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NTG



WCAR

# Racism and Discrimination in the New Millennium's Nepal

By  
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and international peace and security. The second World Conference to Combat Racism and Racial Discrimination held in Geneva in 1983, assessed its activities and formulated plan of action. Both the World Conferences declared apartheid, the extreme form of institutionalised racism, totally abhorrent to the conscience and dignity of mankind, a crime against humanity, and a threat to international peace and security. In this connection, the international community observed one international year (1968) and the three international Decades for Action to Combat Racism and Racial discrimination (1973-1982, 1983-1992 & 1993-2002) and renewed its commitments.

One of the world's worst problems in the area of racial discrimination is the suffering caused to indigenous peoples. The indigenous peoples have been victims of racial discrimination and colonisation for centuries. Though the last two WCARs had given little attention to the questions of the human rights of Indigenous peoples, the Fourth Conference may offer a significant opportunity to indigenous peoples to raise their concerns and plan of action as they envision for themselves. The General Assembly has established the International Decade of the World's Indigenous Peoples from 1995-2004 with major goals of establishing UN Permanent Forum (UNPFII) and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The indigenous communities have appreciated the decision of UN General Assembly to establish the UNPFII but the standard-setting procedures (UNDRIP) at the UN has proven painstakingly slow. In this regard, I as a chairperson of Nepal Tamang Ghedung, suggest the following language for inclusion in the final text.

1. Call for a World Conference on Indigenous Peoples.
2. Recommend a comprehensive review of the International Decade of the World's Indigenous Peoples.
3. Recommend to the Secretary General the early establishment of a separate secretariat for the Permanent Forum, and that preference be give to Indigenous candidates in the staffing of the secretariat with all necessary funding.
4. Recommend the adoption of the draft UN Declaration on the Rights of Indigenous Peoples, approved by the Sub-commission on the Prevention of Discrimination and Protection of Minorities in its resolution 1994/45.
5. Recommend that States ratify international conventions and agreements protective of Indigenous Peoples' rights, and abide by agreements and treaties signed between State sand Indigenous Peoples. States that have

not already done so should ratify the Convention on the Elimination of All Forms of Racial Discrimination and make the Declaration under Article 14 of that Convention.

6. Recommend that States examine their constitutions, laws and legal systems, and policies to identify and eradicate both explicit and inherent racism towards Indigenous Peoples contained therein.
7. Recommend that States promote programs benefit Indigenous women, with their full participation, to promote their civil, political, economic, social and cultural rights; to end disadvantage due to gender; to urgently resolve problems effecting them in education, employment, health, traditional knowledge, justice, the environment and biodiversity; and to eliminate policies of forced sterilisation and the use of sexual violence as a weapon of war as well as the trafficking of Indigenous women and children.
8. Urge the States to commit financial resources to anti-racism education and media campaigns to promote anti-racism awareness, acceptance of diversity, and respect for the cultures of all Indigenous Peoples. In particular, the States should promote a real understanding of the dignity and worth of the histories and cultures of Indigenous Peoples.
9. Urge the State parties to maintain the rights of Indigenous Peoples over their traditional economic, social and cultural structure, to pursue their own economic, social and cultural development and to use and further development their own language, their special relationship to their land and its natural resources should not be taken away from them; the need for consultation with indigenous populations as regards proposals which concern them should be fully observed.

Last but not the least, I thank Nepal Tamang Ghedung family for the publication and acknowledge the contribution of my wife Stella for the improvement in the text and help of Mr. Bigendra Waiba for computer setting.

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## **Preface and Acknowledgement**

This booklet aims at raising awareness about the issues of racism, racial discrimination, xenophobia and related intolerance prevalent in the Nepalese society. The idea itself arose from the preparations for the participation in the World Conference against Racism to be held in South Africa from 31 August to 7 September 2001. Its only desire is to collect basic information on problems and solutions together as seen by the victims and to make the information accessible to readers - both indigenous and non-indigenous so that they may use through their inquiries themselves, as they wish.

The 2001 World Conference Against Racism (WCAR) has been preceded by 50 years of activity by the United Nations in its efforts to eradicate all racism and racial discrimination. The international community accepted the obligation to pursue the realisation of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion through the United Nations Charter in 1945. In December 1948, the United Nations General Assembly adopted the Universal Declaration on Human Rights, which declares that all human beings are born free and equal in dignity and rights, and the convention on the Prevention and Punishment of the Crime of Genocide, which declares genocide an international crime.

The General Assembly, reaffirming the principles of the UN charter and the Universal Declaration on Human Rights, adopted the UN Declaration on the Elimination of All Forms of Racial Discrimination on 20 November 1963, and the International Convention on the Elimination of All Forms of Racial Discrimination on 21 December 1965. The Convention, which is a legally binding instrument, entered into force on 4 January 1969 and now has 155 state parties. It defines racial discrimination as any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise...of human rights and fundamental freedoms.... States parties agreed to condemn racism and to undertake measures to eliminate it in all its forms.

The First World Conference to Combat Racism and Racial Discrimination was held in Geneva in 1978. Its Declaration and Programme of Action reaffirmed that all discrimination based on the theory of racial superiority, exclusiveness or hatred are a violations of fundamental human rights and jeopardise friendly relations among peoples, co-operation between nations

## **Glossary**

<b>CDM</b>	<b>Clean Development Mechanism</b>
<b>GHG</b>	<b>Green House Gas</b>
<b>ICERD</b>	<b>International Convention on the Elimination of All forms of Racial Discrimination.</b>
<b>ILO</b>	<b>International Labour Organisation</b>
<b>PSC</b>	<b>Public Service Commission</b>
<b>UN</b>	<b>United Nations</b>
<b>UNFCCC</b>	<b>United Nations Framework Convention on Climate Change</b>
<b>WCAR</b>	<b>World Conference Against Racism</b>

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# **RACISM AND DISCRIMINATION IN THE NEW MILLENNIUM'S NEPAL**

## **I. Introduction**

The United Nations will convene the Third World Conference to Combat Racism, Racial discrimination, Xenophobia and Related Intolerance (WCAR) from 31 August to 7 September 2001 in Durban, South Africa. Two previous world conferences, held in 1978 and 1983, had discussed the racial problems and had identified strategies for action, yet twenty years later the scourge of racism and racial discrimination continues. The First and the Second World Conferences primarily focussed on apartheid. The apartheid has been ended in South Africa where the Third World conference is taking place. Therefore the World Conference offers a break from the past and celebrates the abolition of South African apartheid and the progress in international standards in the arena of racism, racial discrimination, xenophobia and related intolerance.

The forthcoming WCAR is potentially of great significance to the indigenous peoples of the world. Indigenous peoples face all kinds of racial discrimination on the basis of their race, colour, descent, lingual, national or ethnic origin. The objectives as set forth by the UN General Assembly, this paper focuses on the following two principal objectives at national level and generate policy recommendations at the international level. They are:

1. To review the political, historical, economic, social, cultural and other factors leading to racism and racial discrimination, xenophobia and related intolerance, and;
2. To formulate concrete recommendations to further action-oriented national measures in order to increase level of awareness and commitments of different actors to combat racism and racial discrimination vis a vis to help formulate programme of actions at regional and international level.

Indigenous nationalities<sup>1</sup> of Nepal have been victims of racism and racial discrimination for centuries. The WCAR provides an opportunity to fill gaps and help put into practice existing international standards to deal with contemporary issues of the racism and discrimination. But there is also a possibility of limiting outcome of the conference, since some of the countries



are not willing to accept that racial discrimination exists in their countries and societies. In the case of indigenous peoples, many literatures and states argue that discrimination began with the arrival of the first European colonisers. Colonisation of indigenous peoples took place from overseas. This theory may prevent meaningful progress in those countries, which had not directly fallen under the overseas domination. It can avoid the genuine reflection of racial discrimination within their countries. Nepal was never colonised by the overseas power directly but the Nepalese indigenous peoples have the same experiences of political domination, subjugation and exploitation of economic surplus from the in-land-ruling group. Therefore the racism, racial discrimination, xenophobia and related intolerance are the characteristics of the dominant societies all over the world.

