

# Joint Submission on the Violations of Indigenous Peoples' Rights in Nepal

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by

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**Sunuwar Sewa Samaj** is a Nepali, an umbrella organization of Sunuwar Indigenous Peoples of Nepal. One of the focuses of the organization is the preservation of Sunuwar culture, which includes rituals, festivals, healing practices, language, and traditional knowledge of sunuwar indigenous nationalities in Nepal.

**Indigenous Women's League** is a Nepali organization formed with the purpose of fighting gender discrimination faced by Indigenous women. Some issues emphasized include access to food and participation in politics.

**Newa Misa Daboo** is a national Nepali non-profit organization comprised of Indigenous Newar women. They organize capacity building training and raise awareness on Indigenous rights, women's rights, and gender equality.

**Nepal Tamang Women Ghedung** is a Nepali organization focused on empowering Tamang Indigenous women socially, politically, and economically.

**Indigenous Media Foundation** is Nepali organization formed by journalists from Indigenous communities in Nepal. They use the media as a tool to promote indigenous peoples' constitutional, fundamental, and human rights, knowledge, practices, and cultural and linguistic diversity.

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

and civil participation.

## **I. Executive Summary**

Nepal has failed to implement a number of recommendations made over the first two cycles regarding the rights of Indigenous Peoples. Indigenous Peoples are effectively excluded from institutions with decision-making power and other civil services within the Nepali government, rather allowing a manipulation of the quota system to maintain dominance of few ethnicities. Nepal has failed to fully address the ongoing discrimination against Indigenous women and take effective measures to prevent the disproportionate rate of human trafficking of Indigenous girls. The aggressive pursuit of hydropower has failed to adequately gain the Free, Prior and Informed Consent (FPIC) of Indigenous communities it affects. Overall, the Indigenous Peoples of Nepal are not consulted on laws, policies and development projects that have massive impacts on them. Media in Nepal exclude Indigenous voices and participation, even within community radio stations licensed to broadcast to rural populations, disenfranchising Indigenous Peoples from information and freedom of expression reflecting their cultural and lingual diversity.

## **II. Introduction**

### **A. Methodology**

This report has been prepared jointly by coalition of the Cultural Survival, Sunuwar Sewa Samaj (Sunuwar Welfare Society), Newa Misa Daboo, Indigenous Women League Nepal Tamang Women Ghedung and Indigenous Media Foundation, after series of meetings and consultations carried out at different levels to identify the thematic areas based on the recommendations made by UPR in its first and second cycle review of Nepal in 2011, 2015. The report also has been produced based on first-hand experience of Indigenous Peoples organizations working at the grassroots level. Similarly, the secondary data is based on reports, statistics of government agencies and publications, newspapers and online reports.

### **B. Background**

Nepal is party to over 24 various human rights treaties and declarations which include ICCPR, ICESCR, CRC, ICERD, CEDAW, CAT, UNCRC, ILO Convention No.169, UNDRIP, and others. In the 2015 Constitution of Nepal, Article 51 (b) (3) states that the government shall implement international treaties and agreements to which Nepal is a party.<sup>i</sup> But there is no meaningful implementation of these international laws. Nepal Treaty Act, 1990, Section 9 states that the international law has a higher status than the national law. In case of inconsistency, international law prevails over the national law.<sup>ii</sup> Similarly, at least nine Agreements have been reached so far between Indigenous Peoples' organizations and the Government of Nepal aiming to resolve the existing problems experienced by Indigenous Peoples amicably through amendment of Constitution, laws, and policies.

### **C. Status of implementation of recommendations from the first and second UPR cycles of Nepal**

The following recommendations made to Nepal in the first (January 2011) and second cycle (November 2015) of UPR have not yet been fully implemented by the government of Nepal, which will be analyzed thematically in the subsequent section.

