and Council of Ministers and others, Writ No. 074-Wo-0239, Date of Decision 31 December 2018.

¹⁸ The Constitution of Nepal, 2015, Art 16(1).

¹⁹ UNDRIP, Art. 10 and 11.2.

²⁰ ILO, Art. 16.

²¹ *Sanu Shrestha and et.al. v. Government of Nepal, Office of the Prime Minister and Council of Ministers and others*, Writ No.: 073-WF-0003 (decision date 2074/06/2).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ The Constitution of Nepal, 2015, Art. 9(2).

causes to death of cow and ox.²⁸ Many indigenous and Dalits have been arrested in the case of killing of cow and oxen. In fact, consumption of beef is deeply related to the culture and traditions of many indigenous communities in Nepal.

24. The Constitution has defined the "Khas Arya", a ruling caste group in the Constitution. But not other. According to the Constitution "Khas Arya means Chhetri, Brahmin, Thakuri and Sannyasi (Dasnami) community."²⁹ Similarly, the 2015 Constitution is also discriminatory regarding secularism. The Constitution explains secularism as "protection of religion and culture being practiced since ancient times and religious and cultural freedom³⁰" that ultimately means of protection of Hindu religion.

Post-earthquake support and right to housing (Recommendation #122.111, 122.89, 122.37, 122.89)

25. The IPs are the most affected communities by the 2015 earthquake. Among the killed more than 8,000 by the earthquake 67% are IPs.³¹ After the damage and adverse impacts of the earthquake rehabilitation of the affected is the crucial issues and which is still taking place.
26. The government of Nepal has identified vulnerable beneficiaries hit by the earthquake for priority of rehabilitation and reconstruction of houses. The Operational Procedure of Vulnerable Beneficiary Identification, 2017 has categorized single women above 65 years age³², senior citizens above 70 years³³, orphan children below 16³⁴, and individual received disabled identity cards (red and blue card holders only)³⁵.
27. These vulnerable communities get priority in facilities, rehabilitation and reconstruction of houses as per the decision of National Reconstruction Authority. According to the National Reconstruction Authority total beneficiaries for reconstruction of private damaged houses were identified 829,095. Out of them, construction of 483,443 and 675,475 are under construction³⁶. Out of the total destroyed and damaged by huge earthquake, 41% belonged to Dalit and indigenous peoples.
28. The concern of IPs is to consider the culture and tradition friendly infrastructure and engineering while engage in the reconstruction initiatives. But, it has not been taken into the account by the government. The planning in the Kathmandu for reconstruction undermines the culture and traditions of IPs and intended to assimilation approach introducing same nature and kind of infrastructure model. That

²⁸ The Country Penal (Code) Act, 2017, Section 289. Prohibition of killing or beating cows or oxen (1) No person shall do, or cause to be done, any act with the intention of killing, or causing hurt to, any cow or ox. (2) Where any act referred to in sub-section (1) causes the death of any cow or ox, the offender of such offence shall be liable to a sentence of imprisonment for a term not exceeding three years. (3) A person shall be liable to a sentence of imprisonment for a term not exceeding six months, if he or she causes grievous hurt to a cow or ox, and to a sentence of a fine not exceeding fifty thousand rupees if other hurt is caused.

²⁹ The Constitution of Nepal, 2015, Art. 84(2) Explanation.

³⁰ *Id.*, Art 4, Explanation.

³¹ LAHURNIP, 2016.

³² Operational Procedure of Vulnerable Beneficiary Identification, 2014, Section 3 (1)(a).

³³ *Id.*, Section 3(1)(b).

³⁴ *Id.*, Section 3(1)(c).

³⁵ *Id.*, Section 3 (1)(d).

³⁶ <http://nra.gov.np/np/mapdistrict/datavisualization>, accessed 10 February 2020.

hampers to their culture, tradition, language knowledge, skills, livelihoods and identity.

29. The government of Nepal enacted 'Right to Housing Act, 2018' that ensures the right of homeless persons and families to housing. The right to housing also includes displaced persons due to natural disaster, and the family unable to construct house from the family's income. This act does not include marginalised and low-income groups for the right of housing. The marginalized and low-income groups can have right to housing if they are homeless and unable to construct houses from their families' income.
30. The census of 2011 shows 12% populations are homeless. Nepal government had started 'Janata Awas Yojana' (Peoples Housing Plan) in 2009 from three districts. The continuity of this plan as 'Janata Awas Program (Peoples Housing Program)' is still running which is, now, extended to 27 districts. According to Department of Urban Development and Building Construction the program has already been settled 4,700 families in the constructed houses up to 2016. Around 1,200 units are constructed every year. The program is focused to marginalized Dalit and indigenous families. The current budget of 2018/19 has also continued this 'Janata Awas Programme' and going to start another safe housing program.
31. Peoples with disabilities from indigenous and marginalized communities were and are deprived in relief, recovery and rehabilitation phase because the government applied blanket approach and single liner model for rehabilitation based on impairment to PWDs. During the disaster compared to other PWDs from other caste and ethnic groups, a significant proportion of Dalit PWDs 62% and Janajati/indigenous PWDs 81% reported having inadequate or poor access to public facilities. Likewise, a much larger proportion of Dalit PwDs 85% reported less than adequate access to public services, as did Janajati/indigenous respondents 74%.³⁷