This paper is organised in Six Sections. The Second section of this paper highlights the historical overviews of the evolution of the present Hindu nation state along with the social composition of the Nepalese society. The Third section analyses the sources, causes and factors contributing to racism and racial discrimination whereas the Fourth section identifies the victims at large especially focussing indigenous peoples. The Fifth section recommends a number of measures aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance. The mechanisms and strategies are suggested for the effective implementation of recommendations in the last section.

## **II. Background**

### **1. Historical Overview:**

Nepal displays its beauty of diversity in terms of ethnicity, language, religions, geographical regions and culture. The country has a population of over 22 million of four racial origins; Caucasian, Mongoloid, Dravidian and Austroloid. There are more than 70 human communities. According to the Summer Institute of Linguists, they speak about 125 languages and dialects of four language families such as Indo-Aryan, Tibeto-Burman, Dravidian and Austroloids. But demographically no one community is in absolute majority. These people believe in different faiths as Hinduism, Buddhism, Animism, Jainism, Islamism, Christianity, etc. Indeed, Nepal is a multiethnic, multilingual, multireligious and multicultural country.

The peoples of Mongoloid stock were the ancient inhabitants of Nepal. They had their own homelands in the mountains, valleys and plains. They are the indigenous peoples or nationalities of Nepal now known as the Mongol-Kirata. These peoples developed a sense of collective belonging after Khas rulers had attacked their homelands and their cultures and now are facing serious domination of the Khas nation. The Aryan people who were the follower of the Hinduism from the Indian plains assimilating with the Khas emerged as a Khas nation. Newar emerged as a nationality through assimilation of the Mongol peoples with the immigrants from the North Indian plains in Kathmandu valley. The immigrants from the Northern India assimilating with Indigenous Madhesi peoples are recently displaying a sense of Madhesi community. After conquest over the Mongol peoples, the Khas ruling class shaped Nepal as Khas Hindu nation-state. Dalits in their origin are primarily Khas, the Aryan race but due to intra-group discrimination, they are known as untouchable caste group.

However, since the 1769 AD, following the Gurkha conquest over the many autonomous tribaldoms, chieftainships and feuds, the Khas rulers have been enforcing a policy of ethnic cleansing based on Hindu polity called as 'Manusmriti' and 'Varna (caste) system'. They did not tolerate any other cultures rather they imposed a chauvinistic state policy of the 'absolute Hindu Monarchy, Khas Language, Hindu Religion and Hindu culture'. As the consequence, the indigenous peoples lost their cultural identities, political powers, languages, religions, and faced the religious persecution, presence of caste system and discrimination. Dalits became victims of social discrimination and the Madhesiya felt regional discrimination. In totality, the country became one of the poorest countries in the world in every sense. Because the state has prevented the majority of population from decision-making and access to and control over the resources of the country.

The people's movement of 1990 overthrew the Partyless Panchayat System and turned the absolute Monarchy into constitutional Hindu Monarchy and restored a Multi-party Parliamentary System, bringing high hopes for the powerless indigenous, deprived communities and poor people. But, when the new constitution of the kingdom of Nepal - 1991 came out, it failed to fully address the concerns and aspirations of indigenous peoples, Madhesiya communities and untouchable communities as the new constitution also continued the legacy of 'One Hindu state One Hindu King, One (Khas) language and One Dress (culture)' of the past Panchayat regime. It brought discriminatory provisions regarding the religion, language, ethnicity, caste and indigenous peoples.

Indigenous nationalities could not realise any satisfactory achievements and positive indications of constitutional and legal reformations in the past ten years of so-called democratic governance. Human rights of indigenous peoples are violated day by day and started to seriously diminish through the *certiorari* of the Supreme Court of Nepal as in the case of language rights and *public security regulation*, despite the substantial contributions and lobbying efforts of indigenous peoples and discriminated communities to promote the rights regime.

### **III. Sources, causes and forms of racism and discrimination**

The discriminations at present are manifested in different forms and fashions. Political domination, subjugation, economic exploitation, inequality, powerlessness, ethnocide, etc, are, by example, some of the forms. It is fact that the causes of these discriminations against indigenous peoples are the race, since the race of the ruling class and the races of indigenous nationalities are different and distinct. Because of racial differences, internal colonialism, Hinduisation, Hindu nationalism (Khas chauvinism) and cultural imperialism were seen in the history. It is therefore important to analyse the sources of the racial discrimination in the historical perspectives. These factors should not be considered in isolation, but as an interrelated and interdependent stimulus for aggravating the causes.

#### **A. HISTORICAL FACTORS:**

##### **1. Internal colonisation:**

Indigenous peoples were autonomous, self-governing and independent in Nepal. The King of Gurkha, the present ruling dynasty, annexed the principalities of indigenous peoples in 1769 AD and deputed the Brahmans, Chetris and Thakuris at the tribal localities to administer all the conquered peoples by a large-scale movement of Indo-Aryan people. These ruling groups were the original fugitive people when the Muslim invaded Indian plain. We call this colonisation process as the internal colonisation, since Nepal was never colonised by the overseas powers. In the literature of political science, colonialism is defined from the overseas perspective. It is

presented as a dominant western ideology and is reflected in the relationship western society has maintained with the indigenous peoples of the world, constituting a historical problem, deep rooted with political domination, subjugation and expropriation of economic surplus. In all its expressions, it continues to rob indigenous peoples of their ancestral knowledge, cultural and spiritual practices, of their economies and way of life, as well as their cultural and intellectual heritage that forms a part of their spirituality. It is the cause of the loss and ruination of our sacred places, the loss of our traditional health practices and traditional knowledge including the loss of our plant, animal and human genetic resources. This characterises a typical internal colonisation in the context of Nepal. Therefore it is argued that racism, racial discrimination, xenophobia and related intolerance are the characteristics of dominant societies all over the world and are the forms and manifestations of colonisation, denying Indigenous Peoples' right of self-determination.

## **2. Hinduisation:**

The subsequent process of political consolidation over the centuries was followed by codification to legitimatise the Hindu autocratic authority through creating uniform social structure according to the principle of Hindu social law. The whole society were divided broadly into two; Tagadhari and Matawali Groups and minutely into four hierarchical orders as (1) *Brahmans (Bahuns)* (2) *Ksatriyas (Chhetris)* (3) *Vaishyas (peasants and artisans)* and (4) *Shudras (untouchable or outcastes)*. According to this division, Bahuns and Chhetris who are considered as pure by virtue of their spiritual wisdom and political power placed at highest position of social relations, and the Shudras who are considered impure by virtue of their menial jobs were placed at the lowest level. Similarly, Indigenous peoples were named as Matawali (alcohol drinking group) and placed into the lower strata as Pani chalne Shudra just above the untouchables. The Matawali Shudras were further divided into "*Masiney Matawali*" (those who can be enslaved or killed or eliminated) and "*Namasiney Matawali*" (those who can not be enslaved or killed). The law had prescribed, in detail, commensal rules, marriage alliance, occupational rules and the punishments according to the caste of offenders. Therefore the Hinduisation was a form of religious imperialism by which the state promoted cultural cleansing of indigenous peoples as a whole.