*1) Strengthen the legislative and institutional framework for the promotion and protection of rights of Indigenous Peoples, in particular, to ensure their full participation in decision-making level and society (Mexico)*

*2) Put in place an effective mechanism for addressing the reported multiple forms of discrimination against Indigenous women in Nepal (Uganda);*

*3) Review and adopt relevant legislation and policies, including bills related to caste-based discrimination, the women's commission, the Dalit commission, the rights of Indigenous Peoples, and the rights of the child, to ensure full compliance with international human rights standards (Norway)*

*4) Take more effective measures to increase the involvement of the Indigenous Peoples, minorities and vulnerable groups in the civil services, law enforcement agencies and local authorities. (Malaysia)*

*3) Continue to pursue policies that will increase enrolment in schools of school-going aged children, in particular girls, and children from Indigenous communities and minorities. (Singapore)*

### **III. Ongoing Violations of Indigenous Peoples Rights**

#### **A. Lack of participation of Indigenous Peoples in decision making, government bodies and civil services**

The Constitution of Nepal<sup>iii</sup> does not establish any procedure for obtaining the Free, Prior and Informed Consent of Indigenous Peoples while devising laws, policies and programs of state, or federal and local government, ignoring both (first<sup>iv</sup> and second<sup>v</sup>) early warnings issued by the CERD Committee. Similarly, the Constitution<sup>vi</sup> also accepts the principle of inclusion and proportional representation in the state structure as a fundamental right of different sections of society including Indigenous Peoples. Likewise, Article 42 (1) of the Constitution under 'Right to Social Justice' provisions the "socially backward" (including Indigenous Peoples) shall have the right to participate in the state bodies on the basis of the principle of inclusion. In practice, however, exclusion exists in all high level political appointments and in the recruiting of thousands of bureaucrats for federal and local government by ignoring proportionality requirements. Moreover, the proportional representation is not a free, meaningful and accountable representation of Indigenous Peoples, but rather a representation of respective political parties or their cadres (through from different Indigenous communities) who work strictly in their party line. The dominant group

–Khas Arya– comprises 31.2 percent of total population according to the 2011 Census, but enjoys overwhelming representation in legislative, executive, and judiciary parliament as well as all major posts of state and local government bodies. The latest appointment of High Court judges shows 83.75 percent of all posts went to Khas Arya. Additionally, 95.5 percent of all the Prime Ministers of Nepal have been Khas Arya men. Similarly, local elections held in 2017 show that out of 35,040 local representative positions, there are more Khas Arya mayors than the rest of the population groups combined and almost half of the chairpersons of rural municipalities are Khas Arya.<sup>vii</sup> In December 2019, the government promoted 37 deputy secretaries to undersecretaries, the second highest bureaucratic position. 97 percent of them were Khas Arya, whose proportion in the population is 31 percent.

Indigenous Peoples, who comprise 35.8 percent of the total population, are low in representation in aforesaid state structures. The situation of other marginalized groups such as Madhesis, Muslims, and Dalits, including women, is similar. The main political parties have misused the proportional electoral system by including a quota to Khas Arya along with excluded groups, including Indigenous Peoples and Indigenous women. They also abuse the quota system by appointing their own wives, whether they are Indigenous by birth but married to males belonging to the dominant caste or Khas Arya women married to Indigenous men.<sup>viii</sup>

Similarly, the Local Self-governance Act of 1998 had specific provisions for representation of Indigenous Peoples in local bodies,<sup>ix</sup> which have been substituted by the newly introduced Local Government Governance Act (LGGA) of 2018, introduced after the promulgation of the new constitution. At present, there are 293 municipalities, among which 6 are Metropolis, 11 are sub-metropolis and 276 municipal councils. Other than that, there are 460 rural municipalities, totaling 753 local level governments in Nepal, each with their power to make new laws and regulations. It is clear that the constitutional provisions, laws and policies of Nepal are still regressive in terms of ensuring representation and participation of Indigenous Peoples in decision-making bodies. The governing bodies are still exclusionary and the voices of Indigenous Peoples in decision-making have been seriously undermined by this Act in their very own ancestral land and territories.

## **B. Lack of mechanisms for addressing multiple forms of discrimination against Indigenous women**

Demographically, women comprise 51.52 percent of the total population of Nepal and Indigenous women comprise 36 percent of the total women's population of Nepal. Indigenous women have been facing multiple, compounding forms of discrimination due to their gender, class, and ethnicity. Indigenous women have unique problems and issues in comparison to other women or Indigenous men. Rather than being generalized with women, Indigenous women in Nepal have been fighting for their distinct identity to be recognized within the Constitution, and within many other laws, policies, plans, programs and budgets, so as to ensure their meaningful participation at the decision-making level. Though there are quotas

established for the appointment of women, very often the posts are filled by women belonging to Khas Arya.