Freed bonded labour (Recommendation #122.82)

32. The government of Nepal rehabilitated a total of 27,331 *Kamaiyas* (bonded labourers) and *Haliya* families up to 2017/18 and skill development training to 19,931 freed bonded laborers. Likewise, provided support to buy land for 1,291, housing support to 1,522 and housing repairing support to 5,706.³⁸ Government has provided non fertile and unproductive land from 1 *kattha* (0.0338 Hectare) to 3 *kattha* (0.1014 Hectare) per family for their shelter. The human rights of freed bonded laborers and freed *Haliya* has been a critical issue since their emancipation from the state of bonded.

Education (Recommendation #122.104, 122.105, 122.20)

33. In order to ensure equal educational opportunities for all children, including Dalit children, the report of Nepal Government³⁹ has mentioned that 10,392 Dalit scholarship to Dalit children and 15,389 scholarship to the children of endangered and most marginalized including freed bonded laborers, Haruwa, Charuwa and Badi has been distributed. Nepal has already made 'Free and Compulsory Education Act, 2018' to move ensuring equal educational opportunities. Likewise, Nepal government has

³⁷ Disaster, Disability and Difference. A Study of the Challenges faced by person with disabilities in post earthquake Nepal 2016. Social Science Baha , NFDN, UNDP.

³⁸ Ministry wise data collection by Human Rights Section of Nepal Government, Office of Prime-minster and Council of Ministers, Progress report of fourth national plan actions on Human Rights 2015-19 under education topic.

³⁹ *Id.*

already started ‘Special Scholarship Program’ for marginalized Dalit Chamar, Dom, Badi and Mushar students to study in graduation of engineering and medical science. 6 students have received this scholarship till to date. Effort for establishing few hostels and free text books to Dalit and other target groups children those are studying in 9-10 and 11-12 classes.

34. The above term, ‘equal educational opportunities’ is abstract. What it does mean exactly may be different as Nepal government has understood. The use of word ‘equal’ is contextual. It is injustice to treat equally to any groups or community in all situations.
35. There were 79,78,913 children of 5-16 years age.⁴⁰ Of them, 12.8% were out of school children. Most of the out of school children are from Dalit and indigenous peoples. According to the flash report 2014/15 of Department of Education, the total school enrolment in 2014/15 fiscal year was 96.2% in primary level, 74.6% in lower secondary, 56.1% in secondary and 13.1% in higher secondary level. Out of the total school enrolment, Dalit had 19.9% share in primary, 14.5% in lower secondary, 11% in secondary and 6.7% in higher secondary. Similarly, indigenous peoples had 33.9% share in primary, 38.5% in lower secondary, 38.6% in secondary and 29.8% in higher secondary school. According to the data published by Government of Nepal, Ministry of Education, Science and Technology, Statistics, Policy and Research Section in 2017, there can be found slight changes. Dalit has same share 19.9% in primary, 15.9% in lower secondary, 11.1% in secondary and 6.5% in higher secondary level. Indigenous peoples have 36.7% share in primary, 40.8% in lower secondary, 33.8% in secondary and 23.2% in higher secondary level.⁴¹ This shows that the policies such as scholarship, one time food support to children etc taken by Nepal government to increase enrolment of Dalit and indigenous peoples’ children in schools have influenced to some extent. This also shows that the dropout rate has been increased for the case of indigenous peoples especially in secondary and higher secondary level. Nepal government has been unsuccessful in improving dropout situation.
36. Apart from particularized recommendations, there are common recommendations that are also applied to indigenous peoples, Dalit and marginalized region. Those recommendations are not described here.
37. When it comes to right to education for child with disabilities, in accessible language matters for childre with disabilities and sign language becomes primary but indigenous children with disabilities requires mother tongue language as primary source of education which in not integrated in any disability policies and provisions.

Indigenous women (Recommendation# 121.19, 121.32, 122.2, 122.3, 122.6, 122.7, 122.8, 122.9, 122.10, 122.11, 122.12, 122.12, 122.14, 122.17, 122.22, 122.23, 122.32, 122.34, 122.37, 122.39)

38. Indigenous women form a major section of the society but continue to face multiple forms of discrimination. The state’s commitments to the international community to end violence against women are not intended to promote and protect the rights of indigenous women. Indigenous women have been fighting for their distinct identity

⁴⁰ CBS, 2011.