## **3. Abolition of collective ownership system:**

The administrative policy of the Gurkha Empire was organised according to the principle of Hindu law. In doing so they sought to reinforce the punitive

claims to high caste status and thereby justified the ownership of all land and natural resources under the privileges of Hindu Raja (Monarch). Thus the Gurkha State treated all the indigenous peoples' land as being freely available to be expropriated. They confiscated the KIPAT<sup>2</sup> and other forms of community land of tribal, except Limbus' Kipat. The Kipat or the community owned land-holding system was in practice prior to the entrance of Indo-Aryans into Nepal. The confiscated lands were distributed among the upper caste groups as Bahuns, Chhetris and Thakuris under Raiker, Birta, Guthi and Jagir tenure to encourage new settlement in indigenous peoples' territories even exempting taxes and curree labour. Such policies subverted the regional autonomy of indigenous peoples under Gurkhali rule by limiting their control over once communally held land and resources. The Kipat owned by Limbus remained until the government introduced Land Reform in 1964.

#### **4. Replacement of Indigenous governance:**

The state based on the Hindu code of Manusmriti not only introduced the feudal system of governance but also replaced the customary rights and the traditional authority of the indigenous peoples. The Hindu caste principle excluded the low caste people and indigenous peoples from the decision making position of political power including right to education. Aside of Newars of the Kathmandu valley, the members of non-Hindu and untouchables were seldom admitted to the higher ranks of Gurkha administration during 1854-1950.

## **B. POLITICAL AND LEGAL FACTORS**

### **1. Inequitable political representation:**

The elite of the Tagadhari (upper Hindu caste group) Bahuns and Chetris (31.5%) have been patronising the state power and holding more than 81.7% top level positions in all important areas of governance such as Judiciary, executive, legislature, military, and public administration, etc, in 1999. This pattern of dominance of the upper caste group in high-level positions has not been changed much for the last two centuries. Thus Indigenous nationalities have continued to be underrepresented in politics, legal profession and the civil services (See table no. 1).

**Table No. 1: Integrated National Index of Governance according to social groups, 1999**

Institutions	High Caste (B+C+T)	Newar	Madhesi	Indigenous nationalities	Dalits	Other	Total
Judiciary	181	32	18	4	0		235
Constitutional bodies	14	6	3	2	0		25
Cabinet	20	3	5	4	0		32
Parliament	159	20	46	36	4		265
Public Adm.	190	43	9	3	0		245
Political leadership	97	18	26	25	0		165
DDC/VDC & Municipalities' chairs / V.Chairs	106	30	31	23	0		191
Industry & Commerce	7	20	15	0	0		42
Academic leadership	75	11	7	2	1	1	97
Culture/ professional	85	22	0	6	0		123
Science and Technology	36	18	6	2	0		62
Civil Society	41	8	4	1	0		54
<b>Total</b>	<b>1011</b>	<b>231</b>	<b>170</b>	<b>108</b>	<b>5</b>		<b>1520</b>
Percentage %	66.5%	15.2%	11.2%	7.1%	0.3%		100%
Population %	31.6%	5.6%	30.9%	22.2%	8.7%	0.1%	100%
Difference %	+34.9%	+9.6%	-19.7%	-15.1%	-8.4%	-1%	

(Excerpts from G. Neupane, 2000, 'Nepalma Jatiya Prashna', p. 82)

## **2. Centralised Unitary system of governance:**

Nepal has unitary system of governance. There is no provision of local self-government in the present constitution. The Government has introduced a local self-government Act in 1997 with the support of foreign governments and United Nations Development Programme. This is the 13<sup>th</sup> decentralisation Act in its history. Whatsoever the name of the Act is, the present local governing bodies are not autonomous and local self-governing in any form. In fact, the so-called local self-governments do not have any executive, legislative and judicial powers. All powers are vested in the central government.

## **3. Unscientific electorate and administrative districts:**

The Governments formed under the new constitution of Nepal-1991 after Jana Andolan (The People's Movement), have accepted the old

division of administrative districts and structure of the political system, although they changed the names slightly. The main objective of division of the administrative districts was to divide the indigenous territories and indigenous populations and rule them. Thus the 75 districts and 4000 village development committees were not created to represent the interest and aspiration of indigenous peoples. The consequences of this administrative and political division are that indigenous communities could not be able to represent their communities in any political levels. The majority people of the land turned into minority. The discrimination against the local indigenous groups became acute and the indigenous people were not taken in the state machinery. Therefore Indigenous groups demand for restructuring village units and districts on the basis of their historical territories, language area, population coverage and rearranging of Election system in such a way so that the majority people of the concerned area could be represented.

#### **4. Political hierarchy and mass frustration:**

Many indigenous activists along with the political parties fought for democracy, equality, human rights, and elimination of discrimination and prohibition of racial discrimination in the 1990's people movement. The 1990's people movement brought a new Constitution to the Nepali people with the freedom of expression and the right to form political parties. The movement established a constitutional monarchy and enlarged the sphere of political life in Nepal. But the constitution does not recognise the demands of indigenous nationalities, i.e., equal treatment and protection for all languages, religions, cultures and ethnicity in the country. Although relatively free and open elections have since been held on a regular basis, these changes failed to fulfil all of the democratic expectations of Nepali indigenous groups and citizens. The new political leaders, many of them from the urban Bahuns elite, continued to reinforce traditional hierarchies in political, economic and social organisations, and failed to change fundamentally the power structure of a society that many considered discriminatory. The majority of the population was thus excluded from benefiting from the new constitutional system and remained marginalized in political and economic terms.

#### **5. Restriction on the freedom of Association:**

Under the fundamental rights of the 1991 constitution, freedom to assemble, to form unions and association, and freedom to opinion and expressions are

guaranteed. But these rights are not unconditional. The prohibitive Sub-Clause of the fundamental rights says that nothing shall be deemed to prevent the making of laws to impose restrictions on any activities, which may jeopardise the harmonious relations among the peoples of various castes, tribes or communities. The Nepalese society is divided into class, caste and ethnicity and as consequences, the discrimination and contradiction are prevailing. Indigenous peoples are struggling for their distinct national identities and Dalit groups are struggling for the social status. The Hindu rulers perceive anything that threatens their dominance as threatening to the harmonious relations. This provision is sufficient to impose restriction on forming any organisation or any activities based on castes, tribes, ethnicity or communities. For example, the Election Commission did not register a number of political parties which had Janajati, i.e., nationalities in their titles and stopped them from participating in the election with their real identities while the Shiva Sena Nepal, a Hindu fundamentalist and extremist party was accorded the recognition and registration in 1999's General Election. It is clear that the constitution and law enforcement practices are conservative and discriminatory against indigenous nationalities. This is the great challenge and abstacle for the political empowerment of indigenous communities.

#### **6. Discrimination in Citizenship Distribution:**

According to the constitution of Nepal, only those foreigners can acquire Nepal citizenship if they know Nepali-Khas language written in Devenagari script. The same opportunity is not provided to any one knowing any of the native languages. According to the high-level citizenship commission constituted under Member of Parliament in 2052 estimated 34,00,000 Nepalese people older than 16 years without citizenship. They were mostly landless, indigenous and nomadic groups. Indigenous peoples are affected by this provision because they or their ancestors did not obtain citizenship certificates owing to their nomadic lifestyles and ignorance of beaurocratic process.

### **C. SOCIAL AND CULTURAL FACTORS**

#### **1. Hindu Kingdom:**

The 1990 Constitution has defined Nepal as a Hindu state. This designation empowers the upper caste Bahun and Chetri groups, to which all other castes were legally held to be socially inferior before 1951. Hindu norms and values



have become the norms and values of the state. It has been used as basis for formulating policies that favour the dominant group. All the state festivals, national holidays and national cultures are of Hindu festivals and culture. The national identity is defined on the basis of Hindu culture and identity. The government allocates budgets every year for promotion of Hindu religion. Royal Nepal Academy publishes books on Hindu religion. Hindu religion gets 98 % of the time allocated for religious programme in the state owned Radio Nepal while other regions do not get any time at all. Thus the provision of Hindu State has thus drawn much resentment from those who feel excluded from the process of governance on the basis of caste or ethnicity. The constitution prohibits the acts of religious conversion and who commits is punished. Dalits are Hindu but they can't enter the Hindu temple.