According to Shakti Samuha and Maiti Nepal, organizations working against human trafficking, Indigenous girls are disproportionately victims of human trafficking, representing 70 percent of victims.<sup>x</sup> Indigenous women and girls are vulnerable to trafficking as they grow up in poverty and are lured with fake promises of good jobs. Aside from poverty, lack of education, information, and access to jobs are some of the factors contributing to the trafficking of Indigenous women and girls in Nepal.

According to Nepal Tamang Women Ghedung, Tamang Indigenous women and girls from the adjoining Kathmandu Valley make up the majority of the Indigenous victims of trafficking and exploitations. Historically, Tamang women were forced to serve as courtesans and concubines to the rulers in Kathmandu, the capital city of Nepal, and today make up among the most of the victims of sex trafficking to India and other countries. Tamang women and girls, in particular, are at risk due to their isolation. Though Tamang communities live in areas surrounding Kathmandu Valley, they have high rates of illiteracy, little access to the outside world, and experience high levels of poverty and unemployment. Many Tamang women fall prey to traffickers through promises of jobs or clothing.

Because the Constitution of Nepal sees women as a homogenous group where women's distinct identities as 'Indigenous' are not reflected, issues specific to Indigenous women are not visible and are excluded from laws, policies, plans, budget and programs.

### **C. Commissions with no power**

Minimal efforts have been made to establish commissions to addressing Indigenous issues. The government of Nepal established as many as four Constitutional Commissions, intended to serve minority communities, including Madhesi, Tharu, Muslims, and the Janajati (Indigenous Peoples). The Constitution of Nepal, 2015, Part 27, Article 261 establishes the Adibasi Janajati Commission (Indigenous Nationalities Commission), yet separately, Article 263 forms the 'Tharu Commission' despite Tharu being one of the 59 Indigenous Peoples legally recognized by the government. By forming two separate commissions, Tharu commission and Indigenous Nationalities Commission, the government is dividing Indigenous Peoples, creating resentment and disparate agendas, and essentially implementing a practice of divide and conquer.

Meanwhile, these bodies have no power to receive complaints, investigate the acts of human rights violations, including discrimination, or recommend for further action, and have remained vacant. As these bodies have no authority to protect the rights of respective marginalized communities, there is no productive result of having these commissions. These institutions have been formed against the Paris Principles,

according to which, when a state creates a national institution, it should have financial and administrative autonomy and its recommendations should be acted upon. These proposed commissions do not have powers to make recommendations to the government and no authority to sanction institutions if they ignore their recommendations.

#### **D. Lack of consultations in making new laws**

After the new constitution came into force in September 20 2015, the government of Nepal identified that as many as 174 of the total 339 Acts are required to be replaced or amended, as they contradicted with the provisions in earlier constitution. Article 304 of the Constitution says, "any law inconsistent with it will be invalid to the extent of such inconsistency one year after the first meeting of the federal parliament." In order to avoid the situation of the laws being void by amending or replacing in line with the Constitution, the Federal Parliament first met on March 5, 2019 setting the final deadline for revising all the laws by a year.<sup>xi</sup> These laws and bills are not in line with the UNDRIP and ILO Convention 169 and the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples was not obtained by the government during the making, amending, passing or implementation of these laws.

#### **E. Massive violations of Economic, Social and Cultural Rights of Indigenous Peoples: rights to lands, territories and natural resources**

Indigenous Peoples have special cultural and spiritual relationships with their lands, forests, waters, and natural resources. Moreover, they have the right to own and develop these lands and resources in accordance with their traditions and customary laws and pass these rights to future generations. Similarly, they 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.<sup>xii</sup> But, currently, their land, forests, waters and natural resources are under threat due to the aggressive development projects such as hydropower generation, and road expansion, as well as declarations of national parks and protected areas. This infrastructure has been and is planned for construction in their land and territories without Free, Prior and Informed Consent nor meaningful participation in the planning, implementation and evaluation of such projects. Such development projects have been undertaken against the principle of the 'self-determined development' of Indigenous Peoples.

##### ***i. Massive human rights violation in the name of hydropower***

By endorsing the 'National Energy Crisis Reduction and Electricity Development Decade Plan (2016-2026)', the government of Nepal introduced several ambitious hydropower projects. Currently as many as 84 projects (ranging in capacity from 6 to 750 Megawatts) across the country, with the combined capacity of 1115 MW, are

under operation.<sup>xiii</sup> Additionally, 216 projects (with a total 7679.951 MW capacity)<sup>xiv</sup> have obtained construction licenses and are at various stages of planning and execution across the country. 127 projects with combined capacity of 3444.058 MW<sup>xv</sup> are operated by the government.