⁴¹ Education in Figures 2017 (At a Glance), Government of Nepal, Ministry of Education, Science & Technology (Statistics, Policy and Research Section), Singhdurbar, Kathmandu, Pp.31-33.

among the women section in the constitution⁴², so that they could enhance their participation in decision making rather than include them in a basket of women as a whole, which is counterproductive because the women quotas are very often captured by women belonging to Bahun and Chhetri groups. According to the data from 1991 to 2012 percentage of indigenous women participations in main decision making positions, i.e. Special Class, First Class and Second Class is 9.2 percent only, and if we include the third class, the percentage is 15.5.⁴³ Similarly, the participation indigenous women in the selected five ministries (Ministry of Education, Labour, Forest & Lands, Law and Women Children & Senior Citizen), among 147 members, is 5.44 percent only.⁴⁴The situation of participation indigenous women's in judiciary, civil society and other strata of the state are no different that the aforementioned data.

39. Despite the recommendations, made on 14 November 2018, of the CEDAW committee the government of Nepal has done nothing to implement those recommendations. The recommendations to the State party Nepal states "amend the Constitution to explicitly recognize the rights of indigenous women, in particular their right to self-determination, in line with the United Nations Declaration on the Rights of Indigenous Peoples".⁴⁵ However, the indigenous women's organisations have been urging the Government for its effective implementation. Also, the Government should repeal existing laws and policies that are contrary to the UNDRIP and effectively integrate these instruments in national plans and programs, specifically, Agenda 2030, in consultation and partnership with indigenous peoples noting the need to leverage spaces to engage indigenous women. Nepal Government should stop criminalization of indigenous women's customary knowledge, skills and practices, including traditional Liquor making process.

Persons with disabilities (Recommendation# 122.98, 122.107, 122.109, 122.110)

40. Persons/women with disabilities from indigenous background are particularly faced multiple and intersectional discrimination and face violence abuse and are risk in their daily lives. Reports indicate that 81% indigenous peoples with disabilities have poor access to public facilities⁴⁶ than other PWDs. There are many forms of barriers including attitudinal barrier indigenous peoples with disabilities face, which obstructs their full enjoyment of their rights in their lives. They are not able to bring their voices in wider domain and face constant challenges in their own ancestral land and resources, culture, traditions, languages and suffer from forced evictions, including destroyed resources and environment.⁴⁷They face multifaceted encounters such as barriers to participate in political, social and cultural activities in the society as indigenous peoples and as person with disability they confront challenges including

⁴²Indira Shrish Magar and Sharda Khewa Subba () Rajya ko samabeshi niti tatha karykram ko byabastha ra upalabdhiharu (State's inclusion policy and program precision and achievements), Nepal: Indigenous Women's Legal Awareness Group (INWOLAG).

⁴³ Chhing Chhipa Lhomi, Chhing Lamu Sherpa and Yasso Kanti Bhattachan. (August 2018) *Participation & Representation of Indigenous Women in Decision Making: Home to Policy level*. Submitted to Asian Indigenous Women Network (AIWN) & TBTEBBA Foundation. (Unpublished report). P.8.

⁴⁴ *Id*, P. 12.

⁴⁵ Committee on the Elimination of Discrimination against women. Concluding observations on the sixth periodic report of Nepal. 14 November 2018. para 41 (a). CEDAW/C/NPL/CO/6

⁴⁶ Disaster, Disability and Differences, A Study of the Challenges faced by Persons with Disabilities in Post Earthquake Nepal, 2016 UNPD, Social Science Baha and National Federation of the Disabled Nepal.

⁴⁷ Gurung Pratima, "Life at the margin: The Challenges of Indigenous Women with Disabilities", 2017 Asia Indigenous Women Network (AIWN) Philippines.

lack of education, employment, health care, communication and accessibility, access to intuitions, resources, rehabilitation, development programs and funds than others.⁴⁸ Different studies and report⁴⁹ shows the prevalence rates of disability among indigenous peoples are higher than non-indigenous person with disabilities. Many of the indigenous persons with disabilities are facing challenges in acquiring identification cards and access to resource.