## 2. Cultural xenophobia and Linguistic Discrimination:

Nepal is a multi-lingual and multicultural country. There are, according to the Summer Institute of Linguists, 125 languages spoken by the various communities in Nepal. The languages of Kusunda, Dura and Bhujel have completely disappeared already and about 20 languages are in the process of becoming extinct. The indigenous and language communities are therefore very concerned about their language heritage. They feel that their languages, the vehicles of transmission for their identities and cultures are in danger of being lost with no hope of recovering them. The constitution of Nepal divides the languages into two categories: the 'Language of Nation' and the 'National Languages'. The Khas language, a language of ruling Khas group is designated as the 'Nepali Language', 'Language of Nation' and the 'Official Language' in the country. All the languages spoken by different communities in Nepal as their mother tongues are designated as the 'National Languages'. The constitution is silent about the role and scope of the 'National Languages'. On the other side, the Supreme Court of Nepal made a *certiorari* not to use national languages in local self-governing bodies and the government offices on June 1<sup>st</sup> 1999 when Kathmandu Metropolitan City, Rajbiraj Municipality and Dhanusa District Committee decided to use national languages such as Nepal Bhasa and Maithili language as additional languages in their official affairs as demanded by indigenous and language communities. Because, most of the native speakers are different from the ruling population by their origin and race. The new national code also prohibits killings of cows. Because of Hindu country the cow is

designated as the national animal. Those who violate it may become imprisoned for 12 years, equivalent to life imprisonment. There are many communities who eat beef for generations. Thus language discrimination as a form of racial discrimination exists in Nepal.

### **3. Women and girls trafficking:**

Trafficking appears to be a growing problem in Nepal. Today, roughly 200,000 girls and women have been trafficked from Nepal; one third of them are under the age of sixteen at the time of being trafficked. Estimates of numbers trafficked from Nepal to India every year vary widely, from 5,000 to 20,000. But even at the lower figure, it is still a huge problem. Among them, 90 % trafficked girls and women are from indigenous communities and the rest from other caste communities. The origination of this problem was from the Kati Basne in Rana Durbar (Rana Durbar used to keep the Girls of indigenous communities from around the districts of the capital). Indigenous women demand that the state should compensate the victims of women trafficking and the victim community for their exploitation.

### **4. Lack of access in Media:**

Dominance of the media by the dominant Bahun and Chhetris group has resulted into lack of access of indigenous communities on the media. The constitution has guaranteed the right to information to all citizens. But all the state owned Television, Radio and Newspapers are using Khas-Nepali language as their medium. According to the time analysis of national broadcasts in Radio Nepal, 98.5 % of time are expended in Khas-Nepali language. According to the Population Census report, 50% of the total population of Nepal are non-Khas speaking communities. Therefore most of the indigenous communities and the language communities other than the Khas speakers are denied of their right to have access and control over the information as guaranteed by the constitution.

### **5. Education for privileged caste:**

One of the implications of the Hindu-State is that the state promotes the Bahun (Upper caste) to monopolize the Education. Till 1950, it was the prerogative of Bahun only. It was open for other caste or ethnic groups later. But as a legacy, the Bahun students have been monopolising Sanskrit education, a source of Hindu religion, from schooling to University with free

lodgings, food and stipend while indigenous children are not getting even a free and compulsory basic education in their mother tongues.

Despite the free Sanskrit University for Bahun-sons, the state has introduced Sanskrit education for all in general education as a compulsory subject. The Government has also introduced the Sanskrit language in Radio news broadcasting. It is noteworthy that no family speaks Sanskrit. No one would be deprived of the right to information if it were not given in Sanskrit language. There are many communities with living languages and facing problems of being extinction and who don't understand the news broadcast in Khas-Nepali language. Sanskrit, a language of Indo-European language family has no connection with those indigenous languages belonging to the Sino-Tibetan-Burman family, Austroloid and Dravidian families. It is a form of cultural invasions and aggressions through patronising the education system. Indigenous peoples are running movements against the compulsory Sanskrit education and Radio news broadcast in Sanskrit. Indigenous peoples have begun to disown the Hindu festivals and boycott the Dasain Festival. Janajati students and All Nepal Free Student Union (revolutionary) are launching their protests by boycotting Sanskrit examination in Schools.

#### **6. Political instability and Indigenous peoples:**

Many people see the political instability in Nepal is being rooted in the plight of indigenous nationalities. The popularity of Maoist group is due to their full support to indigenous peoples movement in Nepal. Some advocate constitutional change to provide formal clauses of legal equality. The clause in the Nepalese Constitution that describes Nepal as a "Hindu" state has become notorious among those hoping for a multiethnic, multi-religious Nepal. Despite the Constitution's designation of Nepal as multiethnic and multi-lingual, it remains too silent on the equality of indigenous, minorities and dalits.

The majority-rule electoral system, i.e. 'winner take all', inherited from the West, is incompatible with a multiethnic Nepal. Accordingly, it is under discussion that through proportional representation or through the establishment of national autonomous regions for all indigenous peoples, the small and disadvantaged groups can have the opportunity to air their grievances.

A fairly undisputed means to improve the situation of indigenous and Madhesiya groups is through increased representation in the central

government and other loci of power. Many agree that the declared multiethnic state of Nepal must have autonomous regions on ethnic line and increased participation in the central government body. Without increased representation, mainstream Nepali society will be unable to draw loyalty from these. Methods must also be found to improve the representation of women, the landless and the illiterate. All these disadvantaged groups must be given a chance to participate in the political process and to exercise real power.

## **D. ECONOMIC FACTORS**

### **1. Marginalisation and poverty:**

The successive governments after the 1990 people movements, have failed to address the entrenched poverty of Nepal's rural population and indigenous communities who live in the remote and rural areas. Nepal is a semi-feudal country based on subsistence agriculture. 58 % percent of the total population lies under the disguise underemployment. 42% of the total population are living under the extreme poverty below the poverty line. Most of the indigenous people fall under this category. The indigenous peoples are poor, because they are powerless and resourceless. Marginalisation is one of the main problems of the indigenous peoples.

Population transfer schemes have been used since the Gurkha expansion to the present day to minoritize indigenous peoples in their own homelands. The oldest form of population transfer was to rehabilitate the ruling caste groups in the tribal territories. The present form of transfer is to encourage people to move to the Terai plain lands. The victims of population transfer are the indigenous peoples of the Terai. The indigenous peoples are sandwiched by the Hill migration and Indian immigration.

### **2. Plans and programmes:**

For the first time, the government brought a plan and policy for indigenous peoples under the Social Services and Security in the ninth plan of the country. It was due to the strong pressure from the indigenous movements. The policy has two features as the development programmes and institutional building. But both are not implemented even after elapse of half the plan period. The Ninth plan envisions the detailed proposals of resource mobilisation to be conducted after the proposed 'Adibasi and Janajati council'

and its district level committees identify programmes. But since the council is yet to be formed, the implementation of the programmes is almost impossible in the current ninth plan period. The government has not allocated the budget for the implementation of the plan and programmes for the development of indigenous nationalities as committed in the Ninth Plan. For example, the government has allocated budget of Rs. 1,50,00,000.00 only for 'National Committee for Development of Nationalities'. This is the only government body for indigenous peoples who covers the 70% of the total population where the government has allocated more than Rs20,00,00,000.00 for a single Hindu temple.