Such projects along with those undertaken by multilateral development banks such as the World Bank, Asian Development Bank, European Investment Bank and private sector investors are creating suffering among Indigenous Peoples of Nepal. Most of these projects are operating or planned to operate on the lands and territories of Indigenous Peoples, who are often entirely dependent upon rivers for their livelihood have caused adverse impacts to their livelihood. Hydropower projects on or near Indigenous Peoples' land are operating without Free, Prior and Informed Consent, without public hearings and without adequate compensation for loss of lands and livelihoods. The implementation of such projects is resulting in widespread human rights violations, including escalating conflicts, forced displacements, and massive environmental degradation. Communities that stand against and obstruct the works are often detained, tortured or seriously injured and left without justice.

Examples of this include five hydropower projects (with combined capacity of 263 MW) being constructed by private investors (TM Dugar Group, Himalayan Hydropower Pvt. Ltd. Pikey Hydropower Pvt. Ltd, Apolo Hydropower Pvt. Ltd and Green Venture Pvt. Ltd along with investment of Laxmi Bank, Siddharth Bank, Citizen Bank International, Century Commercial Bank, Bank of Kathmandu in Likhu River) within the ancestral territory of Sunuwar Indigenous community mainly between Ramechhap, Okhaldhunga and Solukhumbu district. The field study conducted in all five projects concludes that these hydropower projects were constructed without conducting public hearing or providing compensation to the loss caused by the company. Moreover, the investors never unveiled the Social Impact Assessment (SIA) and Environment Impact Assessment (EIA) of the project in the languages local and Indigenous communities understand and speak.

The projects have already resulted in negative consequences for Sunuwar Indigenous communities in various ways. The interruption of the flow of the river has long term negative economic, social, cultural, and natural effects including increased chances of landslides as their territory has steeply sloping lands, displacement of thousands of Sunuwar who live along the project areas, negative effects on the traditional occupation including traditions, and culture fishing including agricultural practice of Sunuwar. There are a number Sunuwar members who sustain their lives by fishing and frog trapping. Such concerns of the Sunuwar Indigenous and local communities, whose ancestral lands, community forests and rivers the projects extracted from, were never heard.<sup>xvi</sup>

The private investors might not have policies to ensure meaningful consultation on projects, however, the Asian Development Bank (ADB), European Investment Bank (EIB), and World Bank (WB), have policies in place to respect Indigenous rights in their investment processes. Nonetheless, not a single multinational enterprise has

followed any international treaties, conventions, or their policies in any of the hydropower projects on which they have made an investment. For example, in the case of the Tanahu Hydropower Project, funded by ADB and EIB, communities recently filed complaints with independent watchdogs of the ADB and EIB by affected Indigenous communities alleging the banks' failure to uphold FPIC and adequate compensation for loss of lands and livelihood.<sup>xvii</sup> Similarly, the complaints about violating Indigenous Peoples' rights in the Nepal Power system Expansion Project funded by EIB also were filed by affected Indigenous communities by the 220 KV Marshyangdi Corridor, in Nepal. <sup>xviii</sup> The Government of Nepal often declares hydropower projects as 'projects of national pride' and regularly deploys the army freely to silence the voices of displaced locals and Indigenous communities who are fighting for justice.

## ***ii. Mass forced eviction in the name of infrastructure development roads***

In Nepal, almost all physical infrastructure projects are being built without Free, Prior and Informed Consent. UNDRIP and ILO convention no. 169, which Nepal is party to, have asserted Indigenous people's pre-emptive rights over their ancestral properties, especially land, forest and water sources. According to these international standards, the government must inform local Indigenous Peoples in their own language about any development, industrial and economic activities planned by it. Such activities can be started only after thoroughly consulting them, and securing their prior informed consent.

Nepal's constitution and Environment Protection Act have also made it mandatory to carry out an Environmental Impact Assessment (EIA) before carrying out any development and infrastructure projects. Article 27 of the Constitution has also guaranteed peoples' rights to information about public concerns. Even in Local Self Government Act 2055 BS, it was mentioned that Adivasi Janajati and local people would have to be consulted in identifying, planning and implementing development activities through local councils. But these national and international legal instruments have always been brushed aside while implementing development projects in Nepal, excluding Indigenous people from the consultation process. To prevent local people from protesting against injustices impacting them in large-scale development projects, the government declares them national priority projects and deploys the army to suppress public voices.