41. Participation in decision making is also poor. The Federation of Disabled Nepal has, for example, ensured participation of 33 percent women in the executive committee but all are from Bahun/Chhetris) of women but is not taking account of inclusion of other marginalized communities and the Federation has not included/ framed indigenous issues as human rights issues. The single linear model exist that frames impairment as a discrimination and barrier to PWDs excluding the gender, ethnicity, caste, age, socio economic status and public participation of PWDs. The recent Disability Act 2017 is claimed to be inline with UNCRPD however it does not have any space for the inclusion of underrepresented groups like indigenous peoples and their issues. The Act does not adequately consider mainstreaming the various grounds of multiple discriminations faced by indigenous person with disabilities and other marginalized groups.
42. So there is a culture of addressing only impairment groups that excludes more than 1.3 million indigenous peoples with disabilities in Nepal in all structures and spheres. No any documents, report, studies, policies have been framed in holistic and comprehensive manner addressing the diversities of peoples with disabilities. The Concluding Observation of UNCRPD and CEDAW 2018 has provided numbers of references on the vulnerable situation of underrepresented groups like indigenous peoples/women with disabilities but there has not been any efforts from governments and development partners to mainstream it within disability discourse. The state's commitment to end discrimination against indigenous peoples /women with disabilities is thus not materialized into practice.

G. RECOMMENDATIONS TO THE GOVERNMENT OF NEPAL

- R.1: Implement the recommendation of the concluding observations of UPR, CERD, CEDAW, UNCRPD and other international human rights procedure.
- R.2: Execute the decisions of the Supreme Courts pertaining to lands rights of Indigenous Peoples.
- R.3: Adopt the National Action Plan to implement the ILO Convention No. 169 and reform the existing laws and regulations that are inconsistent with the ILO Convention No. 169, UNDRIP and other international instruments to eliminate discrimination against indigenous peoples and ensure equality. Ensure that the new constitution comprises the provisions and spirit of the ILO Convention, No. 169 and UNDRIP for respect of the rights of indigenous peoples.
- R.4: Appoint commissioner in the Indigenous Peoples Commission and Tharu Commission and allocate sufficient budget for its smooth and effective function and

⁴⁸The Statement by the First Gathering of Indigenous Persons with Disabilities in Asia and the Pacific in 2015 highlights that <http://www.asianindigenouswomen.org/index.php/publications-and-multimedia/magazines-and-newsletters/183-aiwn-2016-2017>

⁴⁹ NIDA et al. (2018). The Rights of Indigenous Persons with Disabilities in Nepal, submitted to UNCRPD Committee. <https://www.indigenouspeoples-sdg.org/index.php/english/all-resources/resource-materials2/reports-and-publications/75-indigenous-peoples-organizations-submit-reply-to-list-of-issues-for-review-of-nepal-under-convention-on-the-rights-of-persons-with-disabilities/file>.

- operation.
- R.5: Ensure de-facto inclusion of indigenous peoples in all state organs including NHRC, Commission for the Investigation of Abused of Authority (CIAA), and Information Commission. Establish the Indigenous Peoples Commission to deal gross human rights violation against IPs.
 - R.6: Repeal the provision of the Cow Slaughter in The Country Penal (Code) Act, 2017 which is based on the Hindu superiority against the norms and values of secular state and article 1, 2, 5(vii) and 5(e) of the CERD; article 27 of the CCPR, article 3 and 5 of the ILO Convention No. 169 and article 8 and 12 of the UNDRIP.
 - R.7: Respect indigenous peoples' right to exercise their religion, beliefs and culture as well as eliminate religious assimilation including obliterating name of indigenous peoples' sacred and religious sites.
 - R.8: Recognize indigenous peoples' rights over communal land, forest, pastures lands and other resources in accordance with the ILO Convention. No. 169 and UNDRIP. Ensure indigenous peoples' participation in the land reform process.
 - R.9: Respect and protect the right to determine priorities of development and the right to free prior and informed consent in relation to development activities taking place in the indigenous territories.
 - R.10: Introduce a national multilingual policy and allocate sufficient budget and teachers for multilingual education in a timely manner.
 - R.11: Institute special measures to address the multiple forms of discrimination against indigenous women and to ensure substantive equality;
 - R.12: Undertake a thorough review of national laws to end discrimination against indigenous women, ensuring their meaningful participation; and amend constitution and make policies to address the diversity within women;
 - R.13: Make gender mainstreaming programs and activities compatible with UNDRIP and increase participation of indigenous women at all levels;
 - R.14: Amend the excising laws relating to National Parks/Reserves in line with the ILO. Convention No.169 and UNDRIP. And, ensure self-management, if not co-management in the protected areas.
 - R.15: Guarantee the Special, Protected and Autonomous regions as mentioned in the Constitution to the indigenous peoples
 - R.16: Review the 2017 Disability Act to include and mainstream indigenous peoples/women with disabilities and recognize the groups facing multiple layers of discrimination and mainstream under-represented groups including indigenous peoples with disabilities in all disability related policies and provisions.
 - R. 17: Take necessary steps for protection and promotion of human rights of ex-Gurkhas who have been struggling for equality and justice.
 - R. 18: Promote and protect the traditional knowledge and skills of indigenous peoples (including indigenous women) and ensure environment for practices without restrictions and discriminations.

ANNEXES