### **3. Land rights:**

In the past, the communal lands known as Kipat and other forms of communal landownership were abolished by the state and handed over to the Bahuns and Chhetris and turned into Raiker system (individual ownership). In many cases, the then Kipat holders became landless and peasants only. There are many indigenous people and communities who have not received land title and lands though they have been living from the time immemorial. Because the state has not recognised the land rights of many indigenous forest dwellers and nomadic communities who have been holding for many generations, since they were not able to present legal documents to the government officials during land survey and so-called land reform.

### **4. Displacement from conservation programs and Eco-racism:**

The creation of national parks and protected areas is another example of discrimination. Conservationists from the colonizing countries had a strong influence in shaping the conservation programs pushed by their government. The result of the conservation is generally the displacement of indigenous peoples from their territories. Forest management practices of indigenous peoples are not recognized as viable practices for forest and wildlife conservation. The western model of conservation has given more importance to wildlife than to forest dwellers, most of which are indigenous peoples. Therefore, a major component of this program is the displacement of forest dwellers. Their right to self-determination and right to their identities and cultures, among others were blatantly violated in the name of conservation. The management of forests and biodiversity is transferred from the forest dwellers to the state agencies, who have very little understanding of indigenous peoples' cosmovision and cultures. The other problem of the

conservation is the militarization of the protected areas and violation of human and fundamental rights of peoples, women and children. The arbitrary torture, rapes and beatings to the local people are common phenomena of daily life.

The discussion under the UNFCCC and the Kyoto Protocol have totally excluded the indigenous peoples to the extent that neither recognises the right of indigenous peoples to full and effective participation and to contribute and debates. The concepts, practices and measures that have been proposed as solutions to the problems of climate change, such as plantations, sinks and the carbon market, among others, will result in projects with negative and adverse effects on indigenous peoples, territories and ecosystems, and in violations of the rights as indigenous peoples. The inclusion of sinks in Clean Development Mechanism reduces sacred land and territories to mere carbon sequestration which is contrary to the indigenous cosmovision and philosophy of life. Sinks in the CDM would constitute a worldwide strategy for expropriating our lands and territories and violating the fundamental rights that would culminate in a new form of 'biocolonialism' Sinks in the CDM would not help to reduce GHG emissions, rather it would provide industrialized countries to continue poisoning the environment. It poses the threat of invasion and loss of our land, seas and territories by establishing new regimes for protected areas and privatization of forest land and creating a new carbon market. Indigenous peoples concern about the emergence of "biocolonialism" and "environmental racism" that indigenous peoples and local communities of the world continually confront.

#### **5. Globalization:**

Present day globalization is basically the imposition of the culture and system of the global capitalist market economy. This colonisation is not being done through gun but through so-called global rules and policies. These are created in trading bodies like the World Trade Organisation, The World Intellectual Property Organisation and multilateral financing bodies like the World Bank and the international Monetary Fund and Asian Bank, etc. If the countries are fallen in the debt trap and is adhered to globalized trade, investment and financing rules then its chances of forging a more independent path to development is diminished and the indigenous peoples' concepts and practices will have less chances of survival. Globalisation shifts the production structure of local economies, small farmers and livelihood systems into mechanized, wide-scale corn production or change to a more competitive crop.

Globalization is a process of globalizing poverty and centralising of the global resources and wealth. Globalization starts from the national level to the international finally reaching to the global level. Therefore benefiting from globalization are national's companies who are the brokers of the international, multi-national and world's top corporations. Therefore globalisation is a form of racism and racial discrimination. We, indigenous peoples are among those who suffer the most from globalization because as someone has wisely said that we are the poor peoples living in the rich resources. The rich resources include biodiversity, cultural diversity and mineral wealth. Globalization has affected the spiritual, cultural, social, economic, and healing system of our peoples. The destruction of our lands, forests, waters and biodiversity is leading to the destruction of our identities as peoples. In this context, our continuing survival, as indigenous peoples and cultures, depends on how strong we are in resisting homogenisation through globalisation.

#### **6. Gurkha soldiers recruitment:**

The Gurkha soldiers overwhelmingly from indigenous communities have been serving the British Government and the British interests for 185 years. While entering into the service of British army, the Gurkha soldiers had to take the same oath as English soldiers saying that the Nepali youths would faithfully abide by each and every rule and regulation of Britain under the British national flag, that they would remain loyal and dutiful towards the British queen and the British sovereignty, and that they would undergo any punishment in accordance with British military code in the case of committing any mistakes. Thus the Gurkha soldiers are an integral part of the British government and people. Accordingly, they fought two world wars for the British government.

But they have fallen into the victim of British recruitment. First, thousands of Gurkha was sent back home post-haste almost empty-handed without pension, without compensation or severance allowances of any kind and with no consolation whatsoever. Bitter memories of insults and humiliation, suffering and losses still rankle in their minds and hearts. Second, Gurkha soldiers are not receiving the same facilities as the British counterparts in terms of salary, pension and other benefits. Third, the British recruitment system encouraged indigenous peoples of Nepal to be Hinduised, since the British put Brahmans to encourage the Hindu festivals and rituals among indigenous Gurkhas in

each camp which were against their values and cultures. And fourth, it is estimated that 60 thousand Gurkha soldiers had died in two world wars for the sake of British Empire.

## **IV. Victims of Racism and Discrimination**

### **1. Religious minorities:**

Nepal is a multi-religious country. We have Hinduism, Buddhism, animism, Jainism, Sikh, Islam, Christianity, etc. The Government census shows that Hindus are in majority. Others are in minorities. Nepal is a Hindu state, though it is the birthplace of Lord Buddha. The minority religions like Muslims, Christians, Jain, Sikh and others are not free. Buddhism, though it is a major religion, was banned in Rana Regime. Buddhist Monks were expelled from the country. Christianity was banned till 1991. Many Christian believers were persecuted. Muslims have been victimised of Hindu fundamentalists from time to time. Hindu rulers deny them to practice every aspect of their religious belief. The religious conversion is prohibited in Nepal and if found, could be punished for life imprisonment. The Government money goes for the development of Hindu religions and Hinduism but for other there is none. The most affected communities of this religious discrimination are indigenous peoples, women and dalits in Nepal.

### **2. Linguistic communities**

Nepal is a multi-lingual country. There are 125 languages and dialects. Three languages such as Dura, Bhujel and Kusunda have already completely disappeared. 20 languages having a small speaking population are in the process of becoming extinct. The numbers of native language speakers except Khas language are decreasing day by day. Khas language is the state language, official language and language of Nation as designated by the constitution. Government has budgetary support for the development of Khas language. There are many Academies and cultural institutions established by the state resources. But none of the native languages are getting any kinds of supports either from state or from any organisations. If the present situation continues, unfortunately we will have to see other many languages whose speakers are less than 20 thousand dying within 20 years. The victims of this



language discrimination are indigenous groups and other people living in the southern plain.

### **3. Indigenous nationalities**

It is believed that there are more than 70 communities in Nepal. Out of them, 61 communities are indigenous nationalities. These communities make the about 70 percent of the total population including the deprived communities like Dalits. The ruling Bahuns and Chhetris group is making 29 % of the total population but controls the national life about 87 %. The seventy percent population of indigenous and deprived communities just share the 13 % of the national pride, position and wealth among them. Due to the assimilative policy of the state, some of the communities like Kusunda, Pahar, Bhramu, Hayu, etc., are vanishing. The nomadic groups like Raute has no room to live by encroachment of their territories by so-called civilised population, community forest and government forests conservation. It is said news that they, for the first time, came to district administration office for food in their history last year.