A case in point is an aggressive road expansion project executed by the government of Nepal in the ancestral land of the Newar Indigenous Peoples, which has adversely impacted more than 150,000 peoples. The road expansion drive conducted without FPIC and adequate compensation has resulted in massive human rights violations, including mass-forced eviction, the demolition of symbols of identity such as cultural and religious sites, as well as intimidation. The Supreme Court issued its Directive Order on 17 September 2017 on the case of Shanu Shrestha 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 home unless there are



no alternative solutions. Additionally, the decision said to address the rights to relocation and rehousing of the displaced equitably, 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. On June 11 of 2018, the ILO decided to set up a tripartite committee to examine alleged non-observance of ILO Convention 169 within Nepal's road expansion project in response to a complaint lodged by the Nepal Telecom Employees' Union (NTEU). Still, Newar Indigenous communities victims of road expansion have yet to receive proper justice.

### **iii. Human rights violations in the name of conservation**

Nepal has 12 national parks, 1 wildlife reserve, 1 hunting reserve, 6 conservation areas, and 13 buffer zones, all of which occupy 23.39 percent of the total lands of the country. These large swathes of forest area, traditionally used by Indigenous Peoples for livelihood or which once were in the customary territories of Indigenous Peoples, have been converted into community forests, national parks, protected zones or conservation areas without securing the Free, Prior and Informed Consent of communities. Oftentimes, the government has unilaterally decided these forest areas as conservation areas and mobilized the army citing the need to control illegal poaching and land encroachment in these areas. The locals have opposed these actions, saying militarizing their communities will further expose them to harm. This pattern is evidenced in Makalu Barun National Park in the eastern region, Dhorpatan Hunting reserve in the central region, Langtang National Park and Shivapuri National Park which fall in customary land of Tamang Indigenous Peoples, Sagarmath National Park, in the land of Sherpa, and Chitwan and Bardiya National Parks, in the ancestral land of Tharu. History shows that these parks and protected areas were created despite objections from the local and Indigenous Peoples, as they were decided without taking their interests and needs into account. ILO Convention no. 169 (to which the Nepal government is a party) clearly states that local peoples deserve rights over local natural resources. However, the local laws such as the National Parks and Wildlife Conservation Act contain no provisions to protect their right to consultation or access to land and resources. Indigenous Peoples who live in these areas routinely face injustices at the hands of the park authorities, security forces, and forestry officials. Moreover, they have lost their land and livelihoods and their traditional ways of life have been wiped out. They have been displaced and denied compensation for their losses. They are prohibited even from grazing their cattle on the common pasture. They are harassed, beaten, fined and in some cases, raped and killed. The hunting reserve including National parks generate millions of rupees as revenue every year, but Indigenous Peoples don't get due share of the amount collected.

### ***iv. Violations of the rights to education in mother tongues for Indigenous children***

UNDRIP, Article 14 (2) stipulates that Indigenous children have the right to all levels and forms of education of the State without discrimination. Sub-Article (3) states effective measures for Indigenous children, including those living outside their communities, should be taken for them to have access to an education in their own

culture and provided in their own language. Moreover, Sub-Article (1) states that Indigenous Peoples have the right to establish and control their educational systems and institutions providing education in their own languages in a manner appropriate to their cultural methods of teaching and learning.

Similarly, ILO Convention No. 169, 1991 Article 28 states: "Indigenous children wherever practicable, be taught to read and write their own Indigenous language. When this is not practicable, the competent authorities shall undertake consultations with these peoples with a view to the adoption of measures to achieve this objective."

It is clear that Indigenous children have the right to education in their own Indigenous languages. The Nepali government in its Constitution and Act has expressed commitments to provide education in mother tongue up to the basic level or secondary level. According to the Department of Education, as many as 69 local languages which have been used as the medium of instruction in the classroom teaching and learning activities at primary level, but schools cite that they have lack of resources such as budget and policies. Likewise, 24 curriculums in different languages have been developed by the Curriculum Development Center (CDC) and the National Centre for Educational Development (NCED) has developed training packages for teachers.<sup>xix</sup> Yet, Nepali language is the only official medium of instruction in education, which creates obstacles for Indigenous Peoples in accessing education. Furthermore, much evidence and many reports mention that Indigenous girls face challenges in gaining access to school in their communities, as 41 percent of Indigenous children have to manage both school and work.<sup>xx</sup> Indigenous Peoples have been deprived of identifying what languages should be used at different stages in public and private education. In education, the students should be considered the primary rights holders. The parents and Indigenous communities are supposed to be involved in decisions about their children, but their voices and choices are hardly heard.

#### ***v. Violations of right to media, information or freedom of expression in Indigenous languages***

UNDRIP recognizes the importance of the right of Indigenous Peoples to their own forms of media and free expression in Indigenous languages for safeguarding culture, identity and equally to protect knowledge and information concerning to Indigenous Peoples. The media can ensure Indigenous Peoples' right to access to information, participation and voice. However, in Nepal, there are few media outlets which provide programming in Indigenous languages and from the perspective of Indigenous Peoples. Nepal's media has been and is still overwhelmingly controlled by the members of the dominant social groups, not only in terms of ownership but also in terms of content production. The major language used in the media has been Nepali. At present, there are as many as 116 Television and 793 FM radio stations which have obtained license to operate across the country. Similarly, there are a total 7743 newspapers and magazines registered including 735 daily newspapers.<sup>xxi</sup> Of all

newspapers published in Nepal, 93 percent are published in non-Indigenous languages. Of this percentage, 68 percent are published in Nepali and 25 percent in English, Hindi, and English-Nepali. The media in Indigenous languages (those media, newspapers, broadcasting radio and TV programs by Indigenous journalists) account for less than 6.6 percent of the total, despite the fact that Indigenous Peoples make up 36 percent of the national population.<sup>xxii</sup> The public government broadcasting Nepal Television and Gorkhapatra (newspaper) provide merely translated Nepali news into some Indigenous languages, those which have a relatively higher number of Indigenous languages speakers, and the content does not reflect the cultures, concerns, and voices of Indigenous Peoples themselves.

Of the total 740 FM radio obtained for license (as of June 30, 2020), some 400 are termed "community radio stations." These are mainly run by NGOs and cooperatives, with some being commercial run by private companies. Although community radio stations in Nepal have the potential to be the lifeblood for many remote communities where many residents are speakers of Indigenous languages, many of currently licensed community radio stations are located in district headquarters, physically inaccessible to the majority of Indigenous Peoples who are living in remote villages. They are mostly controlled by dominant groups in terms of ownership, decision making, and content production. To truly fulfill their role as a community radio station, the communities should have meaningful participation in the radio's leadership board and content should reflect the communities' cultural and linguistic diversity.

Although there are a few media outlets, including FM stations, TV and newspapers, which are owned and operated by individuals or groups from Indigenous communities, they lack funding and support from the government. The lack of Indigenous Peoples control over their own forms of media, in Indigenous languages, has hindered Indigenous Peoples' right to access, participate in, and have voice in Nepali society, and deprived of their right to information, freedom of expression reflecting their cultural and lingual diversity and right to communication in their Indigenous language.

#### **IV. Questions**

We encourage States to ask the following questions of the government of Nepal:

1. What mechanisms do the constitutional commissions formed to address Indigenous Peoples' issues have to receive complaints, investigate the acts of human rights violations, including discrimination, or recommend for further action to government of Nepal?
2. Through what mechanism are Indigenous communities consulted and informed regarding hydropower projects and development projects undertaken on their traditional lands and territories?
3. What steps is Nepal taking to specifically address the rampant levels of human trafficking of Indigenous girls?
4. What measures is Nepal taking to promote freedom of expression and right to media in Indigenous languages as well as to access equal and quality access

to information?

5. What mechanisms/procedures has the Nepal government established for ensuring Indigenous Peoples' right to FPIC in drafting, amending and implementing laws, policies and programs of state, or federal and local government?