### **4. Indigenous women and children:**

The women population amounts to 51.31%, of which about 70% are indigenous women population. The indigenous women are moreover doubly exploited and discriminated. They are suffering in two different ways- because they belong to the women and secondly, because they belong to Janajati community. Women have maximum burden to shoulder, as producer of food working in the fields, as procreator of species, and the social roles. Each day a woman works for almost 4 to 18 hours. Due to the influence of the Hindu culture, they have to face the consequences of gender discrimination. Therefore, the main crux of this problem is related to the declaration of Nepal as a Hindu Kingdom. The Supreme Court in order to give continuity to this Hindu concept has defined that Nepal being a Hindu nation, because of its social tradition, its social value, by remaining within the fold of the Hindu religions tradition, anything that is done against it, shall not be accepted as discriminatory. This kind of definition by the so-called democratic constitution discriminates women once again. Due to enforcement of state law on land and property, indigenous women don't have the Property Rights and they are suffering from the domestic violence also. Indigenous women and girls are sold and purchased in prostitution. Women trafficking have become a national disease. The indigenous women are not represented in the

political decision making body too. Indigenous communities have been forced to increasingly come into the labour market day by day. The majority of the labouring population is women and children. A study on the child workers shows that the Tamang indigenous children constitute 47.5%, Sherpa 10%, Magar 11.5%, Rai/Gurung 3.3% and chhetris 10.5%. Approximately 90% of the carpet child workers are from indigenous populations. They work more than 18 hours in a day living in inhuman conditions.

#### **5. Bonded Labour:**

In 1926 slavery was declared abolished in Nepal, and finally, after the introduction of democracy in 1991, debt bondage labour was again made illegal. Unfortunately debt bondage is still a widespread practice, especially in remote Banke, Bardiyaa, Dang, Kailai and Kanchanpur districts of Nepal. Several anti-slavery organisations have estimated the number of bonded labourers in Southwest Nepal to be between 50,000 and 70,000. They are called KAMAIYAS and they belong to Tharu indigenous community and they are probably among the world's poorest people. Several Kamaiya families have been bonded for up to seven generations. The oppression was intensified when mountain dwellers moved south to the lowlands and legally of not, acquired large areas of fertile land. There is a tradition of putting themselves on the sale and purchase on the first day of Magh (around 15<sup>th</sup> of January) every year. The government of Nepal decided to outlaw the practice of keeping kamaiya in the country on 17<sup>th</sup> of July 2000 (after our roundtable) but their fate is not changed for good. Due to lack of government rehabilitation programs and supports, they are now displaced and took shelter in jungle. The Kamaiyas are freed but in nowhere. The freed frustrated bonded labour says, 'it is better to die from a bullet than from hunger'.

#### **6. Dalits (Untouchable groups):**

Being a Hindu state, there is a state-sponsored discrimination on the basis of caste and religion. The societal structure of Nepal is based on four folds Varna (caste) system such as Bahun, Chetri, Vaisya and Shudra. Shudra are known as Dalits and treated as untouchables and the most oppressed caste of Hindu Varna system. Caste discrimination and untouchability manifest in the denial of civil rights of freedom and access to all forms of basic necessities in public and private places. There are many cases where Dalits are not allowed to take water from the common well and they are not allowed to enter into the Hindu temples. Of the 22 million people of Nepal, Dalits comprises 21%

population. There are 8 major caste groups of Dalit community along with 25 subcaste groups. Originally, Dalit community belongs to Khas (Aryan) group. There are some Dalits who are as a result of being the offspring of touchable and untouchable pairs.

#### **7. Madhesi populations:**

There are minorities like Muslims, Christians and others. Muslims are part of Madhesi and spread across the country but Pahadi Hindu rulers deny them to practice every aspect of their religious belief. There are other communities such as low land indigenous peoples and the immigrants known as Madhesiya communities. They are also the victims of regional discrimination.

## **V. General Recommendations**

There may be a number of recommendations or ways to address the sources, causes and forms of discrimination and inequality. Indigenous nationalities have proposed 27 proposals for the amendment of constitution, 7 proposals for common laws and some of the clauses of 34 special laws (statutes). The major recommendations are summarised as below:

### **A. POLITICAL AND CONSTITUTIONAL REFORMS**

#### **1. Recognition of right to self-determination and national autonomy:**

Since the diverse setting of cultural and regional communities, the present structure of the political and administrative system is unable to fulfil the concerns and aspirations of indigenous nationalities. Indigenous and regional groups are being deprived from their right of democratic self-rule. The decentralisation act known as Local self-government Act has not decentralised the state power but has sought to legitimate the centralisation of power in the name of decentralisation. Looking at the historical facts of the autonomy of indigenous communities, the state should recognise the right to self-determination for all indigenous or ethnic peoples. The state should also restructure the present administrative areas according to indigenous communities' majority population and historical association with the land and territory. The local administrative unit under the present structure is no more suitable for the development for indigenous nationalities and their

representation also has been lacked. The local or regional level of political units as national autonomous regions should be empowered within the multi-national state system. Therefore the present local self-government act should be replaced by another Act which will respect and recognise the right to self-determination and national autonomy of Indigenous nationalities and ethnic groups.

## **2. Constitution of House of Nationalities:**

The present upper house of the parliament, called the 'National Assembly', is constituted by the King's nominees and proportional representation of parties as they got elected in the Lower House of Parliament and the local bodies. This is the mere duplication of the Lower House as it is composed of the representatives of the political parties. There are many small sized indigenous groups who never shared the state power and will not be able to share power in the present condition. It is therefore recommended that the 'National Assembly' should be turned into the 'House of Nationalities' where all the nations (peoples) that make up Nepal should be represented in order to seek truly fuller participation of all communities, either small or large, to give opportunity in decision-making process. This can be the strong instrument to strengthen the national unity of the country.

## **3. Powerful autonomous governments:**

Keeping in mind the unbalanced development of the country and the ethnic desire of autonomy, there should be separation of power between the central and local self-government. The central government should hold foreign affairs, defence and money and leave rest of the executive, legislative, judiciary power to the national autonomy. The national autonomy can only solve the problems of ethnicity, cultures, languages, religions, decision making and development in a country of multi-racial diverse settings like ours. Therefore the state should be restructured to give local communities more control over administration and distribution of resources at the local level by increasing the powers and decision-making functions of local government. The donor and other international actors can have a role in working to increase the capacity of local governing bodies.

## **4. Right to association and citizenship:**

There are many prohibitive clauses in the constitution. There is a possibility that the Government can use these clauses to suppress the indigenous movements. Since the perspective about the inter-groups relation of the

dominant group is a discriminatory, Indigenous person, Minorities and Dalits are the sufferers. To sustain this relation, the constitution aims at curbing the activities of the disadvantaged groups. Therefore those clauses should be eliminated.

There are many indigenous communities such as Santhal, Jhangad, Meche, Tajpuria, Chepangs, Raute, Bote, and Bhote. Most of them have not received citizenship certificates, since they could not produce land ownership certificate and documents. But they have been living in the same place for many generations. Due to mass illiteracy and oral tradition among indigenous communities, they lacked the documents. The state should give them the citizenship in easy and simple way.

#### **5. Indigenous women in decision-making:**

The political participation of indigenous women is very low. The state should increase women candidates in parliamentary election from 5% to 10% and the fifty- percent seats should go to indigenous women and low caste women.

#### **6. Pluralistic-cultural national symbols for Nepal:**

The present national symbols are red rhododendron, red powder (crimson colour), cow, crown, and lophophorus (bird). They are derived from the Hindu culture. They are not able to represent the whole cultures of the country. Therefore the state should determine the national symbols representing the multicultural communities instead of Hindu symbols. The national symbols should encourage tolerance and coexistence among the different cultures.

The national anthem is not related with the land and people. According to the constitution of 1991, the Nepalese people are the sovereign. The national anthem should reflect the land and the sovereign people.

#### **7. Protection of minorities:**

According to the government statistics, no one group of the country is in absolute majority. Demographically, all groups are in minority. It is important to define minority from the political power and historical perspective. Those groups who are not in decision making are the minorities. In the context of

Nepal, Muslims, Christians, Jain, Sikhs and migrants people living in Nepal for many generations are minorities. The existing laws, which don't treat minorities equally, must be improved immediately. Where there are gaps in existing mechanisms, new laws should be drafted to ensure equitable and fair treatment to all Nepalese. The Muslim and Christians should be treated in par with other religious groups.

#### **8. Justice and equality to Dalits (untouchable groups)**

Dalits known as untouchable are the product of Hinduism. Untouchability is one of the worst and barbaric forms of crime against humanity done by the Hindu Verna System. The state should take special measures to abolish the caste-based discrimination and untouchability. The caste discrimination should be punishable. Affirmative actions such as reservations in education, employment and parliament are suggested.

### **B. RECOGNITION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

#### **1. Declaration of secular state:**

The state does not have its own religion but the people living in may have. The people of Nepal profess different world religions such as Hinduism, Buddhism, Jain, Islam, Christianity, etc. Hinduism being a state religion and by its in-built discriminatory character, has been a source of racism, discrimination, inequality, violations of human rights of the persons or the communities belong to other faiths and religions. Therefore there is a need to separate the state and the religion. Nepal should be proclaimed as 'Secular State' in place of 'Hindu Kingdom' so that the dominant group can not use the religion as an instrument to suppress other beliefs and religions. The discriminatory provisions of the constitution, acts and laws should be abolished.

#### **2. Elimination of language discrimination:**

There is no theoretical basis for the distinction of language as the language of the nation and the national language. All the languages, whether it has large number of speakers or small are the cultural heritage of Nepal and the world. They are all equal. The state should therefore take responsibility to conserve

and promote all the languages of Nepal. The discriminatory clauses of the constitution of Nepal regarding the languages should be eliminated. The state should recognise and respect all the languages equally. All languages should be used for education, communication and information, media, public service commission, official uses in every aspects of the national life. In the initiative of Nepal Tamang Ghedung and Newa Rastriya Aandolan, a draft of "Private Language Bill" is prepared to table at the current session of the parliament. We urge the Government of Nepal and the members of the Parliament to pass the bill and resolve the language conflict in the country.

### **3. Recognition of traditional institutions and customary rights**

The Gurkha Empire consolidated the annexed territories replacing indigenous governance by the new administrative mechanism based on Zamindari system. Later it was developed as Panchayats and the formal court system during the panchayat regime. The Panchayat replaced all from bottom to top. They at no case recognise the traditional authority and the customary rights of indigenous peoples. Therefore the indigenous communities became powerless.

The state should recognise the customary rights of indigenous peoples for protection of indigenous knowledge, skills and technologies. The prevailing intellectual property rights, prepared in accordance with the western individual rights, can not protect the collective rights. It is also necessary that the state should amend the related laws to ensure that indigenous peoples should have access, control and manage over their customary land and resources.

### **4. Recognition of Communal Land and resource rights:**

The state should recognise the ancestral land or domain or collective rights of indigenous peoples who had their historical control and linkages over the land and resources. The lands occupied by the indigenous peoples for many generations should be registered in their names and the laws should be made to prohibit the sale and purchase of such lands. There are such tribes as Majhi, Darai, Bote who were surviving by fishing and transporting peoples in the rivers, lakes are now unemployed due to the construction of bridges over the rivers and the rivers are given to contractors for fishing on lease. Those communities who are displaced from their traditional occupation should be compensated and rehabilitated them by the state.

#### **5. Establishment of national academy:**

The bill on the establishment of "National Academy for Nationalities" is in the pigeonhole of the Parliament for the last year. The mandate of the Academy should be broad enough for the research and publication of indigenous cultures, languages, history, religions, lifestyles, indigenous knowledge and to conduct developmental activities for indigenous peoples. The scope of the Royal Nepal Academy be expanded to promote the indigenous literatures, script, culture, arts and languages. The Universities should open the Central Institute for Nationalities.

#### **6. Policy formulation for affirmative actions:**

The state should take affirmative actions for the development of indigenous communities such as reservations in employment, education, foreign scholarships and political institutions as a compensatory programme. Since they have been put behind by the state itself. The 'Public Services Commission' holds examination in Khas Language. Many students who are not Khas speakers are not able to pass the examinations. PSC should not discriminate the candidates on the basis of language and on any other ground, while taking examination for the Government employees. This is one of the reasons that indigenous candidates can not enter into the administrative and other departments of the Government services.

#### **7. Recognition of Indigenous women and children rights:**

The state should recognise that the problems of indigenous women are different from the problems of the dominant Hindu women. The state should provide reservations in employment, education, scholarships and representation in the parliament for indigenous women, since they are far behind the Hindu privileged women. The state should ensure that children from indigenous communities are not exploited as child labour in factories. The state must provide economic rehabilitation and free and compulsory education in mother languages; and bring special programmes to help the indigenous child workers.

#### **8. Control of women and girls trafficking:**

Trafficking is a growing problem in Nepal. Today, roughly 200,000 girls and women have been trafficked from Nepal. One third of them is under the age



of sixteen at the time of being trafficked. Among them, 90% trafficked are from the indigenous communities and the rest from other caste communities. The state should compensate the victims and communities of victims of trafficking. Because this problem was originated out of the historical discriminations and exploitation done by the state. The state should ensure, through legal provisions and their diligent applications, that the trafficking of women for prostitution purposes is fully and immediately stopped, carry out repatriation, legal redress and economic rehabilitation of such women. Since the trafficking a Trans-border problem, the Government of Nepal should initiate discussion with the Government of India for the possible co-operation to repatriate trafficked women and girls, and push the proposed SAARC convention against trafficking of women and girls in South Asia.

#### **9. Rehabilitation of Bonded labour:**

Last year, the Government of Nepal decided to outlaw the practice of Kamaiya in the country, which was prevalent in the Western-Southern parts of Nepal. Most of the freed Kamaiyas are displaced and staying in the jungle under the tent. Thus we urge that the state should rehabilitate the freed bonded labour immediately.

#### **10. Equal treatment for Gurkha soldiers:**

The Gurkha soldiers have been serving from the last 185 years for the British Empire. They fought two world wars for the British Government. A large number of them died or injured and disabled for life long. Most of these war veterans were sent back after the world wars ended with empty hands. Most of the British-Gurkha Army is from indigenous communities. But they are receiving extremely less salary, pensions and other benefits, not equal, in comparison with their British counterparts. This is an extreme form of racial discrimination in the employment. The British Government should immediately pay salary and other benefits to the Gurkha Soldiers equivalent to the British soldiers and publish the list of Gurkha soldiers killed in two World Wars. The British government should acknowledge wrongs done to Gurkha community and consider the ways of compensating for them.

The bilateral treaty says that the Gurkha soldiers serving under the foreign army can be used against Hindu community or state. We also urge that the Government of Nepal should ensure through bilateral agreements not to mobilise the youths from Indigenous groups (who are presently serving the

armies of a foreign country) to suppress the national and indigenous peoples' liberation movement in any part of the world. On the other hand, the state should create employment opportunities for such youths in the country itself in order to discourage such expatriation.

#### **11. Provision of Education in native languages**

The constitution says that each community residing within the Kingdom of Nepal shall have the right to preserve and promote its language, script and culture. They can operate schools up to the primary level in its own mother tongue for imparting education to its children. These constitutional provisions seem discriminators. Because on the one hand the state has not taken responsibility for the preservation and promotion of the language script and culture by itself and on the other hand, the communities can not operate schools above primary levels. It is imperative that the state should take responsibility to preserve the language, script and culture as well as the education in mother tongue till university.