## **V. Recommendations**

We urge States to make the following recommendations to the government of Nepal:

1. Collect and develop a system to track disaggregated data on violence against Indigenous women and girls and form special mechanisms to address multiple forms of discriminations faced by Indigenous women.
2. Ensure full compliance with international human rights standards by consulting with Indigenous Peoples to adopt legislations, policies, bills, and forming of institutions designated to address the implementation of Indigenous Peoples rights.
3. Ensure meaningful participation and consultation by forming a mechanism/procedures to maintain FPIC in the drafting, amending, and implementing laws, policies and programs of state, or federal and local government, including in planning, implementing, monitoring and evaluation of development projects undertaken in the lands and territories of Indigenous Peoples.
4. In consultation with Indigenous Peoples, take steps to amend the National Parks and Wildlife Conservation Act to align with convention 169, ensuring Indigenous Peoples' Free, Prior and Informed Consent and protecting their access to land and resources.
5. Implement Article 16 of UNDRIP by ensuring that community radio stations are reflective of Indigenous communities they serve, by establishing a mechanism to ensure meaningful participation of Indigenous communities on community radio's board of directors, and by monitoring that the station's content is reflective of the cultural and linguistic diversity of the communities to which they broadcast.
6. Recognize Indigenous Peoples' rights over lands, territories, and natural resources that they have occupied customarily owned and used traditionally.
7. Ensure Indigenous children's right to education in their mother tongues by consulting with Indigenous Peoples on policies for multilingual education.
8. Support Indigenous girls in overcoming obstacles in gaining access to education in their mother tongues.

**End**

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<sup>i</sup> The Constitution of Nepal was promulgated on September 20<sup>th</sup>2015. See full text of the constitution in English language at <http://www.lawcommission.gov.np/en/wp-content/uploads/2018/09/constitution-of-nepal-2-2.pdf>

- ii Nepal Treaty Act, 1990, Section 9  
<http://www.lawcommission.gov.np/en/archives/category/documents/prevaling-law/statutes-acts/nepal-treaty-act-2047-1990>
- iii The Constitution of Nepal was promulgated on September 20<sup>th</sup> 2015. See full text of the constitution in English language at [http://www.constitutionnet.org/sites/default/files/2017-07/Constitution-of-Nepal-English-with-1st-Amendment\\_2\\_0.pdf](http://www.constitutionnet.org/sites/default/files/2017-07/Constitution-of-Nepal-English-with-1st-Amendment_2_0.pdf)
- iv CERD committee first early warnings to government of Nepal, available at :  
[https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NPL/INT\\_CERD\\_ALE\\_NPL\\_7100\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/NPL/INT_CERD_ALE_NPL_7100_E.pdf)
- v The second early warnings to government of Nepal available at:  
<https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Nepal28092009.pdf>
- vi *ibid* 3
- vii see <https://www.recordnepal.com/wire/news-analysis/in-local-government-khas-arya-men-dominate-in-all-major-posts/>
- viii see at : <https://www.Indigenousvoice.com/en/father%E2%80%99s-or-husband%E2%80%99s-surname-political-parties-distort-logics-to-cheat-Indigenous-women-in-nepal.html>
- ix Section 8(C);76 (C) and 172 (e) of the Local Self-Governance Act, 1998
- x Available at <https://www.Indigenousvoice.com/en/7-out-of-every-10-victims-of-trafficking-in-person-are-Indigenous-women-and-girls-in-nepal.html>
- xi <https://kathmandupost.com/national/2019/03/03/parliament-misses-deadline-to-amend-laws-inconsistent-with-constitution>
- xii ILO Convention no. 169 and UNDRIP
- xiii Ministry of Energy, Water Resources and Irrigation, Department of Electricity Development, hydro-projects in operation, available at <http://www.doed.gov.np/license/54> (accessed on 3 March 2020)
- xiv Ministry of Energy, Water Resources and Irrigation, Department of Electricity Development, licenses for hydropower-projects, available at <http://www.doed.gov.np/license/21> (accessed on 3 March 2020)
- xv *ibid* 12
- xvi A draft field study report conducted by Sunuwar Sewa Samaj and submitted to Cultural Survival in Nepali in 2018.
- xvii Press release issued by Indigenous communities affected by the Tanahu Hydropower Project in Nepal who file complaints with the ADB and EIB, on Feb. 20, 2020,  
<https://cemsoj.wordpress.com/2020/02/20/Indigenous-communities-affected-by-the-tanahu-hydropower-project-in-nepal-file-complaints-with-the-asian-development-bank-and-european-investment-bank/>
- xviii press release by the Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP and Accountability Counsel) on 2019, <https://www.accountabilitycounsel.org/client-case/nepal-220-kv-marsyangdi-corridor-transmission-line/>
- xix Department of education, <https://www.doe.gov.np/category/research-reports.html>
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