#### **12. Implementation of right to information:**

The state should ensure the right to information of indigenous and language communities by providing the Government official documents, announcements, reports, Radio and Televisions programmes in all languages. 50 % of the total population are still native speakers. They do not speak the khas language, which is the medium of instruction in education and government offices. It does mean that 50 percent of the population are deprived of the right to information and media due to the language.

#### **13. Ratification of international instruments without reservations:**

The government of Nepal has ratified the CERD with reservation. The government should lift the reservation and implement it in consultation with the indigenous peoples and the minorities. It is also necessary to ratify ILO 169 and take steps to adopt the UN Draft Declaration of the Rights of Indigenous Peoples. The state should adopt comprehensive domestic legislation that incorporates the principles, rights, duties and obligations stated in the conventions and should adopt, in consultation with civil society organisations, comprehensive national policies and action plans to combat racism especially in the practice.

#### **14. Promotion of self sufficient economy:**

The Indigenous peoples are among those who are highly affected by globalisation. The indigenous peoples are also among those who are resisting the process since we are the ones who can offer the best alternative to globalisation. Therefore the government must recognise the negative effects of globalisation which contribute inter-alia, cultural homogenisation, economic inequality within and between states which occurs along racial lines or may be based on the social and economic exclusion of peoples, communities and groups. The government must respect the indigenous peoples' traditional livelihood activities. The government must recognise, protect and promote the indigenous peoples' knowledge, wisdom. The development programme must embrace insight from a wide range of disciplines, which draw on both the micro- and the macro-picture.

### **VI. Mechanisms and strategies to combat racism at national level**

#### **1. Constitutional reforms through constituent assembly:**

The national consultation on indigenous peoples had identified 27 clauses of the constitution, 7 clauses of the common laws and 34 special laws to be amended and to redraft the constitution to incorporate the new elements as the principle of right to self-determination and national autonomy. King Tribhuvan, promising the election of a Constituent Assembly in which the people could draft their own constitution – a promise that was never fulfilled, based the proposal on the precedent of the 1951 proclamation. A constituent assembly would rely on the will of the people, rather than on formal and legalistic requirements. The drafting of the constitution through the elected Constituent Assembly will be the most democratic and fully participatory.

#### **2. Referendum on the form of government:**

There is also debate on the forms of the government. The indigenous peoples call for a popular referendum on the form of government in Nepal. There could be directly elected Prime Minister by the people. Indigenous peoples favour either the national autonomy on ethnic lines or the federal

government. Madhesiya group demands the federal government on the basis of the regions. Because, the social structure and the regional base of the Nepal is diverse. A referendum would rely on the will of the people, rather than on formal and legalistic requirements.

The Indigenous peoples were autonomous before the establishment of the feudal Hindu nation state. They had elected kingship systems. The present Hindu Monarchy is hereditary. It is constitutional monarchy in title but it has military and emergency power. It is still above parliament and the constitution. The parliament of the sovereign people can not discuss and enact laws for the Monarchical institution. The institution is not accountable to the nation and the people and it is not transparent. The constitution can not give permission to speak about the king and his royal relatives. In relation to Government and Maoist Peace Talks, the people including indigenous peoples, Political parties and Maoist groups are speaking about the choice between the Hindu Kingdom and the secular Republic State. A referendum could be a way to address these issues including the role of the monarchy. Equally, a referendum on the form of government and issues of national importance could be considered as the most appropriate tool to reveal the peoples' priorities and aspirations.

### **3. Establish a high level Special Rapporteur at national level:**

The Government should form a high level Special Rapporteur to study the discriminations against indigenous peoples, minorities, dalits and women at the national level, in order: to identify communities in which discrimination continues to be experienced in practice; to examine existing constitutional, legislative and administrative measures for the abolition of such discrimination; and to make any further concrete recommendations and as may be appropriate in the light of such examination.

### **4. Set up National Commission and Monitoring Mechanism:**

The Government of Nepal should establish National Commission to promote the respect for the enjoyment of human rights of indigenous peoples, women, minorities and Dalits as expressly set in ICERD, to review the government policy towards the protection against the racial discrimination, to monitor legislative compliance with the provision of the ICERD, and to help the government to take immediate and effective measures, including appropriate forms of affirmative actions.

## References:

1. Tamang, P.R. (ed.) 2000, Proceedings of the Roundtable on Setting Strategies for the Rights of Indigenous Nationalities, jointly organised by Minority Rights Groups International and Nepal Federation of Nationalities, held in Dhulikhel, Nepal from 16-20 Magha, 2056.
2. A list of existing contradictory laws of Nepal with International Human Rights laws:
  - (1) Universal Declaration of Human Rights (UDHR/1948): The constitution of Nepal contradicts with the article 2 of the UDHR, since it distinct and discriminates on the basis of language, religion, caste and ethnic origin.
  - (2) International Convention on Civil and Political Rights (ICCOPR/1965).
  - (3) International Convention on Economic, Social and Cultural Rights (ICESCR/1965).
  - (4) United Nations Declaration on the Elimination of All Forms of Racial Discrimination (EARD/1963): Articles 1, 2, 4, 9(1,3).
  - (5) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD/1965): Articles 1, 2.1C, 2.2, 4, 5d(VII, VIII, IX), 5E(F), 6, 7.
  - (5) United Nations Declaration on the Rights of Persons belonging to Religious, Linguistic, Ethnic or National Minorities (MRD/1992): Articles 1.2, 2.1, 2.2, 2.4, 3.1, 4.1, 4.3, 4.4, and 5.1.
  - (6) United Nations Convention on the Rights of Child (CEC): Art. 30.
  - (7) ILO-169: Convention Concerning Indigenous and Tribal Peoples in Independent Countries (1989): Articles 2.2 (ABC), 3.1, 4.1, 5a, 6b,c, 7.1, 8.1, 9.1, 10.1, 14.1, 14.2, 15.1, 15.2, 20.2b, 20.3c, 27.1, 27.3, 28.1, 28.3, 31, & 33.

## Footnotes:

1. The Indigenous Peoples" refers to those communities or nationalities; (i) which possess their own distinct and original lingual and cultural traditions and whose religious faiths are based on ancient animism (worshipper of ancestors, land, season, nature), and/or who do not claim "The Hinduism" enforced by the state, as their traditional and original religion; (ii) those existing descendants of the peoples whose ancestors had established themselves as the first settlers or principal inhabitants in any part of the land falling within the territory of modern state (Nepal), or and who inhabited the present territory of Nepal at the time when persons of different culture or ethnic origin arrived there and who have their own history written or oral and historical continuity; (iii) which (communities) have been displaced from their own land for the last 4 centuries, particularly during the expansion and establishment of modern Hindu Nation-State and have been deprived of their traditional rights to own the natural resources (Kipat (communal land), cultivable land, water, minerals, trading points etc.); (iv) who have been subjugated in the State's political power set-up (decision-making process), whose ancient culture, languages and religion are non-dominant and whose social values were neglected and humiliated; (v) whose society is traditionally erected on the principle of egalitarianism - rather than the hierarchy of the indo-Aryan caste system and gender equality (or rather women enjoying more advantageous positions) - rather than social, economic and religious subordination of women, but whose social norms and values have been aligned by the state; and (vi) which formally or informally admit or claim to be the indigenous peoples of Nepal on the basis of aforementioned characteristics. Though 'Indigenous Peoples' and 'Nationalities' are restively not synonyms but, however, all the 'nationalities' seem to be the 'Indigenous peoples' in the context of Nepal (NCIDWIP/Nepal, Lapsipedi Report; 1994).
2. Tamang, Rai, Jirel, Majhi and Limbu communities were the Kipat holders in Nepal. Other indigenous groups also had communal lands in different titles.

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